days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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.* Please include File Number SR–NASDAQ–2015–022 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2015–022. 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–NASDAQ–2015–022 and should be submitted on or before April 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

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the Commission written notice of its intent to file 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 has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74521; File No. SR–ISE–2014–43]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Amending its Information Barrier Rules

March 17, 2015.

I. Introduction

On September 15, 2014, International Securities Exchange, LLC (''Exchange'' or ''ISE'') 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 amending its information barrier rules. The proposed rule change was published for comment in the **Federal Register** on October 6, 2014.[3] The Commission received one comment letter regarding the proposed rule change[4] and one response letter from ISE.[5] On November 17, 2014, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to January 2, 2015.[6] On December 31, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[7] On March 9, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.[8] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend ISE Rules 810 (Limitations on Dealings) and 717 (Limitations on Orders) governing information barriers. Specifically, the Exchange proposes to amend Rule 810 to permit information to flow to a member's EAM unit, which handles the customer/agency side of the business, from its affiliated Primary Market Maker (''PMM'') and/or Competitive Market Maker (''CMM'') (jointly, ''market makers'') unit. As amended, ISE Rule 810 will allow EAMs to know where, and at what price, their affiliated market makers are either quoting or have orders on the order book[9] and to use that information to influence routing decisions. The Exchange represents that it currently provides guidance to its members that ISE Rule 810 is to be interpreted as a two-way information barrier between the EAM unit and its affiliated market maker unit.[10]

The Exchange also proposes to amend ISE Rule 717, Supplementary Material .06 to specify that the orders of a EAM

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73261 (September 30, 2014), 79 FR 60226 (''Notice'').

[4] *See* Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., dated October 27, 2014 (''Group One Letter'').

[5] *See* Letter from Michael J. Simon, Secretary and General Counsel, International Securities Exchange, LLC, dated November 14, 2014 (''ISE Response Letter'').

[6] *See* Securities Exchange Act Release No. 73614 (November 17, 2014), 79 FR 69547 (November 21, 2014).

[7] *See* Securities Exchange Act Release No. 73973 (December 31, 2014), 80 FR 583 (January 6, 2015).

[8] In Amendment No. 1 the Exchange clarifies that an Electronic Access Member (''EAM'') would only have access to the publicly available orders and quotes of its affiliated market maker. In addition, the Exchange clarifies that the proposed rule change would not permit a member's EAM unit to access any non-public order or quote information of its affiliated market maker, including any hidden or undisplayed size or price information. The Exchange also clarifies that market makers are not allowed to post hidden or undisplayed orders and quotes on the Exchange. Finally, the Exchange clarifies that its members would not expect to receive any additional order or quote information as a result of this proposed rule change. Amendment No. 1 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

Amendment No. 1 has been placed in the public comment file for SR–ISE–2014–43 at *http://www.sec.gov/comments/sr-ise-2014–43/ise201443.shtml* (see letter from Michael J. Simon, Secretary and General Counsel, International Securities Exchange, LLC, to Secretary, Commission, dated March 9, 2015) and also is available at the Exchange's Web site at *www.ise.com.*

[9] According to ISE Rule 805(b)(1)(ii), market makers may only have orders on the order book in option classes to which they are not appointed.

[10] *See* Notice, *supra* note 3, 79 FR 60226, 60226.

unit and its affiliated PMM and/or CMM unit may interact within one second without violating the ISE Rule 717(d) and (e) order exposure requirements when the firm can demonstrate that: (1) The customer order was marketable when routed; (2) the EAM was not handling the affiliated market maker quote/order; and (3) the affiliated market maker quote/order was in existence at the time the customer order(s) were entered into the ISE system. In combination, the proposed amendments to ISE Rules 810 and 717 will make it possible for an EAM to route a customer order to the ISE to immediately interact with the quote or an order of an affiliated market maker, but only subject to the conditions stated above.

