

requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-2001-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44955; File No. SR-ISE-2001-18]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 to Proposed Rule Change, by the International Securities Exchange LLC, Relating to Priority Principles on Complex Orders

October 18, 2001.

I. Introduction

On May 25, 2001, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 to establish priority and order handling principles for complex orders. Notice of the proposed rule change and Amendment Nos. 1, 2 and 3 thereto was published for comment in the **Federal Register** on August 13, 2001.³ No comments were received.

On October 16, 2001, the ISE filed Amendment No. 4 to the proposed rule change. In Amendment No. 4, the Exchange added text to proposed new Rule 722(b)(5) to provide that the right to facilitate or cross up to 40% of a customer's complex order without exposing the order for 30 seconds, as is otherwise required by ISE rules, would be limited to those complex orders where at least one leg of the order was for at least 50 contracts.⁴

This order approves the proposed rule change as amended, accelerates approval of Amendment No. 4, and solicits comment from interested persons on that amendment.

II. Discussion

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.⁵ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁶ which requires, among other things, 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.

The Commission notes that the rules of other options exchanges allow similar procedures for the execution of complex orders.⁷ In general, such rules serve to reduce the risk of incomplete or inadequate executions, while increasing efficiency and competitive pricing. At the same time, they protect the priority of orders of public customers by permitting the legs of complex orders to trade ahead of bids and offers established in the marketplace only under restrictions such as those proposed here. Although the ISE's proposal would apply to more types of orders than the rules of other options exchanges, such as box spread and collar orders, the Commission believes that these types of orders are of a similar degree of complexity to those approved in the past for special priority rules, and it is therefore appropriate to accord them the same treatment.

As originally proposed, the new rule would have allowed a firm to execute immediately up to 40% of a complex order, either as principal ("facilitation") or against an order it has solicited ("crossing"), as opposed to first exposing the order to the market for 30 seconds, as is otherwise required by paragraphs (d) and (e) of ISE Rule 717. In Amendment No. 4 to the proposed rule change, the ISE limited this allowance to orders where at least one

leg of the transaction was for at least 50 contracts.⁸

The Commission finds that Amendment No. 4 is consistent with the Act, and finds good cause to approve it prior to the thirtieth day after the date of publication of notice of its filing in the **Federal Register**. Amendment No. 4 conforms the proposed rules to existing ISE Rules 716 and 717, which permit similar execution procedures for other orders, provided that they are for 50 contracts or more. The Commission believes that limiting such facilitation or crossing rights to orders of this size should help to adequately protect competitive pricing for smaller orders. Finally, the Commission notes that a broker who accepts a customer's order has a fiduciary duty toward that order.

Therefore, the Commission finds good cause to approve Amendment No. 4 to the proposed rule change on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4, including whether Amendment No. 4 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 USC 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 File No. SR-ISE-2001-18 and should be submitted by November 14, 2001.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-ISE-2001-18), as amended, be, and it hereby is, approved.

⁷ See fn. 4, *supra*.

⁹ 15 USC 78s(b)(2).

¹ 17 CFR 200.30-3(a)(12).

² 15 USC 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 44659 (August 6, 2001), 66 FR 42575 (August 13, 2001) ("Notice").

⁵ See letter from Jennifer Lamie, Assistant General Counsel, ISE, to Nancy Sanow, Assistant Director,

Division of Market Regulation, Commission, dated October 15, 2001 ("Amendment No. 4").

⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 USC 78c(f).

⁷ 15 USC 78f(b)(5).

⁸ See Chicago Board Options Exchange Rule 6.45; American Stock Exchange Rule 950(d), Commentary .01; Philadelphia Stock Exchange Rule 1033; Pacific Exchange Rule 6.75.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44631A; File No. SR-NASD-00-38]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Application of NASD Rules and Interpretive Materials to Exempted Securities; Corrections

October 17, 2001.

In FR Document No. 01-19700, beginning on page 41283, column 3, for Tuesday, August 7, 2001, a sentence was incorrectly stated. Specifically, footnote 10 should be revised to delete references to National Association of Securities Dealers, Inc. ("NASD") Rule 2440, "Fair Prices and Commissions," and to IM-2440, "Mark-Up Policy."

Footnote 10 is revised to read as follows:

¹⁰ See Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996) (order approving File No. SR-NASD-95-39) ("1996 Order"). The 1996 Order approved the application of the following NASD rules to exempted securities, including government securities but not municipal securities: NASD Rule 2110, "Standards of Commercial Honor and Principles of Trade;" NASD Rule 2120, "Use of Manipulative, Deceptive or Other Fraudulent Devices;" NASD Rule 2210, "Communications with the Public;" IM-2210-2, "Communications with the Public about Collateralized Mortgage Obligations;" IM-2210-2, "Communications with the Public about Variable Life Insurance and Variable Annuities;" IM-2210-3, "Use of Rankings in Investment Companies Advertisements and Sales Literature;" NASD Rule 2250, "Disclosure of Participation or Interest in Primary or Secondary Distribution;" NASD Rule 2270, "Disclosure of Financial Condition to Customers;" NASD Rule 2310, "Recommendations to Customers (Suitability);" IM-2310-2, "Fair Dealing with Customers;" IM-2310-3, "Suitability Obligations to Institutional Customers;" NASD Rule 2320, "Best Execution and Interpositioning;" NASD Rule 2330, "Customers' Securities or Funds;" IM-2330, "Segregation of Customers' Securities;" NASD Rule 2340, "Customer Account

