

June 4, 2004

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: File No. S7-18-04; Proposed Changes to Rule 19b-4

Dear Mr. Katz:

The International Securities Exchange, Inc. ("ISE") appreciates the opportunity to comment on the proposal to require greater automation in the filing and posting of self-regulatory ("SRO") rule changes. The Commission proposes to amend Rule 19b-4 ("Rule 19b-4") under the Securities Exchange Act of 1934 (the "Act") to require SROs: (1) to file rule changes electronically with the Commission; (2) to post their rule changes on their web sites; and (3) to maintain a current set of their rules on those web sites.

We strongly support this proposal. Filing rule changes electronically will streamline the filing process. The proposed requirement that SROs post their rule changes and full set of rules on their web sites will provide greater public access to this material on a uniform basis. We already post our full set of rules and fees on our web site, and we have no concerns with posting rule filings when we file them with the Commission, as long as all SROs do so as well.

We have the following comments on possible ways to improve the proposal:

- *Timing of Amending Posted Rules:* The Commission proposes to require an SRO to update the rules posted on its web sites "no later than the next business day after it has been notified of the Commission's approval of a proposed rule change" This is a difficult standard for us to follow since there is no uniform practice by which the Commission notifies SROs of approval of rule changes. Sometimes the Commission staff calls to notify us of an approval, while sometimes the staff faxes or e-mails notification to a specific person at the ISE (who may not be in the office). There also are times where we do not know about rule approvals until we see a notice in the *SEC News Digest* (which notice does not include the approval order) or we see the order itself either on the Commission's web site or in the *Federal Register*. Moreover, until we see the order, we may not be aware of certain conditions or other limitations on the approval.

Because there would be legal liability for our failure to update our posted rules on a timely manner, we believe it would be premature to require an SRO to update its posted rules until there is official legal notice that the Commission has approved the rule change. We therefore recommend that the Commission adopt an explicit and uniform requirement for updating posted rules: we propose that the Commission

require an SRO to update the rules on its web site no later than the day after publication of the approval order in the *Federal Register*.

- *Prompt Publication of Rule Changes:* A potential risk in having SROs post proposed rule changes on their web sites is that potential commentators may file comment letters prior to publication of the rule change in an attempt to delay processing of the filing and publication of the proposal in the *Federal Register*. The result could be a semi-private "debate" of the proposal between the filing SRO and selected commentators without benefit of full public input. We thus urge that the Commission adopt the policy of promptly publishing all properly-submitted rule changes within a specified time frame (such as 10 business days after filing), regardless of any comments it may receive prior to publication.
- *Text of Proposed Rule Changes:* SROs are inconsistent in whether they provide the full text of a proposed rule change in the draft *Federal Register* notice attached to a filing. Because it is difficult to comment on a proposal without seeing the specific language of the proposed rule change, we recommend that the Commission require that the rule change an SRO posts on its web site include the full text of the proposed amendments.
- *Comment Letters:* To provide complete transparency of the SRO rule change process, we believe it is important that all comment letters on proposed rule changes – including SRO responses thereto – be available electronically. Thus, we recommend that the Commission undertake to post on its own web site, promptly upon receipt, all comment letters it receives on a proposed rule change. This would include comment letters that the Commission receives in paper format, which the Commission would need to scan and then post electronically.
- *Posting of Fees:* Because SRO fees are "rules" under the Act and Rule 19b-4, we assume that the proposal would require SROs to post their fee schedules on their web sites. However, the proposal does not explicitly state this. We recommend that the Commission make this requirement explicit and require that SROs post their fees as a stand-alone, easy to read file on their web sites, and not simply as information integrated into their rules package.
- *Removing Stale Rule Filings from Web Sites:* The proposal requires an SRO to post rule filings on its web site, without stating how long such filings must remain posted. Thus, absent regulatory relief, an SRO will need to keep all its rule filings posted in perpetuity (unless the SRO withdraws a filing), even after Commission approval. We believe that rule filings become dated and of little value over time, and even can become misleading as subsequent changes to the same rule supersede previous amendments. Also, as proposed, SROs need not specify on their websites whether the Commission has approved a posted rule change. We recommend that the Commission (1) require SROs to indicate on their web site when the Commission has approved a pending rule change within the same time period required for updating the posted rules and (2) permit SROs to remove rule filings from their web sites one year after Commission approval of the rule change, or one year after effectiveness of rule changes that take effect on filing.

We thank you for the opportunity to submit these comments. If you have any questions on our comments, or if we can be of further help, please do not hesitate to give us a call.

Sincerely,

Michael J. Simon
Senior Vice President and Secretary

Attachment

cc: Annette Nazareth
Robert Colby
Florence Harmon