

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

The Amex has designated the foregoing proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and Rule 19b-4(f)(2) thereunder,<sup>8</sup> and therefore the proposal has become effective upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the 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, D.C. 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 Amex. All submissions should refer to File No. SR-Amex-2001-60 and should be submitted by September 19, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44741; File No. SR-CBOE-2001-14]

#### Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending Rules Regarding Jurisdiction Over Former Members and Associated Persons for Failure To Honor an Exchange Arbitration Award

August 23, 2001.

On March 27, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to make amendments to its disciplinary and arbitration rules to extend the CBOE's disciplinary jurisdiction to cover former members and associated persons subject to CBOE arbitration awards. In particular, the proposed rule change provides that the failure to honor a CBOE arbitration award by a former CBOE member or associated person would subject former member or associated person to the disciplinary jurisdiction of the Exchange regardless of the date of termination of membership.

The proposed rule change was published for comment in the **Federal Register** on June 18, 2001.<sup>3</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Sections 6(b)(1) and Section 6(b)(6) of the Act,<sup>6</sup> respectively, in that the proposed rule change satisfies the requirement that: (1) An exchange is so organized and has the capacity to be able to carry out the purposes of Section 6 of the Act and to

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

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

<sup>3</sup> See Securities Exchange Act Release No. 44408 (June 11, 2001), 66 FR 32853.

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(1); (b)(6).

enforce compliance by its members and persons associated with its members with the provisions of Section 6 of the Act, the rules and regulations thereunder, and the rules of the exchange; and (2) the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violation of the Act, the rules and regulations thereunder, or the rules of the exchange.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-CBOE-2001-04) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44739; File No. SR-ISE-00-22]

#### Self-Regulatory Organizations; International Securities Exchange LLC; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments Nos. 1 and 2 to the Proposed Rule Change Relating to Market Maker Financial Requirements

August 22, 2001.

#### 1. Introduction

On November 28, 2000, the 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend and further define the calculations necessary to determine the minimum financial requirements for the Exchange's market makers, and specify certain reporting requirements when a market maker fails to maintain the minimum financial requirements. The proposed rule change was published for comment in the **Federal Register** on February 9, 2001.<sup>3</sup> No comments were received on the proposed rule change. On March 13, 2001, ISE filed

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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.

<sup>3</sup> See Securities Exchange Act Release No. 43922 (February 2, 2001), 66 FR 9735.

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

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

Amendment No. 1<sup>4</sup> and on August 8, 2001, ISE filed Amendment No. 2 to its proposal.<sup>5</sup> This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendments Nos. 1 and 2.

## II. Description

Exchange Rule 809 sets forth the minimum financial requirements for market makers. Currently, Exchange Rule 809 provides that every PMM maintain a cash or liquid asset position equal to the greater of \$5 million or an amount sufficient to assume a position of twenty options contracts of each class in which the PMM is appointed. Exchange Rule 809 similarly provides that every CMM maintain a cash or liquid asset position equal to the greater of \$1 million or an amount sufficient to assume a position of ten options contracts in each class of options to which the CMM is appointed.

The Exchange proposes to eliminate the option position component in calculating the minimum equity. With respect to CMMs, the proposed rule change would require CMMs to maintain net liquidating equity of not less than \$1 million. With respect to PMMs, the proposed amendment would require PMMs to maintain net liquidating equity of not less than \$3.25 million plus \$25,000 excess equity for each issue over 10. According to the Exchange, when the Exchange phases-in

trading in 600 options with approximately 60 options trading in each of its 10 groups or "bins," this requirement would equal \$4.5 million for PMMs trading in one bin, and \$6.0 million for a PMM trading in two bins.<sup>6</sup>

Under the proposed rule change, the Exchange would also replace the phrase "cash or liquid asset position" with "net liquidating equity," and define the later term to conform to the Chicago Board Options Exchange's ("CBOE") rule.<sup>7</sup> The proposed definition of net liquidating equity, which is the sum of positive cash balances and long securities positions less negative cash balances and short securities positions, is the same as the CBOE definition of the term in CBOE Rule 12.3(f)(1)(F).