III. Comment Letter and ISE's Response

As noted above, the Commission received one comment letter [11] opposing the proposed rule change.[12] The commenter asserts that the proposed one-way information barrier would introduce a conflict of interest which could result in EAMs routing orders based on self-interest as opposed to the customer's interest.[13] The commenter disagrees with the Exchange's premise that the proposed rule change would not compromise market integrity or cause customer harm.[14] The commenter also indicates that although other exchanges may interpret their rules to permit the sharing of information between the various units of a firm, such sharing only weakens a customer's chance of best execution.

The commenter believes there are two specific scenarios where a costumer may be harmed under this proposed rule change. First, the commenter states that EAMs could route customer orders to an affiliated market maker's quote at an exchange's best bid or offer rather than to an exchange with a better fill rate or price improvement mechanism.[15] Second, the commenter argues that an EAM holding a large customer order that could influence the price in the underlying could opt to route away from the quote of its affiliated market maker to avoid the potential risk of the trade and deprive the customer of a fill they were otherwise entitled to.[16]

The commenter indicates that these routing scenarios are not ''mere conjecture'' as broker-dealers ''openly admit'' that numerous factors are built into routing decisions that are primarily beneficial to broker-dealers.[17] The commenter also notes that there are litigation and academic studies that suggest that routing decisions are negatively impacted by conflicts of interest. The commenter believes that the erosion of information barriers would increase the likelihood that customer orders are routed based on the firm's best interest as opposed to duty of best execution owed to the customer.[18] The commenter concludes that two-way information barriers are the ''only way to truly guard customer interests and protect against the misuse of material non-public information,'' and a shift to a one-way information barrier would not provide any benefits EAM customers.[19] The commenter also believes that exchange rules should be written and interpreted in a way that prevents conflicts of interest from ever arising, and a two-way information barrier takes the potential conflict of interest out of the equation.[20]

The ISE responds that the commenter did not raise any new issues and its concerns were addressed in the Notice.[21] The ISE states that nothing in the proposed rule change would relieve members of their best execution obligation to obtain the most favorable terms reasonably available for customer orders.[22] The Exchange notes that, as a national securities exchange, it has a comprehensive surveillance program to monitor member compliance with applicable securities and regulations, including best execution.[23] ISE also represents that it would continue to monitor for abnormalities in interaction rates between members, and investigate and take appropriate regulatory action against members that fail to comply with their best execution obligations.[24] ISE believes that its surveillance tools will allow it to fulfill its regulatory responsibilities.[25] ISE also suggests that the filing is a competitive imperative as other options exchanges currently interpret their information barrier rules to be one way barriers that permit members to make routing decisions based on the quotes and orders of affiliated business units.[26]

IV. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[27] The Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) [28] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Amended ISE Rule 810 permits a less restrictive, one-way information barrier between market makers and other business units, as opposed to the prior rule that required a prescriptive, two-way information barrier. Nonetheless, the Commission notes that Exchange members are still required to have policies and procedures that are reasonably designed to prevent the misuse of material, non-public information consistent with Section 15(g) of the Act [29] and ISE Rule 408.[30] The Commission notes that the EAM unit of a member would not, pursuant to the proposed rule change, have access to any non-public quote or order information, including hidden or undisplayed price or size information, of an affiliated market maker.[31] The Commission also notes that the Exchange has represented that its ongoing surveillance for manipulative conduct and the Financial Industry Regulatory Authority's exam program that reviews for member compliance with such policies and procedures should provide a regulatory framework

[11] *See* Group One Letter, *supra* note 5.

[12] *See* ISE Response Letter, *supra* note 6.

[13] *See* Group One Letter at 1, *supra* note 4.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 2.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *See* ISE Response Letter at 1, *supra* note 6.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.* at 2.

[27] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* 15 U.S.C. 78o(g). Section 15(g) of the Act requires every broker or dealer to ''establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse. . .of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.''

[30] Further, Exchange members will continue to be subject to ISE Rules 400 (Just and Equitable Principles of Trade), 401 (Adherence to Law), and 405 (Manipulation).

