

The proposed rule change would enable common participants to trade between related joint accounts that are used as financing vehicles without violating Exchange Rule 8.9. The Exchange proposes that the following activity be permitted: (1) Trading between different market makers or other broker/dealer accounts that are financed by the same member where there is no common control over the trading activity in those accounts; and (2) trading between independently operated subsidiaries (*i.e.*, separate broker/dealers) of the same parent or holding company.¹⁰

The Exchange represents that it will continue to prohibit the following activity: (1) Market makers trading with their joint account, even though their percentage of ownership is less than 100% (for instance, market maker ABC finances market maker XYZ via a joint account and ABC is a participant in the joint account. Ownership is 50% and XYZ makes his own trading decisions. ABC is still prohibited from trading directly with the joint account of which he is a member); (2) nominees of the same entity trading with each other on behalf of the entity; (3) firm traders employed by the same broker/dealer on different trading desks trading together, regardless of whether they are separate profit centers; and (4) spouses trading together.

The Exchange represents that under the proposed rule change, transactions between related joint accounts that are effected for an improper purpose, such as trades executed to create a false and misleading appearance of activity, would continue to violate Exchange Rule 4.1 (Just and Equitable Principles of Trade). The Exchange states that its Department of Market Regulation will continue to monitor trading between accounts with common beneficial ownership for trading abuses.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with section 6(b) of the Act,¹¹ in general, and furthers the objectives of section 6(b)(5),¹² in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

¹⁰ The Exchange has represented that it will issue a regulatory circular informing members of permitted and prohibited trading activity among joint accounts.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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 received a letter from Fulcrum urging the Exchange to re-evaluate its policy on trading between joint accounts.¹³ Fulcrum states that it is appropriate to allow trading between joint accounts where control has been successfully refuted. In addition, Fulcrum notes that stock exchange interpretations specifically state that a trade between a parent and its wholly-owned broker-dealer affiliate results in a change in beneficial ownership subject to trade reporting, and therefore would not be considered a wash sale. Fulcrum urges the Exchange to relax its policy to permit legitimate trading activity between joint accounts.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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, as amended, 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

¹³ Fulcrum Letter, *supra* note 9. In addition, the Exchange represents that its regulatory staff has had numerous conversations with members since the Exchange first considered changing its regulatory policy regarding transactions between accounts with common ownership.

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-CBOE-00-13 and should be submitted by March 20, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43983; File No. SR-ISE-01-02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC, Relating to Anticipatory Hedging Activity

February 20, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 12, 2001, the International Securities Exchange LLC (the "Exchange" or the "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 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 is proposing to adopt Supplementary Material .02 to Rule 400 (Just and Equitable Principles of Trade). Supplementary Material .02 states that it may be considered conduct inconsistent with just and equitable principles of trade for any member or person associated with a member, who has knowledge of all material terms and conditions of (1) an order and a solicited

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

order, (2) an order being facilitated, or (3) orders being crossed, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument.

This prohibition of the proposed rule change would continue until either (1) all of the terms of the order of which the member or associated person has knowledge are disclosed to the trading crowd, or (2) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. The rule specifies that the terms of an order are "disclosed" to the trading crowd on the Exchange when the order is entered into the System or into the Facilitation Mechanism.

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 Exchange 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 Exchange is proposing to adopt Supplementary Material .02 to Rule 400 (Just and Equitable Principles of Trade) to prohibit the use of non-public information received during the facilitation and solicitation processes. ISE Rule 717(d)-(e), in conjunction with ISE Rule 716(d), required that orders be displayed to the trading crowd before being crossed with facilitation orders or orders that have been solicited. The purpose of this requirement is to provide the trading crowd with an opportunity to participate in the transaction with the facilitating member or the solicited party.

The Exchange seeks to codify its policy prohibiting either a member or a person associated with a member from using non-public information for the member's benefit by trading in the underlying stock or in related instruments prior to exposing the order

to the trading crowd. This policy prevents members and associated persons from using undisclosed information about imminent options transactions to trade the relevant option or any closely related instrument in advance of the trading crowd. Such action would undermine the ability of crowd participants to participate in the execution of the order at equally favorable terms as the member representing the order.

2. Statutory Basis

The basis for this proposed rule change is the requirement under section 6(b)(5) of the Act³ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

The Exchange believes that 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, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the ISE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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. 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 the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-ISE-01-02 and should be submitted by March 20, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43988; File No. SR-NASD-00-37]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Permanent Approval of the Nasdaq Application of the OptiMark System

February 20, 2001.

On June 19, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to seek permanent approval of the Nasdaq Application of the OptiMark System without any restrictions on the trading activity to be conducted through the facility. Notice of the proposed rule change was published on August 9, 2000, in the **Federal Register**, to solicit comment from

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b)(5).