The Exchange further proposes to adopt notification requirements. A market maker that falls below the equity requirement must immediately notify the Exchange of the deficiency and submit a plan for raising its equity to the appropriate level if the deficiency cannot be rectified immediately. According to the Exchange, this will allow the Exchange to monitor carefully any firm that might be experiencing financial difficulties and to take actions to minimize any potential risk to the Exchange or investors.<sup>8</sup> ISE will review the adequacy of all business plans submitted by a deficient market maker,<sup>9</sup> as well as review a market maker's continued compliance with the provisions of the plan.<sup>10</sup> Finally, in the case of a PMM with a deficient net liquidating equity, the Exchange may determine to appoint an interim PMM to assure fair and orderly markets.<sup>11</sup>

## III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations

thereunder.<sup>12</sup> Specifically, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act<sup>13</sup> that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

ISE proposes to amend its rule to revise the minimum financial requirements for market makers. Under the proposal, the minimum net liquidating equity for PMMs will be \$3.25 million plus \$25,000 excess equity for each underlying security upon which appointed options are open for trading in excess of the initial ten underlying securities. The minimum net liquidating equity for CMMs will be \$1 million.

The Commission believes that the proposed net liquidating equity requirements are designed to assure that ISE market makers are capable of making liquid and competitive markets. Although the proposal may reduce the minimum financial requirements for PMMs and CMMs, the Commission believes, based on the representations of ISE, that there are sufficient safeguards (in addition to the proposed minimum financial requirements) to assure that ISE's PMMs and CMMs are adequately capitalized. In this regard, the ISE has represented that it will separately monitor market makers to determine whether a market maker has fallen below the minimum net liquidating equity required by ISE Rule 809 and will notify the market maker if the market maker has failed to notify the Exchange of its deficiency.<sup>14</sup> If the deficiency cannot be rectified immediately, the market maker must submit within five business days, a business plan for raising its equity to the appropriate level. ISE will review all business plans submitted by a deficient market maker,<sup>15</sup> as well as review a market maker's continued compliance with the provisions of the plan.<sup>16</sup> If the Exchange determines that summary suspension is necessary under ISE Rule 1500, given the facts and circumstances, it will appoint an interim PMM to

<sup>4</sup> In Amendment No. 1, the Exchange clarified that it would be reviewing the adequacy of any business plans submitted under the proposed rule change, as well as clarified why it is unnecessary for ISE to appoint interim competitive market makers ("CMMs"). See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Kathy England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 12, 2001 ("Amendment No. 1").

<sup>5</sup> In Amendment No. 2, the Exchange deleted supplemental materials .02 and .03 to ISE Rule 809, which required, in part, that a member (1) notify the Exchange when its equity falls below the minimum requirement, and (2) submit a business plan for raising its equity to comply with ISE Rule 809, as well as allowed the Exchange to appoint an interim Primary Market Maker ("PMM"). In lieu of the supplemental materials, the Exchange submitted a draft Regulatory Information Circular specifying the foregoing requirements in greater detail. ISE has represented that it will submit any changes to the Regulatory Information Circular to the Commission pursuant to Rule 19b-4, 17 CFR 240.19b-4. See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated August 7, 2001 ("Amendment No. 2"). The Exchange also clarified that if the Exchange appoints an interim PMM, ISE will appoint the interim PMM in accordance with ISE Rule 802. An interim PMM will have the same responsibilities and obligations as a regular PMM. Telephone conversation between Jennifer M. Lamie, Assistant General Counsel, ISE, and Terri L. Evans, Special Counsel, Division, Commission, on August 15, 2001.

<sup>6</sup> Pursuant to Exchange Rule 317(a), a member cannot be approved to trade in more than two bins as a PMM.

<sup>7</sup> See CBOE Rule 8.86, which states that "[e]ach DPM shall maintain (i) net liquidating equity in its DPM account of not less than \$100,000, and in conformity with such guidelines as the MTS Committee may establish from time to time. \* \* \*

<sup>8</sup> ISE has represented that it also will separately monitor a market maker's net liquidating equity and notify a market maker if its net liquidating equity falls below the minimum level required by ISE Rule 809. Telephone conversation between Jennifer M. Lamie, Assistant General Counsel, ISE, and Terri L. Evans, Special Counsel, Division, Commission, on August 15, 2001.

<sup>9</sup> See Amendment No. 1, *supra* note 4.

