

to the filing date of the proposed rule change.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Amex has requested that the Commission waive the 30-day pre-operative waiting period. The Amex believes that acceleration of the operative date will permit the immediate harmonization of exchange fee schedules for the transmission of shareholder communications and, thus, will ease member firm compliance burdens. In addition, the Amex believes that the Commission has recently considered all issues raised by the Amex's filing in connection with its approval of the NYSE's proposal.

The Commission, consistent with the protection of investors and the public interest, has waived the thirty-day operative date requirement for this proposed rule change, and has determined to designate the proposed rule change as operative as of the date of filing to allow the Amex to implement its revised proxy fee schedule immediately.<sup>12</sup> The Commission notes that it has already considered and addressed issues that may be raised by this proposal when it approved similar proposals by the NYSE.<sup>13</sup> The Commission further notes that this proposal will allow for consistency in proxy fees between the Amex and the NYSE. 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.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

<sup>10</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

<sup>13</sup> See Securities Exchange Act Release No. 45644 (March 25, 2002), 67 FR 15440 (April 1, 2002) (order approving File No. SR-NYSE-2001-53); and 43993 (February 22, 2001), 66 FR 13364 (March 5, 2001) (order approving File No. SR-NYSE-01-03).

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 Amex. All submissions should refer to File No. SR-Amex-2002-51 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46129; File No. SR-ISE-2002-17]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. To Extend Its Enhanced Size Pilot

June 26, 2002.

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 June 19, 2002, the International Securities Exchange, Inc. ("ISE" or "Exchange") 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.

<sup>14</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.

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

The Exchange proposes to extend its "Enhanced Size Pilot" (the "Pilot") until October 31, 2002. The Exchange also proposes to add 17 new options to the Pilot and to amend the definition of "deep-in-the-money" options that are excluded from the Pilot. The text of the rule change is available at the Office of the Secretary of the Exchange and at the Commission.

### 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 purpose of the proposed rule change is to extend and expand the Exchange's Enhanced Size Pilot. On April 25, 2002, the Commission approved the Pilot, requiring market makers to quote in larger size for 19 of the 25 most-actively-traded options.<sup>3</sup> This is currently a three-month Pilot scheduled to expire on July 25, 2002. The initial analysis of trading pursuant to the Pilot indicates: the average size of the ISE's quotations in these options has increased; there has been no adverse effect on quotation spreads; and ISE market share has increased in these options.

Based on these initial, though limited results, the Exchange proposes to extend the Pilot for an additional three months, through October 31, 2002. ISE also proposes to increase the Pilot to include 17 additional options out of the 50 most-active options: Banc of America; Ciena; Dell; Fannie Mae; Motorola; Merrill Lynch; Nvidia; Xilinx; Amazon.com; Halliburton; Nextel Communications; J.P. Morgan Chase; ADC Telecommunication; Best Buy; Calpine; General Motors; and Hewlett

<sup>3</sup> Securities Exchange Act Release No. 34-45823 (April 25, 2002); 67 FR 22143 (May 2, 2002) (File No. SR-ISE-20010-23).

Packard. We have determined to include these particular options in the Pilot based on recommendations by our market makers.

In all other respects, except one, the Pilot will remain unchanged. For Primary Market Makers ("PMMs"), the minimum size for quotes will continue to be 100 contracts for customers and 50 contracts for broker-dealers, although this enhanced quotation size requirement will not affect the PMM's obligation under ISE Rule 803(c)(1) to disseminate a quotation of at least 10 contracts when the quotation consists, in part, of a customer order for less than 10 contracts. For Competitive Market Makers, the size requirements will continue to be half of the PMM requirement: 50 contracts for customers, 25 contracts for broker-dealers. The enhanced broker-dealer size will not apply to executions against other market makers, where the minimum size would continue to be one contract.

These enhanced size requirements will apply only to the options series in the three months closest to expiration. Moreover, the pilot will not apply to "deep-in-the-money" options, or an option in the last three days of that option's trading (that is, the pilot will not apply for the last three days of trading during an option series' expiry week). In the one change to the Pilot, ISE proposes to amend the definition of "deep-in-the-money." Currently, the rule excludes options that are deep-in-the-money, with the definition based on the number of pricing intervals a strike is from the at-the-money strike. ISE proposes to change this by defining "deep-in-the-money" to mean options with strike prices that are in the money by 12 percent or more in relation to the price of the underlying stock. This change to the definition is based on market makers' experience trading under the Pilot today, and ISE believes that this amended definition will reduce market makers' exposure to risk, while continuing to apply the Pilot to options representing over two-thirds of all trading volume.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>4</sup> that an exchange have rules that are designed 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 ISE 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*

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) does not become operative for 30 days from the date of filing; and (iv) 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>5</sup> and Rule 19b-4(f)(6)<sup>6</sup> thereunder.

## 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 also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-2002-17 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46141; File No. SR-NASD-2002-01]

### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Automatic Refreshing of Quotations in Nasdaq's SuperMontage System and the Withdrawal of Market Makers That Fail to Maintain a Clearing Relationship**

June 28, 2002.

On January 3, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") 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 NASD Rules 4710(b)(5) and 4619(c) to modify the procedures for refreshing exhausted market maker quotes in, and withdrawing market makers that fail to maintain proper clearing arrangements from, Nasdaq's future Order Display and Collector Facility ("NNMS" or "SuperMontage").

Specifically, Nasdaq proposes to reduce from 3 minutes to 30 seconds the amount of time that a market maker can leave its bid or offer quotation at zero before SuperMontage begins its automatic quote refresh process. The process would only operate against the single bid or offer side of a quotation that has been reduced to zero through executions. If there are no available quotes from which to determine a refresh price, SuperMontage would refresh the exhausted side of a quote to a normal unit of trading at a price level that is one penny inferior to the lesser of either: (a) The last valid displayed inside bid/offer in the security before all

<sup>7</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>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>4</sup> 15 U.S.C. 78f(b)(5).