

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54398; File No. SR-ISE-2006-42]

### Self-Regulatory Organizations; the International Securities Exchange, Inc., Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Short Sales

August 31, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 25, 2006, the International Securities Exchange, Inc. (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to adopt a rule with respect to short selling on the ISE Stock Exchange, the Exchange's entry into the trading of non-option equity securities. The text of the proposed rule change is available on the Exchange's Web site (<http://www.iseoptions.com>), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

*Purpose*—Currently the ISE only trades options on equity securities and

indices. The purpose of this proposed rule change is to adopt a rule that will be necessary for ISE ultimately to trade non-option equity securities. Specifically, Commission Regulation SHO<sup>3</sup> and Rule 10a-1<sup>4</sup> under the Securities Exchange Act of 1934 ("Exchange Act") govern the marking of orders in equity securities as long and short, the short sale of securities, and securities borrowing and delivery requirements. In order for the ISE to trade equity securities it will need to adopt a rule implementing these provisions. Proposed Rule 2105 does so by: (a) Requiring members to mark orders in compliance with Regulation SHO; (b) implementing the short-sale restrictions of the "tick rule" contained in the Short Sale Rule; and (c) prohibiting members from entering orders in equity securities unless the member can comply with the borrowing and delivery requirements of Regulation SHO. Proposed Rule 2105 exempts from its requirements transactions, securities and persons similarly exempted under Regulation SHO.<sup>5</sup>

*Basis*—The basis under the Exchange Act for this proposed rule change is found in Section 6(b)(5), in that the proposed rule filing is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the proposal will permit the Exchange to trade equity securities in a manner that complies with Regulation SHO and the Short Sale Rule.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties. The Exchange will notify the Commission of any written comments received by the Exchange.

<sup>3</sup> Rules 242.200 through 242.203 under the Exchange Act; 17 CFR 242.200-242.203 ("Regulation SHO").

<sup>4</sup> 17 CFR 240.10a-1 ("Short Sale Rule").

<sup>5</sup> Rule 2105 is substantially similar to Rule 30.20 of the Chicago Board Options Exchange, Incorporated ("CBOE").

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2006-42 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2006-42. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the ISE and on ISE's Web site at <http://www.iseoptions.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2006-42 and should be submitted on or before October 3, 2006.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5), which requires that an exchange have rules designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general to protect investors and the public interest.<sup>6</sup> By incorporating the requirements of Regulation SHO and the Short Sale Rule, the proposed rule will contribute to a coordinated regulatory effort to prevent short sale fraud and manipulation and, in so doing, will protect investors.

#### *Acceleration*

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal incorporates the provisions of Regulation SHO and the Short Sale Rule and will be necessary for the ISE to trade non-option equity securities on the ISE Stock Exchange. The Exchange's adoption of a rule incorporating the provisions of Regulation SHO and the Short Sale Rule in order to trade non-option equity securities benefits the investing public. The Commission does not believe that ISE's proposal raises any novel regulatory issues. Accordingly, the Commission believes good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Exchange Act, 15 U.S.C. 78f(b)(5) and 78s(b), to approve the proposed rule change on an accelerated basis.

#### **V. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-ISE-2006-42) be and hereby is approved on an accelerated basis.

<sup>6</sup> In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Nancy M. Morris**,  
*Secretary*.

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-54399; File No. SR-ISE-2006-45]**

### **Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating To Establishing ISE Stock Exchange, LLC as a Facility of the International Securities Exchange, Inc**

September 1, 2006.

#### **I. Introduction**

On July 31, 2006, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change establishing a facility, ISE Stock Exchange, LLC ("ISE Stock"), that would administer a fully automated trading system for the trading of equity securities by Electronic Access Members, or EAMs, of ISE under the rules of ISE. The proposed rule change was published for comment in the **Federal Register** on August 10, 2006.<sup>3</sup> The Commission received no comments regarding the proposal. On August 31, 2006, ISE filed Amendment No. 1 to the proposed rule change.<sup>4</sup> This order grants accelerated approval to the proposed rule change and Amendment

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 54273 (August 3, 2006), 71 FR 45868.

<sup>4</sup> In Amendment No. 1, ISE made changes to the proposed rule change to reflect changes made in the Second Amendment and Restated Limited Liability Company Agreement ("LLC Agreement") of ISE Stock, and made clarifying changes to the LLC Agreement, in part, to specifically reference ISE in various provisions, to clarify the voting rights of Members who have transferred Units, to clarify the details of the exception from the voting restrictions as they relate to International Securities Exchange Holdings, Inc. ("Holdings"), to clarify that ISE's Board must determine whether any change to the LLC Agreement must be filed with the Commission pursuant to Section 19(b) of the Act, and to apply the call right described in Section 9.8 of the LLC Agreement to all Units.

No. 1 thereto, and solicits comments from interested persons on Amendment No. 1.

#### **II. Description of the Proposal**

##### *A. Overview*

The Exchange proposes to establish ISE Stock as a facility, as that term is defined in Section 3(a)(2) of the Act,<sup>5</sup> of ISE. ISE Stock would administer a fully automated trading system for the trading of equity securities by Electronic Access Members, or EAMs, of ISE under the rules of ISE. The Exchange submitted to the Commission the Certificate of Formation of ISE Stock and the LLC Agreement. The Certificate of Formation and the LLC Agreement are the source of ISE Stock's governance and operating authority and, therefore, function in a similar manner as articles of incorporation and by-laws function for a corporation.

ISE is a founding and controlling member of ISE Stock. ISE owns all of the Class A Units of ISE Stock, representing 51% of the voting securities of ISE Stock. In addition to its ownership stake in ISE Stock, ISE has entered into a management agreement (the "Management Agreement") with ISE Stock. Pursuant to the Management Agreement, ISE Stock has appointed ISE as ISE Stock's manager ("Manager") to perform certain management, operational, and related services. As described in Section 8.1 of the LLC Agreement, with limited exceptions, ISE, as the Manager, would have the complete and exclusive authority to manage the operations and affairs of ISE Stock. In addition, ISE would have responsibility for all regulatory functions related to the facility (including conducting market surveillance for trading on ISE Stock). ISE Stock would have responsibility for the business operations of the facility to the extent those activities are not inconsistent and do not interfere with the regulatory and oversight functions of ISE.<sup>6</sup>

The Exchange submitted to the Commission the Certificate of Formation and the LLC Agreement of ISE Stock specifically relating to the control and governance of ISE Stock that would ensure that ISE has the authority within ISE Stock to maintain its responsibility for all regulatory functions related to the ISE Stock facility.<sup>7</sup> The LLC Agreement

<sup>5</sup> 15 U.S.C. 78c(a)(2).

<sup>6</sup> See Amendment No. 1 *supra* note 4 and LLC Agreement, Section 6.1(d).

<sup>7</sup> The Board of Directors of ISE would be required to determine if any changes to the LLC Agreement are required to be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b-