<sup>10</sup> Telephone conversation between Jennifer M. Lamie, Assistant General Counsel, ISE, and Terri L. Evans, Special Counsel, Division, Commission, on August 15, 2001.

<sup>11</sup> See Amendment No. 2, *supra* note 5.

<sup>12</sup> In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See Amendment No. 2, *supra* note 5, and telephone conversation between Jennifer M. Lamie and Terri L. Evans, *supra* note 8.

<sup>15</sup> See Amendment No. 1, *supra* note 4.

<sup>16</sup> Telephone conversation between Jennifer M. Lamie, Assistant General Counsel, ISE, and Terri L. Evans, Special Counsel, Division, Commission, on August 15, 2001.

assure that fair and orderly markets are continued in the PMM's assigned options.<sup>17</sup>

The Commission also believes that the proposed financial requirements are comparable to the financial requirements at other options exchanges. For example, generally, on the American Stock Exchange ("Amex"), the financial requirement for options specialists is equal to a minimum of \$600,000, plus \$25,000 for each option issue in excess of the initial ten issues in which such specialist is registered,<sup>18</sup> while on CBOE, a designated primary market maker ("DPM") must maintain, in part, net liquidating equity in its DPM account of not less than \$100,000, as well as conform to guidelines established by the MTS Committee, which require \$350,000 plus \$25,000 in excess equity for each class or product allocated in excess of the initial eight products.<sup>19</sup> On the Pacific Exchange ("PCX"), lead market makers that perform the function of an Order Book Official ("OBO") must maintain, in part, a cash or liquid asset position of at least \$500,000 plus \$25,000 for each issue over five issues for which they perform the function of an OBO,<sup>20</sup> while LMMs that do not perform the function of an OBO must maintain a cash or liquid asset position of at least \$350,000 plus \$25,000 for each issue over eight issues that has been allocated to the LMM.<sup>21</sup> Finally, on the Philadelphia Stock Exchange ("Phlx") members that are exempt from Rule 15c3-1 must generally maintain net liquid assets of \$25,000.<sup>22</sup> Phlx also has specific provisions applicable to FLEX and foreign currency options ROTs. For example, a specialist in FLEX index options must maintain a minimum of \$1 million in net capital and an assigned ROT in foreign currency options must maintain a minimum \$1 million in net liquid assets.<sup>23</sup> Accordingly, the Commission believes that the proposal will help ISE market makers compete effectively with specialists at other exchanges. Increased competition, in turn, should benefit investors by producing a more efficient marketplace.

The Commission finds good cause for accelerating approval of Amendments Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after

the date of publication in the **Federal Register**. The Commission finds that Amendments Nos. 1 and 2 clarify ISE's proposal by providing additional information and representations regarding the operation of the proposed rule and guidance to be provided to members. Accordingly, the Commission believes that granting accelerated approval of Amendments Nos. 1 and 2 is appropriate and consistent with sections 6(b)(5) and 19(b)(2) of the Act,<sup>24</sup> in that it should promote just and equitable principles of trade and, in general, protect investors and the public interest.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2, including whether the Amendments are 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, D.C. 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 above-referenced self-regulatory organization. All submissions should refer to File No. SR-ISE-00-22 and should be submitted by September 19, 2001.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-NYSE-00-22), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>26</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>24</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44736; File No. SR-NSCC-2001-07]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Buy-In Rules and Procedures

August 22, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 27, 2001, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on April 30, 2001, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. 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 (i) further automates the buy-in process of CNS positions, (ii) allows for a Notice of Intention to Buy-In ("Buy-In Notice") to be filed on successive days provided that the quantity of securities representing the sum of the Buy-In Notices does not exceed the member's total long position, and (iii) revises Retransmittal Notices to include the identity of the member with the long position ("originator").

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

NSCC is modifying its buy-in rules and procedures to further automate and

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>17</sup> See *supra* note 5.

<sup>18</sup> See Amex Rule 950(h).

<sup>19</sup> See CBOE Rule 8.86 and CBOE DPM Equity Guidelines 00-111.

<sup>20</sup> See PCX Rule 6.82 Commentary .03.

<sup>21</sup> See PCX Rule 6.82(c)(11).

<sup>22</sup> See Phlx Rule 703.

<sup>23</sup> See Phlx Rule 1079(c)(2) and Phlx Rule 1069(d), respectively.