

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61286; File No. SR-ISE-2009-112]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program To Expose All-or-None Orders Until January 31, 2010

January 5, 2010.

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 December 24, 2009, 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 Exchange. The Exchange has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 is proposing to amend its rules to implement a broadcast message that will inform market participants when a non-marketable all-or-none limit order is placed on the limit order book. The text of the proposed rule change is as follows, with deletions in [brackets] and additions *italicized*:

Rule 717. Limitations on Orders

\* \* \* \* \*

Supplementary Material to Rule 717

.01-.03 No Change.

.04 A non-marketable all-or-none limit order shall be deemed "exposed" for the purposes of paragraphs (d) and (e) one second following a broadcast notifying market participants that such an order to buy or sell a specified number of contracts at a specified price has been received in the options series. This provision shall be in effect on a pilot basis expiring [December 31, 2009] *January 31, 2010*.

\* \* \* \* \*

#### 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

(a) *Purpose*—Pursuant to ISE Rule 717(d) and (e), Electronic Access Members must expose agency orders on the Exchange for at least one second before entering a contra-side proprietary order or a contra-side order that was solicited from a broker-dealer, or utilize one of the Exchange's execution mechanisms that have one second exposure periods built into the functionality.<sup>5</sup>

The Exchange operates an integrated system that consolidates all market maker quotes and orders, and automatically disseminates the best bid and offer. If a limit order is designated as all-or-none ("AON"), the contingency that the order must be executed in full makes it ineligible for display in the best bid or offer. Nevertheless, such orders are maintained in the system and remain available for execution after all other trading interest at the same price has been exhausted.<sup>6</sup> Upon the receipt of a non-marketable all-or-none limit order, the system automatically will send a broadcast message to all market participants notifying them that an all-or-none order to buy or to sell a specified number of contracts at a specified price has been placed on the book.

On July 9, 2009, the Exchange adopted a proposed rule change on a three-month pilot basis to specify that a non-marketable all-or-none limit order is deemed "exposed" for the purposes of Rule 717(d) and (e) one second following a broadcast notifying members that such an order to buy or sell a specified number of contracts at a specified price has been received in

the options series.<sup>7</sup> The Exchange subsequently extended the pilot for an additional month,<sup>8</sup> and then extended it again through December 31, 2009.<sup>9</sup> During the last extension, the broadcast message was made available to any market participant, not just members.<sup>10</sup> Thus, all of the terms of the order are disclosed to all market participants. The Exchange now proposes to extend the pilot until January 31, 2010.

(b) *Basis*—The basis under the Securities Exchange Act of 1934 ("Exchange Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and 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. In particular, under the proposed rule change all-or-none orders will continue to be exposed to all market participants so that there is a greater opportunity for them to interact with such orders.

##### 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 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:* (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30

<sup>7</sup> See Exchange Act Release No. 60311 (July 15, 2009), 74 FR 36290 (July 22, 2009).

<sup>8</sup> See Exchange Act Release No. 60866 (October 22, 2009), 74 FR 55879 (October 29, 2009).

<sup>9</sup> See Exchange Act Release No. 61016 (November 17, 2009), 74 FR 61393 (November 24, 2009).

<sup>10</sup> The AON broadcast message is available through the Exchange's application programming interface ("API"). Any member or non-member connecting to the API can receive the AON broadcast message. The Exchange is not proposing to adopt a fee associated with receiving this message, and any future fee would be filed with the Commission.

<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> See ISE Rule 716(d) (Facilitation Mechanism), Rule 716(e) (Solicited Order Mechanism) and Rule 723 (Price Improvement Mechanism for Crossing Transactions).

<sup>6</sup> Supplementary Material .02 to ISE Rule 713.

days after the date of the 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>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

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.<sup>13</sup> However, Rule 19b-4(f)(6)(iii)<sup>14</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. The Commission notes that waiver of the operative delay will permit the pilot to continue until January 31, 2010 without further delay, and will provide all market participants with the opportunity to receive ISE's broadcast message with information about the terms of new AON orders. The Commission also notes that no comments were received to date on the existing pilot. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.<sup>15</sup>

At any time within 60 days of the filing of the 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 change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange satisfied this requirement.

<sup>14</sup> *Id.*

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

#### 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-2009-112 on the subject line.

#### 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 No. SR-ISE-2009-112. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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 No. SR-ISE-2009-112 and should be submitted on or before February 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61284; File No. SR-NFA-2009-02]

### Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of a Proposed Change to the Interpretive Notice Regarding Security Futures Products Proficiency Training

January 4, 2010.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-7 under the Act<sup>2</sup> notice is hereby given that on December 11, 2009, National Futures Association ("NFA") 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 the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA concurrently filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").<sup>3</sup>

#### I. Self-Regulatory Organization's Description of the Proposed Rule Change

The amendments to the Interpretive Notice titled "NFA Compliance Rules 2-7 and 2-24 and Registration Rule 401: Proficiency Requirements for Security Futures Products" extend the relief from having to take a proficiency exam to engage in security futures activities from December 31, 2009 to December 31, 2012.

A copy of this filing is available on the Exchange's Web site at <http://www.nfa.futures.org>, on the Commission's Web site at <http://www.sec.gov>, the Exchange's principal office 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

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> On December 31, 2009, NFA filed an update to the proposed rule change to indicate that the CFTC, by letter dated December 28, 2009, advised NFA that the CFTC had determined not to review the proposal and that NFA was permitted to make the proposal effective as of December 28, 2009.