Statements;" NASD Rule 2430, "Charges for Services Performed;" NASD Rule 2450, "Installation or Partial Sales;" NASD Rule 2510, "Discretionary Accounts;" NASD Rule 2520, "Margin Accounts;" NASD Rule 2521, "Margin Requirements—Exception for Certain Members" (formerly NASD Rule 2520(a); NASD Rule 2522, "Definitions Related to Options, Currency Warrants Currency Index Warrants and Stock Index Warrants Transactions" (formerly NASD Rule 2520(b); NASD Rule 2770, "Disclosure of Price in Selling Agreements" (applicable only to traditional underwriting arrangements); NASD Rule 2780, "Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities;" NASD Rule 2910, "Disclosure of Financial Condition to Other Members;" NASD Rule 3010, "Supervision;" NASD Rule 3020, "Fidelity Bonds;" NASD Rule 3030, "Outside Business Activities of an Associated Person;" NASD Rule 3040, "Private Securities Transactions of an Associated Person;" NASD Rule 3050, "Transactions for or by Associated Persons;" NASD Rule 3060, "Influencing or Rewarding Employees of Others;" NASD Rule 3070, "Reporting Requirements;" NASD Rule 3120, "Use of Information Obtained in a Fiduciary Capacity;" NASD Rule 3110, "Books and Records;" IM-3110, "Customer Account Information;" NASD Rule 3130, "Regulation of Members Experiencing Financial and/or Operational Difficulties;" IM-3130, "Restrictions on a Member's Activity;" NASD Rule 3131, "Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties;" NASD Rule 3140, "Approval of Change in Exempt Status under SEC Rule 15c3-3;" NASD Rule 3230, "Clearing Agreements;" NASD Rule 3310, "Publication of Transactions and Quotations;" IM-3310, "Manipulative and Deceptive Quotations;" NASD Rule 3320, "Offers at Stated Prices;" IM-3320, "Firmness of Quotations;" NASD Rule 3330, "Payment Designed to Influence Market Prices, Other than Paid Advertising;" NASD Rule 8110, "Availability to Customers of Certificate, By-Laws, and Rules;" NASD Rule 8120, "Complaints by Public Against Members for Violations of Rules;" NASD Rule 8130, "Complaints by District Business Conduct Committees;" NASD Rule 8140, "Complaints by the Board of Governors;" NASD Rule 8210, "Reports and Inspections of Books for Purpose of Investigating Complaints;" NASD Rule 8220, "Suspension of Members for Failure to Furnish Information Duly Requested;" NASD Rule 8310, "Sanctions for Violation of the Rules;" IM-8310-1, "Effect of a Suspension, Revocation, or Bar;" IM-8310-2, "Release of Disciplinary Information;" NASD Rule 8320, "Payment of Fines, Other Monetary Sanctions, or Costs;" and NASD Rule 8330, "Cost of Proceedings." As discussed more fully below, Amendment No. 2 clarifies NASD Regulation's reasons for including NASD Rules 2521, 2522, 2910, 8220 (which was expanded to include current NASD Rules 8221 through 8227), and IM-8310-2 in its list of rules and interpretative materials applicable to exempted securities, including government securities, other than municipal

securities. See Amendment No. 2, *supra* note 4.

In addition, in FR Document No. 01-19700, beginning on page 41284, column 1, a sentence in footnote 12 was incorrectly stated. Specifically, footnote 12 should be changed to delete references to NASD Rule 2300 and to IM-8310 and to add a reference to IM-2522.

Footnote 12 is revised to read as follows:

¹² Specifically, NASD Rule 0116(b) states that, unless otherwise indicated within a particular provision, the following NASD rules and interpretative materials apply to transactions and business activities relating to exempted securities but not municipal securities, conducted by members and associated persons: 2110, 2120, 2210, IM-2210-1, IM-2210-2, IM-2210-3, 2250, 2270, 2310, IM-2310-2, IM-2310-3, 2320, 2330, IM-2330, 2340, 2430, 2450, 2510, 2520, 2521, 2522, IM-2522, 2770, 2780, 2820(g), 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM-3110, 3120, 3130, IM-3130, 3131, 3140, 3230, 3310, IM-3310, 3320, IM-3320, 3330, 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM-8310-1, IM-8310-2, 8320, and 8330. See Amendment No. 2, *supra* note 4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44943; File No. SR-NYSE-2001-39]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 123

October 16, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-b-4 thereunder,² notice is hereby given that on October 8, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The text of the proposed rule change is available for inspection and copying at

¹ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 17 CFR 200.30-3(a)(12).