[31] *See* Amendment No. 1, *supra* note 8.

that guards customer interests and protects against the misuse of material non-public information.[32]

Finally, as noted above, the commenter expressed concern that this proposed rule change would introduce a conflict of interest that would erode the duty of best execution and harm customers. The Exchange believes, and the Commission agrees, that this proposed rule change, as modified by Amendment No. 1, does not alter a broker-dealer's duty of best execution.[33] Although the proposed rule change, as modified by Amendment No. 1, will permit EAMs to know and consider the quotes of its affiliated market makers when making routing decisions, the Commission continues to expect that routing decisions related to the duty of best execution will be premised solely on customer considerations such as the likelihood of execution, the opportunity to obtain price improvement, availability of best price and minimization of market impact.[34] The Commission emphasizes that a broker-dealer's duty of best execution exists whether an EAM determines to route customer order flow toward its affiliated market maker or away from its affiliated market maker. Further, the Commission notes that in response to the commenter's concern that the proposed rule change would negatively impact best execution considerations, ISE stated that it would ''continue to monitor for abnormalities in interaction rates between members, and will investigate and take appropriate regulatory action against members that fail to comply with their best execution obligations . . . [and that] these surveillance tools will allow ISE to comply with its regulatory responsibilities, consistent with treatment across competitor options exchanges.'' [35] Among other things, the Commission's oversight of the ISE program is designed to evaluate the ISE's performance in regard to that representation.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [36] that the proposed rule change (SR–ISE–2014–43), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–06515 Filed 3–20–15; 8:45 am]

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[32] *See* Notice, *supra* note 3, 79 FR 60226, 60227.

[33] *See* Notice, *supra* note 3, 79 FR 60226, 60227; ISE Response Letter at 1, *supra* note 6.

[34] *See e.g.,* FINRA Rule 5310 (Best Execution and Interpositioning); *see also* Securities Exchange Act Release No. 34–51808, 70 FR 37496, 37537–8 (Jun. 29, 2005) (File No. S7–10–04) (Regulation NMS Final Rules); Securities Exchange Act Release No. 37619A, 61 FR 48290, 48322–3 (Sep. 12, 1996) (File No. S7–30–95) (Order Execution Obligations Final Rules).

[35] *See* ISE Response Letter at 1, *supra* note 6.

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74519; File No. SR–CBOE–2015–026]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Rules 6.74A and 6.74B

March 17, 2015.

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 March 6, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 seeks to amend CBOE Rules 6.74A and 6.74B. The text of the proposed rule change is provided below (additions are *italicized;* deletions are [bracketed]).

* * * * *

Chicago Board Options Exchange, Incorporated Rules

Rule 6.74A. Automated Improvement Mechanism (''AIM'')

* * * * *

. . . Interpretations and Policies:

* * * * *

.04 [Any solicited orders submitted by the Initiating Trading Permit Holder to trade against the Agency Order may not be for the account of a Market-Maker assigned to the option class.] *A Market-Maker submitting a solicited order to execute against a particular Agency Order may not modify its pre-programmed response to Request for Responses based on information regarding the particular Agency Order or solicited order.*

* * * * *

Rule 6.74B. Solicitation Auction Mechanism

* * * * *

. . . Interpretations and Policies:

* * * * *

.03 Under Rule 6.74B, Trading Permit Holders may enter contra orders that are solicited. The Auction provides a facility for Trading Permit Holders that locate liquidity for their customer orders. Trading Permit Holders may not use the Auction to circumvent Rules 6.45A.01, 6.45B.01 or 6.74A limiting principal transactions. This may include, but is not limited to, Trading Permit Holders entering contra orders that are solicited from (a) affiliated broker-dealers, or (b) broker-dealers with which the Trading Permit Holder has an arrangement that allows the Trading Permit Holder to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Additionally, [solicited contra orders entered by Trading Permit Holders to trade against Agency Orders may not be for the account of a CBOE Market-Maker assigned to the options class.] *a Market-Maker submitting a solicited order to execute against a particular Agency Order may not modify its pre-programmed response to Request for Responses based on information regarding the particular Agency Order or solicited order.*

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.