

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57398; File No. SR-ISE-2007-112)

February 28, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Obvious Errors

On November 29, 2007, the International Securities Exchange, LLC (“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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend ISE Rule 720 (“Obvious Error Rule” or “Rule”) to address “catastrophic errors.” On January 4, 2008, the ISE submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on January 16, 2008.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

The Exchange proposes to amend the Obvious Error Rule to add criteria for identifying catastrophic errors and making adjustments when they occur. The Exchange also proposes to streamline the procedure for reviewing actions taken when catastrophic errors occur.

Currently, under the Obvious Error Rule, trades that result from an obvious error may be adjusted or nullified based on objective standards set forth in the Rule. Under the Rule, whether an obvious error has occurred is determined by comparing the execution price of the option to its theoretical price and assessing whether the minimum amount of difference that is set forth in the Rule is met. The Rule requires that members notify ISE Market Control within a short time

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 57127 (January 10, 2008), 73 FR 2967 (“Notice”).

period following the execution of a trade (five minutes for market makers and 20 minutes for Electronic Access Members (“EAMs”)) if they believe the trade qualifies as an obvious error. Trades that qualify for adjustment are adjusted under the Rule to a price that matches the theoretical price plus or minus an adjustment value, which is \$.15 if the theoretical value is under \$3 and \$.30 if the theoretical value is at or above \$3. By adjusting trades above or below the theoretical price, the Rule assesses a “penalty” in that the adjustment price is not as favorable as the amount the party making the error would have received had it not made the error.

In some extreme situations, ISE members may not be aware of errors that result in very large losses within the notification time periods required under the Rule. The proposal will allow members experiencing catastrophic errors additional time to seek relief so that there is a greater opportunity to mitigate very large losses and reduce corresponding windfalls. In such cases, the proposal sets forth the minimum amount by which the option’s execution price must differ from the theoretical price for a catastrophic error determination to occur. The proposal also sets forth the adjustment value to be used by the Exchange when it makes a catastrophic error determination.

A catastrophic error will be deemed to have occurred when the execution price of a transaction differs from the theoretical price for the option by an amount equal to at least the specified minimum amount indicated in the Rule and an adjustment would be made plus or minus the adjustment value that also is set forth in the Rule. The minimum amount by which the execution price must differ from the theoretical price and the adjustment value for catastrophic errors will be significantly higher than the thresholds required for obvious errors, which the Exchange believes will limit the application of the proposed rule to errors involving significant losses.

Under the proposal, members will have until 8:30 a.m. Eastern Time on the day following the trade to notify Market Control of a potential catastrophic error. For trades that take place in an expiring series on expiration Friday, members must notify Market Control of a potential catastrophic error by 5:00 p.m. Eastern Time that same day. In consideration of the extreme nature of situations that will be addressed under the catastrophic error provisions, the Exchange proposes a streamlined one-step review process where a Catastrophic Error Tribunal (“Tribunal”), comprised of two representatives from market makers and two representatives from EAMs that are unrelated to the transaction in question, will make catastrophic error determinations and adjustments.⁴ In the event the Tribunal determines that a catastrophic error did not occur, the member that initiated the review will be charged \$5,000 to reimburse the Exchange for the costs associated with reviewing the claim.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act⁵ and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁶ in that the proposal is designed to prevent fraudulent and manipulative acts, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Commission notes that, in approving proposals relating to adjustment or nullification of trades involving obvious errors, it has stated that the determination of whether an obvious

⁴ In comparison, ISE Market Control makes initial obvious error determinations that can then be appealed to an Obvious Error Panel.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

error has occurred and the process for reviewing such a determination should be based on specific and objective criteria and subject to specific and objective procedures.⁷ The Commission believes that the ISE's proposal provides specific and objective criteria and procedures for the Exchange to apply when members seek review of transactions involving catastrophic errors. The Commission also believes that the proposed Catastrophic Error Tribunal, which is intended to streamline the review process, and the proposed fee for unsuccessful claims are appropriate given the proposal's purpose to allow members additional time to seek relief for very significant errors.⁸

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-ISE-2007-112), as amended, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

⁷ See, e.g., Securities Exchange Release Nos. 54228 (July 27, 2006), 71 FR 44066 (August 3, 2006) (SR-ISE-2006-14) (approving revisions to ISE's Obvious Error Rule) and 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (SR-ISE-2003-10) (approving revisions to ISE's Obvious Error Rule).

⁸ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).