

Regulatory Information Circular – 2002-14

To: ISE Members

Date: September 24, 2002

Re: Approval of Change to Facilitation Response Time

The Securities and Exchange Commission has approved a change to the ISE's Facilitation Mechanism described in Rule 716(d) that reduces the order exposure period from 30 seconds to 10 seconds (Securities Exchange Act Release No. 34-46514). The text of Rule 716(d) showing the changes is attached.

The Facilitation Mechanism is a process by which an Electronic Access Member can facilitate block-size Public Customer Orders. When an order is entered via the Facilitation Mechanism, ISE market participants are now given ten seconds to indicate whether they want to interact with that order. In addition, the requirement that orders or quotes to improve the facilitation price must be entered at least ten seconds before the expiration of the exposure period has been eliminated.

Please note that this change is only applicable to facilitation orders utilizing the Facilitation Mechanism. Under ISE Rule 717(d), EAMs wishing to facilitate their customer orders outside of the Facilitation Mechanism must still expose such orders to the ISE market place for at least 30 seconds.

The reduced time parameter will be in effect starting Friday, September 27, 2002.

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Questions regarding this circular may be directed to Jim Sampson, Vice President Market Supervision, at 212/897-0235.

Text of Rule Change

Underlining indicates additions; [brackets] indicate deletions

Rule 716. Block Trades

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(d) *Facilitation Mechanism*. The Facilitation Mechanism is a process by which an Electronic Access Member can facilitate block-size Public Customer Orders. Electronic Access Members must be willing to facilitate the entire size of orders entered into the Facilitation Mechanism.

(1) Upon the entry of an order into the Facilitation Mechanism, a broadcast message will be sent to the crowd Participants, which will be given an opportunity to indicate whether they want to participate in the facilitation of the Public Customer order at the facilitation price (an "Indication").

(2) Indications may be priced at the price of the order to be facilitated or at a better price, so long as such better price is to buy (sell) at a price that is below (above) the ISE best bid (offer), and must not exceed the size of the order to be facilitated.

(3) Crowd Participants may indicate a willingness to facilitate an order at an improved price that is equal to or higher (lower) than the best bid (offer) on the Exchange by entering orders or changing their quotes, as applicable[, but must do so at least ten (10) seconds prior to the expiration of the request for indications].

(4) At the end of the period given for the entry of Indications, the facilitation order will be automatically executed in full.

(i) Unless there is sufficient size to execute the entire facilitation order at a better price, Public Customer bids (offers) on the Exchange at the time the facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at the facilitation price. Non-Customer bids (offers) on the Exchange at the time the facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at their stated price, thereby providing the order being facilitated a better price for the number of contracts associated with such higher bids (lower offers).

(ii) The facilitating Electronic Access Member will execute at least forty percent (40%) of the original size of the facilitation order, but only after better-priced orders and quotes, as well as Public Customer Orders at the facilitation price are executed. Indications, quotes and Non-Customer Orders at the

facilitation price will participate in the execution of the facilitation order based upon the percentage of the total number of contracts available at the best price that is represented by the size of the Non-Customer Order or quote.

Supplementary Material to Rule 716

.01 It will be a violation of a member's duty of best execution to its customer if it were to cancel a facilitation order to avoid execution of the order at a better price. The availability of the Facilitation Mechanism does not alter a member's best execution duty to get the best price for its customer. Accordingly, while facilitation orders can be canceled during the [thirty seconds] time period given for the entry of Indications, if a member were to cancel a facilitation order when there was a superior price available on the Exchange and subsequently re-enter the facilitation order at the same facilitation price after the better price was no longer available without attempting to obtain that better price for its customer, there would be a presumption that the member did so to avoid execution of its customer order in whole or in part by other brokers at the better price.

.02 The time given to Crowd Participants to enter Responses under paragraph (c)(1) [and Indications under paragraph (d)(1)] shall be thirty (30) seconds, and for Indications entered under paragraph (d)(1) shall be ten (10) seconds.