

*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 Number SR-CBOE-2005-78 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-78. 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. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

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-CBOE-2005-78 and should be submitted on or before November 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jonathan G. Katz,**  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52711; File No. SR-ISE-2004-04]

**Self-Regulatory Organizations;  
International Securities Exchange, Inc.;  
Order Approving Proposed Rule  
Change and Amendments No. 1 and 2  
Relating to Exposure Periods in the  
Facilitation and Solicited Order  
Mechanisms**

November 1, 2005.

**I. Introduction**

On February 23, 2004, 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 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to reduce the exposure period in its Facilitation and Solicited Order Mechanisms from ten seconds to three seconds. The ISE filed Amendments No. 1 and 2 to the proposal on September 7, 2005, and September 20, 2005, respectively.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on September 28, 2005.<sup>4</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as amended.

**II. Description of Proposal**

Supplementary Material .04 to ISE Rule 716, "Block Trades," currently provides ISE members with 10 seconds to respond to broadcast messages for orders entered into the ISE's Facilitation and Solicited Order Mechanisms. The ISE proposes to amend ISE Rule 716, Supplementary Material .04 to reduce the exposure period in the Facilitation and Solicited Order Mechanisms from 10 seconds to three seconds.<sup>5</sup>

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

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

<sup>3</sup> Amendment No. 1 superseded and replaced the ISE's original filing in its entirety. Amendment No. 2 corrected a non-substantive typographical error in the text of the proposed rule change, and two incorrect references in footnotes to the Form 19b-4 for Amendment No. 1 and Exhibit 1 thereto.

<sup>4</sup> See Securities Exchange Act Release No. 52479 (September 21, 2005), 70 FR 56755.

<sup>5</sup> ISE Rule 716 originally required that orders be exposed in the Facilitation Mechanism for 30 seconds. In September 2002, the Commission approved an ISE proposal to reduce this exposure period from 30 seconds to 10 seconds. See Securities Exchange Act Release No. 46514 (September 18, 2002), 67 FR 60627 (September 25, 2002) (order approving File No. SR-ISE-2001-19). The Commission approved the ISE's Solicited Order Mechanism in June 2004 with an exposure period of 10 seconds. See Securities Exchange Act Release

Similar to the Facilitation and Solicited Order Mechanisms, the ISE's Price Improvement Mechanism ("PIM") provides an auction process through which an ISE member may trade with its customer's order as principal or execute its customer's order against orders the member has solicited.<sup>6</sup> The exposure period for orders entered into the ISE's PIM is three seconds. The ISE notes that the PIM is an interactive auction in which ISE members receive and may respond to multiple price updates within the three-second exposure period. In contrast, ISE members receive only one message at the start of an auction for orders entered into the Facilitation and Solicited Order Mechanisms. The ISE believes that there is no reason for providing different exposure periods in the three mechanisms because, in each of the three mechanisms, ISE members are notified of orders and enter their interest in trading with such orders in the same technical manner.

**III. Discussion**

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b),<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>9</sup> In particular, the Commission believes that reducing the exposure period for orders entered into the ISE's Facilitation and Solicited Order Mechanisms from 10 seconds to three seconds could facilitate the prompt execution of these orders while providing participants in ISE's market with an adequate opportunity to compete and provide price improvement for the orders.

In approving the ISE's PIM, the Commission concluded that the three-second PIM auction should afford electronic crowds sufficient time to compete for orders submitted to the PIM.<sup>10</sup> In reaching this conclusion, the

No. 49943 (June 30, 2004), 69 FR 41317 (July 8, 2004) (order approving File No. SR-ISE-2001-22).

<sup>6</sup> See ISE Rule 723, "Price Improvement Mechanism for Crossing Transactions." See also Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (order approving File No. SR-ISE-2003-06) ("PIM Order").

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> See PIM Order, *supra* note 6.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

Commission stated that the critical issue is determining whether the three-second timeframe would give participants in a fully automated marketplace sufficient time to respond to a PIM broadcast, to compete, and to provide price improvement for orders, and whether electronic systems were available to ISE members that would allow them to respond to PIM broadcasts in a meaningful way within the proposed timeframe.<sup>11</sup> The Commission noted that the ISE is a fully electronic exchange where crowd members interact by electronic means, and that electronic systems were readily available, if not already in place, that would allow ISE members to respond to PIM broadcasts.<sup>12</sup>

The Commission believes that its rationale for approving the three-second PIM auction applies equally to auctions in the Facilitation and Solicited Order Mechanisms. In this regard, the Commission notes that in contrast to the PIM, which provides an interactive auction in which ISE members may receive and respond to multiple price updates within the three-second exposure period, the Facilitation and Solicited Order Mechanisms provide ISE members with only one message at the start of the auctions. Accordingly, the Commission believes that the electronic systems that would allow ISE members to receive and respond to multiple price updates during a three-second PIM auction also should allow them to respond in a meaningful way to three-second auctions in the Facilitation and Solicited Order Mechanisms.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-ISE-2004-04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 05-22179 Filed 11-4-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52709; File No. SR-NASD-2005-117]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Seeking Permanent Approval of Rules Concerning Bond Mutual Fund Volatility Ratings Prior to Expiration of Pilot

November 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 28, 2005 and October 24, 2005 (Amendment No. 1), the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD is seeking permanent approval of NASD Rule 2210(c)(3) and Interpretive Material 2210-5 concerning bond mutual fund volatility ratings prior to the expiration of the pilot on December 29, 2005.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### IM-2210-5. Requirements for the Use of Bond Mutual Fund Volatility Ratings

[(This rule and Rule 2210(c)(3) will expire on December 29, 2005, unless extended or permanently approved by NASD at or before such date.)]

(a) through (c) No change.

\* \* \* \* \*

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these

statements may be examined at the places specified in Item IV below. NASD 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

##### 1. Purpose

#### Background and Description of NASD's Rules on Bond Mutual Fund Volatility Ratings

On February 29, 2000, the SEC approved on a pilot basis NASD Interpretive Material 2210-5, which permits members and their associated persons to include bond fund volatility ratings in supplemental sales literature (mutual fund sales material that is accompanied or preceded by a fund prospectus).<sup>3</sup> At that time, the SEC also approved as a pilot NASD Rule 2210(c)(3), which sets forth the filing requirements and review procedures applicable to sales literature containing bond mutual fund volatility ratings. Previously, NASD staff interpreted NASD rules to prohibit the use of bond fund volatility ratings in sales material.

IM-2210-5 permits the use of bond fund volatility ratings only in supplemental sales literature and only if certain conditions are met:

- The word "risk" may not be used to describe the rating.
- The rating must be the most recent available and be current to the most recent calendar quarter ended prior to use.
- The rating must be based exclusively on objective, quantifiable factors.
- The entity issuing the rating must provide to investors through a toll-free telephone number or Web site (or both) a detailed disclosure on its rating methodology.
- A disclosure statement containing all of the information required by the rule must accompany the rating. The statement must include such information as the name of the entity issuing the rating, the most current rating and the date it was issued, and a description of the rating in narrative form containing certain specified disclosures.

Rule 2210(c)(3) requires members to file for approval with NASD's Advertising Regulation Department ("Department"), at least 10 days prior to

<sup>11</sup> See PIM Order, *supra* note 6.

<sup>12</sup> See PIM Order, *supra* note 6.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</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. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR-NASD-97-89).