

opportunities, violations of this Interpretation require sanctions more rigorous than a series of cautionary letters prior to formal proceedings.

Under the proposal, Exchange regulatory staff will review a sampling of Exchange members' market orders, based on appropriate market conditions, to determine if a threshold of market order exposure violations has been exceeded. Violations that exceed 2% of all eligible market orders of any Member for any calendar quarter will result in a \$1,000 fine for that quarter. The second quarterly violation within a rolling 12-month period will result in a \$2,500 fine. A third quarterly violation within a rolling 12-month period will result in a CSE Business Conduct Committee hearing with a staff recommendation of a \$10,000 fine.<sup>5</sup>

The minor rule violation fine schedule is merely a recommended schedule; fines of more or less than the recommended amount can be imposed (up to a \$2,500 maximum) in appropriate situations. Also, the Exchange reserves the right to proceed with formal disciplinary action when, in the Exchange's opinion, circumstances warrant a more severe level of sanction or remedial action.

### III. Discussion

The Commission has reviewed carefully the CSE's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the commission finds the proposal is consistent with sections 6(b)(5),<sup>7</sup> 6(b)(6),<sup>8</sup> 6(b)(7),<sup>9</sup> and 6(d)(1),<sup>10</sup> of the Act.

<sup>5</sup> While the Exchange will collect data on a daily basis, the Exchange's initial sampling will consist of a review of data collected for two days per week—the day with the most violations, and the day with the fewest. Based on the Exchange's analysis of this information, the Exchange will determine if the violations exceed 2% of all eligible market orders for each calendar quarter. The Exchange plans eventually to determine violations based on information collected daily, rather than on a partial sample, with March 2001 as the proposed target date. See telephone conversation among Jeffrey Brown, Vice President, Regulation and General Counsel, CSE, James Flynn, Staff Attorney, CSE and Katherine England, Assistant Director, Division of Market Regulation ("Division"), SEC and Joseph Morra, Special Counsel, Division, SEC, November 30, 2000.

<sup>6</sup> In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78f(b)(6).

<sup>9</sup> 15 U.S.C. 78f(b)(7).

<sup>10</sup> 15 U.S.C. 78f(d)(1).

Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade and 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. The Commission believes the proposal is consistent with section 6(b)(5) because it will augment the Exchange's ability to police its market, and will allow greater flexibility in responding to violations of the Market Order Display Rule.

Section 6(b)(6) requires that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of Commission and Exchange rules. Including violations of the Market Order Display Rule in the Program should give the Exchange the ability to treat violations of the Rule in a summary fashion, but retain the flexibility to address more egregious violations of the Rule with more severe sanctions where appropriate.

In addition, the Commission believes that the proposal provides a reasonable procedure for the discipline of Members consistent with sections 6(b)(7) and 6(d)(1) of the Act. Section 6(b)(7) requires the rules of an exchange to be in accordance with the provisions Section 6(d), and, in general, to provide a fair procedure for the disciplining of members and persons associated with members. Section 6(d)(1) requires that, in any proceeding by an exchange to determine whether a member should be disciplined, the exchange must bring specific charges, notify the member of those charges, and give the member an opportunity to defend against the charges. Because CSE Rule 8.15 provides procedural safeguards to the Member being fined, and allows the Member who is disciplined to request full hearing on the matter, the Commission believes the proposal is both reasonable and consistent with sections 6(b)(7) and 6(d)(1).

The Commission notes that by allowing the CSE to address violations of the Market Order Display Rule under the Program, the Commission in no way minimizes the importance of compliance with the Rule, and all other Rules subject to the imposition of fines under the Program. The Commission believes that the violation of any Exchange and/or Commission Rule is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Program provides a reasonable means to address rule violations that do not rise to the level of

requiring formal disciplinary proceedings. The Commission expects that the CSE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less the recommended amount are appropriate for violation of the Market Order Display Rule on a case by case basis, or if a violation requires formal disciplinary action.

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CSE-00-08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43659; File No. SR-ISE-00-14]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the International Securities Exchange LLC, Relating to Listing Procedures

December 4, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 15, 2000, the International Securities Exchange LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. 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 is proposing to amend the procedures by which it lists options to conform its procedures to those currently in place at the other options exchanges. The text of the proposed rule change is available at the Commission and the ISE.

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

## 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 ISE 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

The ISE proposes to amend its listing procedures to conform to the procedures employed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. These exchanges long have followed the uniform listing procedures contained in the Joint Exchange Options Plan ("Plan"), which the Commission has approved as rules of each of those exchanges.<sup>3</sup> However, the Plan historically focused on the listing of new options, not the listing of options already trading on another exchange. Among other things, the Plan's procedures require an exchange listing an option to inform The Options Clearing Corporation ("OCC") of the proposed listing, as well as to provide notice of the listing to all the other markets.

