

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50184; File No. SR-ISE-2004-20)

August 12, 2004

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a
Proposed Rule Change by International Securities Exchange, Inc. to Amend ISE Rule
722 Relating to Ratio Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 21, 2004, the International Securities Exchange, Inc. (the "ISE" or "Exchange") 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 ISE. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 ISE proposes to amend Exchange Rule 722 "Complex Orders" to allow ratio orders equal to or greater than one-to-three (.333) and less than or equal to three-to-one

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii).

(3.00). The text of the proposed rule change appears below. Proposed new language is in *italics*; proposed deletions are in [brackets].

Rule 722. Complex Orders

(a) **Complex Orders Defined.** A complex order is any order for the same account as defined below:

(1) – (5) – No change.

(6) **Ratio Order.** A spread, straddle or combination order may consist of legs that have a different number of contracts, so long as the number of contracts differs by a permissible ratio. For purposes of this paragraph, a permissible ratio [of contracts] is any ratio that is equal to or greater than [.5] one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.0) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not [(which is equal to .5) and a six-to-ten ratio (which is equal to .6) are permitted, but one-to-three ratio (which is equal to .333) is not].

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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 Exchange 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 Exchange Rule 722(a)(6), a spread, straddle or combination order may consist of legs that have a different number of contracts, so long as the number of contracts differs by a permissible ratio. Currently, a permissible ratio is any ratio that is equal to or greater than .5. For example, under the current rule, a one-to-two ratio (which is equal to .5) and a six-to-ten ratio (which is equal to .6) are permitted, but one-to-four ratio (which is equal to .25) is not.

The Exchange proposes to amend the definition of a ratio order under Exchange Rule 722 to allow ratios down to one-to-three (.333). The Exchange also proposes to clarify the language of Exchange Rule 722(a)(6) to specify that ratios of up to three-to-one (3.0) are also permitted. For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.0) ratio will be permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio will not. The Exchange believes that permitting ratio orders to have ratios equal to or greater than one-to-three or less than or equal to three-to-one will help market participants to tailor their positions more precisely to implement their trading and hedging strategies.

The Exchange notes that it is only proposing to change the definition of ratio order in Exchange Rule 722(a)(6) by changing which ratios are permissible thereunder. The Exchange intends to apply the same, current priority rules set forth in Exchange Rule 722(b) to the proposed ratio orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act⁶ 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 Exchange believes that the proposed rule change is consistent with these objectives in that it helps market participants to tailor their positions more precisely to implement their trading and hedging strategies.

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

The Exchange does not believe that the proposed rule change will 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 neither solicited nor received written comments on the proposed rule change.

⁶ 15 U.S.C. 78f(b)(5).

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

Because the proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of 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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange satisfied the five-day pre-filing requirement. The Exchange further requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),⁹ and designate the proposed rule change to become operative immediately. The Exchange represents that the proposed rule change is based on a Chicago Board Options Exchange (“CBOE”) rule change recently approved by the Commission,¹⁰ and that, as a result, the ISE’s proposed rule change does not present any novel issues.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ See Securities Exchange Act Release No. 48858 (December 1, 2003), 68 FR 68128 (December 5, 2003).

The Commission believes that it is consistent with the protection of investors and the public interest to designate the proposal immediately operative.¹¹ The Commission believes that permitting ratio orders to have ratios equal to or greater than one-to-three (.333) or less than or equal to three-to-one (3.00) may provide market participants with greater flexibility and precision in effectuating trading and hedging strategies. The Commission also believes that the procedures governing ratio orders serve to reduce the risk of incomplete or inadequate executions.¹² In designating the proposal immediately operative, the Commission also does not believe that the proposed rule change raises any new issues of regulatory concern. The Commission notes that the proposed rule change is similar to a CBOE proposed rule change recently approved by the Commission that was subject to the full notice and comment period.¹³ No comments were received on the CBOE proposal. Accordingly, the Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date requirement for this proposed rule change, and has determined to designate the proposed rule change as operative on July 21, 2004, the date it was submitted to the Commission.

¹¹ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² We note that because of concerns that a higher ratio could provide market participants with a means to enter a ratio order that was designed primarily to give priority over orders on the limit order book or in the trading crowd, rather than to effectuate a bona-fide trading or hedging strategy, the Commission would need to closely examine any proposal to provide a higher ratio for ratio orders and would be concerned about whether such a proposal would be consistent with investor protection and the public interest under the Act.

¹³ See supra note 10.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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.¹⁴

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 e-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2004-20 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-ISE-2004-20. 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

¹⁴ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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 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-2004-20 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).