

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67606; File No. SR-ISE-2012-69]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expose Non-Customer Orders Subject to Automatic Rejection to Its Members for Potential Execution at the NBBO or Better

August 7, 2012.

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 30, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 self-regulatory organization. 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

The Exchange proposes to provide an opportunity for Non-Customer orders to be exposed for execution on the Exchange before being rejected when execution of the order would trade through a better price on another exchange or placing the order on the book would lock or cross another market. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.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 IV 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

##### 1. Purpose

Under the intermarket linkage rules, the ISE cannot execute orders at a price that is inferior to the national best bid or offer ("NBBO"), nor can the Exchange place an order on its book that would cause the ISE best bid or offer to lock or cross another exchange's quote.<sup>3</sup> How the Exchange handles orders in these circumstances depends on whether they are Public Customer Orders (*i.e.*, orders for the account of a person that is not a broker-dealer)<sup>4</sup> or Non-Customer Orders (*i.e.*, orders for the account of a broker-dealer).<sup>5</sup> Non-Customer Orders are rejected automatically upon receipt, whereas Public Customer Orders are handled by the Primary Market Maker,<sup>6</sup> which has the responsibility of either executing the Public Customer Order at a price that at least matches the NBBO or obtaining better prices from the away market(s) by sending one or more intermarket sweep orders ("ISOs") on the Public Customer's behalf.<sup>7</sup> Before the Primary Market Maker sends ISOs to other exchanges in these circumstances, Public Customer Orders are exposed to all ISE Members for up to one second to give them an opportunity to execute the Public Customer Order at the NBBO price or better.<sup>8</sup>

Under the proposed rule change, the Exchange seeks to provide Non-Customer Orders an opportunity to be executed on the ISE before automatically rejecting the order, similar to the process used to expose Public Customer Orders before ISOs orders are sent to other exchanges. Specifically, instead of automatically rejecting a Non-Customer Order in the circumstances described above, the Exchange proposes to expose Non-Customer Orders to all members for up to one second. The Exchange will reject any unexecuted balance of the Non-Customer Order at the end of the exposure period unless it can be placed on the ISE book without locking or crossing another exchange's quotes.<sup>9</sup>

<sup>3</sup> ISE Rule 1901 and 1902.

<sup>4</sup> ISE Rule 100(a)(39).

<sup>5</sup> ISE Rule 100(a)(28).

<sup>6</sup> ISE Rule 714(a).

<sup>7</sup> ISE Rule 803(c)(2).

<sup>8</sup> Supplementary Material .02 to Rule 803. The exposure period for Public Customer Orders currently is 150 milliseconds.

<sup>9</sup> The Exchange proposes to amend Supplementary Material .02 to Rule 803 to provide for the exposure of Non-Customer Orders. The proposed changes differentiate the handling of Non-Customer Orders from Public Customer Orders, as Primary Market Makers are not responsible for

While the default under the proposal is for Non-Customer Orders to be exposed, members may instruct the Exchange not to expose Non-Customer Orders.<sup>10</sup> As a result, this proposed change will have no impact on Non-Customers that prefer to have their orders rejected immediately upon entry as they are currently.

The Exchange anticipates implementing the new system functionality for the proposed rule change in August 2012. Prior to implementation, the Exchange will issue a circular to all members informing them of the date on which the new functionality will become available.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change will provide Non-Customer Orders a greater opportunity to receive an execution on the ISE at the NBBO or better. Due to differences in execution fees among the options exchanges, the Exchange believes that some Non-Customers would prefer to have their orders executed on the ISE if possible. However, the Exchange also believes that some Non-Customers prefer not to have their orders delayed in any manner. Accordingly, the proposed rule change allows members to choose whether Non-Customer Orders should be rejected upon entry as they are currently, or whether they should be exposed on the Exchange before being rejected. Thus, the Exchange believes the proposed rule change will benefit Non-Customers by giving them greater control over the processing of their orders.

providing NBBO price protection to Non-Customer Orders. Primary Market Makers will not handle Non-Customer Orders under the proposed exposure process for Non-Customer Orders.

<sup>10</sup> The Commission has previously approved the exposure of Non-Customer Orders when an exchange is not at the NBBO. CBOE Rule 6.14A(a) (providing that the CBOE may designate eligible order origin code, including non-market maker broker-dealer, and class in which HAL2 is activated).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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

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

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

The proposed rule change does not impose any burden on competition.

### 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 unsolicited written comments from members or other interested parties.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, 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>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2012-69 on the subject line.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

### Paper Comments

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

All submissions should refer to File Number SR-ISE-2012-69. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-ISE-2012-69 and should be submitted on or before September 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67616; File No. SR-NYSEArca-2012-66]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of iShares Copper Trust Pursuant to NYSE Arca Equities Rule 8.201

August 8, 2012.

#### I. Introduction

On June 19, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 list and trade shares ("Shares") of iShares Copper Trust ("Trust") pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on June 27, 2012.<sup>3</sup> The Commission received one comment letter on the proposed rule change.<sup>4</sup>

This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change. The institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201, which governs the

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

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

<sup>3</sup> Securities Exchange Act Release No. 67237 (June 22, 2012), 77 FR 38351 ("Notice").

<sup>4</sup> See letter from Robert B. Bernstein, Vandenberg & Feliu, LLP ("V&F"), to Elizabeth M. Murphy, Secretary, Commission, dated July 18 2012 ("July 18 V&F Letter"). The July 18 V&F Letter is available at <http://www.sec.gov/comments/sr-nysearca-2012-66/nysearca201266-1.pdf>. V&F identified itself as a U.S. law firm that represents RK Capital LLC, an international copper merchant, and four end-users of copper: Southwire Company, Encore Wire Corporation, Luvata, and AmRod. V&F states that these companies collectively comprise about 50% of the copper fabricating capacity of the United States. See July 18 V&F Letter at 1.