The ISE adopted the Plan, with certain modifications, prior to its launch of trading. The most significant modification in the ISE's version of the Plan relates to the listing of options already trading on another exchange ("multiple-listing procedures"). While the other exchanges have followed informal procedures regarding multiple listings (primarily the requirement to provide each other with three days notice of proposed multiple listings that have been trading for more than ten days), the multiple-listing procedures are not included in the Plan. The ISE codified the multiple-listing procedures in its rules, which the Commission

approved as part of the ISE's registration.<sup>4</sup>

The four other options exchanges recently settled an enforcement action with the Commission and an antitrust action with the Department of Justice in which the government claimed, among other things, that the Plan contains anticompetitive elements. The Commission mandated that the four exchanges work together, and with the ISE, to eliminate these anticompetitive provisions.<sup>5</sup> One anticompetitive provision that the Commission identified is the requirement that exchanges provide three-days notice of a proposed multiple listing. To address this concern, the other exchanges have received no-action letters from Commission staff allowing them to list a multiply-traded option with one days notice of the intention to list an option class to OCC and the other exchanges listing that option. The ISE must amend its rules to achieve this same result because it has codified the three days notice provision for multiple listings in its rules. The Proposed rule change will conform the ISE's listing procedures to those of the other exchanges by providing for one days notice to OCC and the other listing exchanges of a new multiple listing.

In addition, the ISE is also proposing to eliminate the prohibition against any exchange that was not a selecting or joining exchange commencing trading the selected option prior to the eighth business day following notification by the selecting and/or joining exchanges of the intention to certify the option. The Exchange believes that this change will conform its listing practices to those of the other options exchanges.

#### 2. Basis

The Exchange believes the basis for the proposed rule change is the requirement under section 6(b)(5) of the Act<sup>6</sup> that an exchange have rules that are 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

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

The proposed rule change does not 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 not solicited or received comments on the proposed rule change.

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

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of filing; and (4) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the act<sup>7</sup> and Rule 19b-4(f)(6)<sup>8</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

The ISE has requested that the Commission accelerate the operative date of the proposed rule change. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal to become immediately operative upon filing. Acceleration of the operative date will ensure that the ISE's listing procedures for multiply traded options conform to the listing procedures of the other options exchanges. For these reasons, the Commission finds good cause to designate that the proposal become immediately operative upon filing.<sup>9</sup>

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 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).

<sup>4</sup> See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (at note 144 and accompanying text).

<sup>5</sup> Securities Exchange Act Release No. 43268 (September 11, 2000).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> See Securities Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48594 (September 25, 1991).

#### 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to the File No. SR-ISE-00-14 and should be submitted by December 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43637; File No. SR-OCC-00-11]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Investment of Excess Funds and to Procedures Applicable to the Safeguarding of Such Investments

November 29, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, notice is hereby given that on October 5, 2000, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow OCC to amend its By-Laws to expand the types of investments that OCC may make its funds in excess of those needed for working capital and to update the procedures applicable to the safeguarding of such investments.<sup>2</sup>

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to expand the types of investments that OCC is permitted to make its funds in excess of those needed for working capital and to update the procedures applicable to the safeguarding of such investments.

Article IX, section 1(a) currently provides that the board of directors may invest OCC's excess funds in Government securities. The By-Laws are amended to allow the board or a committee thereof to approve the investment of OCC's funds in other securities or financial instruments. This change permits portfolio diversification and allows OCC to hedge its obligation under stock-based compensation plans. The By-Laws are further amended to explicitly allow OCC to hold securities in accounts at registered broker-dealers. Section 1(a) currently provides that one director (other than the Management Director) must act jointly with an officer of OCC to access or withdraw securities that are the property of OCC. Section 1(a) is being amended to allow withdrawals by joint action of an officer of the rank of vice president or above

<sup>2</sup> A copy of the text of OCC's proposed rule change and the attached exhibit are available at the Commission's Public Reference Section or through OCC.

<sup>3</sup> The Commission has modified the text of the summaries prepared by OCC.

and the treasurer or an assistant treasurer.

The proposed rule change is consistent with the requirements of section 17A of the Act because it provides reasonable procedures governing the investment of OCC funds in excess of those needed for working capital and for the safeguarding of such investments.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

#### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(3) thereunder as it is concerned solely with the administration of a self-regulatory organization. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such 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.

#### 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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, 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 Section,

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).