

the **Federal Register**. Amendment No. 2 revised the proposal to require that the public customer priority overlay be activated whenever *pro rata* priority is in use, to delete provisions relating to complex orders, and to amend the requirements for executing a facilitation or crossing transaction with priority over existing interest on the book. These changes further public customer protection by reducing the likelihood that a public customer order will lose all or part of a fill to a later arriving professional order at the same price. Amendment No. 2 also made clarifications to the proposed rule change that do not alter the substance of the proposed rules and thus are appropriate for accelerated approval. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>110</sup> to approve the proposed rule change, as amended, prior to the thirtieth day after publication of the notice of filing of Amendment No. 2 thereto in the **Federal Register**.

#### IV. Solicitation of Comments Concerning Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether it 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 Number SR-CBOE-2004-21 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-CBOE-2004-21. 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 such 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-2004-21 and should be submitted on or before October 6, 2006.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>111</sup> that the proposed rule change (File No. SR-CBOE-2004-21), as amended, is approved, and that Amendment No. 2 thereto is approved on an accelerated basis, as a pilot program, until the final compliance date for Rules 610 and 611 of Regulation NMS.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>112</sup>

**Nancy M. Morris**,  
Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54418; File No. SR-ISE-2006-51]

#### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Definition of a Directed Order

September 8, 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 September 6, 2006, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

change as described in Items I and II below, which Items have been prepared by the ISE. ISE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

ISE is proposing to expand the definition of a "Directed Order" to allow broker-dealer orders to be routed to ISE market makers under ISE Rule 811. Below is the text of the proposed rule change. Proposed new language is in *italic*; proposed deletions are in [brackets].

\* \* \* \* \*

##### Rule 811. Directed Orders

(a) Definitions.

(1) A "Directed Order" is [a Public Customer Order] *an order* routed from an Electronic Access Member to an Exchange market maker through the Exchange's System.

(2) through (3) no change.

(b) through (e) 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, the ISE 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 IV below. The ISE 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

Under ISE Rule 811 (Directed Orders), Electronic Access Members may route orders to an ISE market maker, which is then required to either enter them into the Price Improvement Mechanism<sup>5</sup> or release them to execute in the regular market. While the Price Improvement

<sup>111</sup> *Id.*

<sup>112</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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> ISE Rule 723.

<sup>110</sup> 15 U.S.C. 78s(b)(2).

Mechanism is not limited to Public Customer Orders under ISE Rule 723, the Exchange initially limited the directed orders program to the routing of Public Customer Orders only.<sup>6</sup> The Exchange now believes it is appropriate to expand the directed orders program to give broker-dealer orders a greater opportunity for price improvement. The Exchange therefore proposes to broaden the definition of a Directed Order under ISE Rule 811, so that broker-dealer orders may be routed to ISE market makers for potential entry into the Price Improvement Mechanism.

## 2. Statutory Basis

The Exchange believes that the basis under the Act is found in section 6(b)(5),<sup>7</sup> in that the proposed rule change 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. In particular, the Exchange believes that the proposed rule change will provide greater opportunity for broker-dealer orders to receive price improvement through the Price Improvement Mechanism.

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

The Exchange believes that 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.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms, become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the

protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. ISE has requested that the Commission waive the 30-day operative delay, which would make the rule change effective and operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>11</sup> Such waiver would allow the Exchange to implement the proposed rule change immediately. The Commission notes that the proposal to amend the definition of a Directed Order in the ISE Rules is substantially similar to the definition of a Directed Order currently used by the Boston Options Exchange ("BOX"), a facility of the Boston Stock Exchange, Inc.<sup>12</sup> The Commission does not believe that the proposed rule change raises new regulatory issues. Accordingly, the Commission designates the proposed rule change effective and operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> For purposes only of waiving the 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> See Chapter I, Section 1(a)(21) of the BOX Rules (defining the term "Directed Order" to mean any Customer Order to buy or sell which has been directed to a particular Market Maker by an Order Flow Provider) and Chapter I, Section 1(a)(20) of the BOX Rules (defining the term "Customer Order" to mean an agency order for the account of either a Public Customer or a broker-dealer). See also Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15) (order approving trading rules for the Boston Options Exchange facility).

change is consistent with the Act. Comments may be submitted by any of the following methods:

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### Paper Comments

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

All submissions should refer to File Number SR-ISE-2006-51. 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 such filing also will be available for inspection and copying at the principal office of the ISE. 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-2006-51 and should be submitted on or before October 6, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Nancy M. Morris,**  
Secretary.

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<sup>6</sup> Under ISE Rule 100(a), a Public Customer Order is defined as an order for the account of a Public Customer, and a Public Customer is defined as a person that is not a broker or dealer in securities.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 17 CFR 200.30-3(a)(12).