

specialist exceed 40% of the facilitation transaction.

In the more than two years since the pilot program was first implemented, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with the Commission<sup>6</sup> concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

In order to allow the pilot program to be extended without significant interruption, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to section 19(b)(2) of the Act.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

The Exchange believes that the proposed rule change will impose no burden on competition.

### *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. 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.,

<sup>6</sup> See File No. SR-Amex-2000-49, available for inspection at the Commission's Public Reference Room.

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

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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 office of the Exchange. All submissions should refer to File No. SR-Amex-2002-82 and should be submitted by November 8, 2002.

## IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

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>10</sup> In its original approval of the pilot program,<sup>11</sup> the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of sections 6(b)(5) and 6(b)(8) of the Act.<sup>12</sup> The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,<sup>13</sup> and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will extend the pilot program without significant interruption while revisions are considered, and does not raise any new regulatory issues.

*It is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2002-

<sup>10</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> See *supra*, note 3.

<sup>12</sup> 15 U.S.C. 78f(b)(5) and (b)(8).

<sup>13</sup> See, e.g., Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

82) be, and hereby is, approved on an accelerated basis as a pilot program through January 7, 2003.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46647; File No. SR-ISE-2002-21]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by International Securities Exchange, Inc. Relating to Listing and Maintenance Standards

October 11, 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 October 3, 2002, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 ISE is proposing to amend its maintenance listing criteria for underlying securities contained in ISE Rule 503 to allow the Exchange to add series on underlying securities that fail to meet the \$3 minimum trading price requirement so long as they are trading on another options exchange and met the \$3 requirement at the time they were listed. The text of the rule amendment is below; proposed new language is italicized.

#### Rule 503. Withdrawal of Approval of Underlying Securities

\* \* \* \* \*

(c) In connection with paragraph (b)(4) of this Rule, the Exchange shall not open for trading any additional series of options contracts of the class covering an underlying security at any time (including on a next-day,

<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 24019b-4

expiration or intra-day basis) when the market price per share of such underlying security closed less than \$3 on the last trading day preceding the day on which such series are added, as measured by the closing price reported by the primary market in which the underlying security trades. In addition to closing at or above \$3 on the last trading day preceding the day series are added, the Exchange shall not open for trading any additional series of options contracts on an intra-day basis unless the last reported trade in the primary market in which the underlying security trades is at least \$3 at the time the Exchange determines to add the series. *Notwithstanding the above, the Exchange may add a series if the additional series is traded on at least one other registered national securities exchange and, at the time the additional series was listed by such other registered national securities exchange, it met the \$3 market price requirement.*

\* \* \* \* \*

## 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 III 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

ISE Rule 503 contains the guidelines used to determine whether an underlying individual equity security previously approved for options trading meets the requirements for continued approval. ISE Rule 503 currently provides that the Exchange may not list additional series for an options class unless the market price per share of the underlying security is at least \$3 on the last trading day preceding the day on which such series are added, as measured by the closing price reported by the primary market in which the underlying security trades. In addition to closing at or above \$3 on the last preceding trading day, the Exchange may not open any additional series on an intra-day basis unless the last reported trade in the primary market in

which the underlying security trades is at least \$3 at the time the Exchange determines to add the series.

The Exchange proposes to amend ISE Rule 503 to permit the Exchange to add additional series of options regardless of the market price per share for underlying securities that satisfy all of the maintenance listing requirements other than the \$3 per share price requirement, so long as such series are traded on at least one other registered national securities exchange, and at the time the additional series were listed by such other registered national securities exchange, the underlying security met the \$3 market price requirement. Three of the five options exchanges have already adopted this change,<sup>3</sup> and the ISE states that it seeks to keep its rules consistent with these other options exchanges to avoid any competitive disadvantage that might arise if the Exchange were unable to list series that are permitted to be listed on another exchange. The Exchange states that when an underlying security otherwise meets the maintenance listing standards and at least one other exchange trades the options series, the options already are available to the investing public. The Exchange believes that increased competition for order flow in these additional series of approved options classes will benefit investors and the marketplace for options and the respective underlying securities.<sup>4</sup> Moreover, the Exchange believes that the maintenance listing standards other than price assure that options will be listed and traded on the securities of companies that are financially sound.<sup>5</sup>

#### 2. Statutory Basis

The Exchange believes the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>6</sup> that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

<sup>3</sup> See Securities Exchange Act Release Nos. 46375 (August 16, 2002), 67 FR 54628 (August 26, 2002) (SR-AMEX-2002-68); 46406 (August 23, 2002), 67 FR 55446 (SR-PCX-2002-51); and 46501 (September 16, 2002), 67 FR 59585 (SR-CBOE-2002-52).

<sup>4</sup> The Exchange represents that this proposed rule change would not serve to introduce additional options series.

<sup>5</sup> The Exchange represents that it will continue to apply the other maintenance listing guidelines in Rule 503, which assure that (1) the underlying security consists of a large number of outstanding shares held by non-affiliates of the issuer; (2) the underlying security is actively-traded; (3) there is a large number of holders of the underlying security; and (4) the underlying security continues to be listed on a national securities exchange or traded through the facilities of a national securities association.

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

information with respect to, and facilitating transaction 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 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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 File No. SR-ISE-2002-21 and should be submitted by November 8, 2002.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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, and in particular, the requirements of Section 6(b)(5) of the

Act.<sup>7</sup> The Commission believes investors benefit from the competition among options exchanges that results when options are listed on more than one options exchange; and that investors are sufficiently protected, even though ISE will be permitted to list a series of option contracts when the market price of the underlying security is below \$3, because the Exchange must comply with all of the other maintenance listing requirements, and the market price of the underlying security was at or above \$3 when the options series was listed on the first options exchange.<sup>8</sup> Therefore, the Commission finds that proposed rule change will promote just and equitable principles of trade, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.<sup>9</sup>

The ISE has requested that the proposed rule change be given accelerated approval pursuant to Section 19(b)(2) of the Act.<sup>10</sup> The Commission believes accelerated approval of the proposal would enhance competition among the options exchanges. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>11</sup> to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-ISE-2002-21) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46646; File No. SR-ISE-2002-20]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by International Securities Exchange, Inc., Relating to Its Complex Order Rule

October 11, 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 October 1, 2002, the International Securities Exchange, Inc. (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 ISE.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

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

The ISE is proposing permanent approval of its complex order rule, Rule 722 (the "Rule"). The ISE also proposes to amend the Rule to delete the provisions allowing a Member to execute 40 percent of certain complex orders such Member entered without the need for the order to be exposed for 30 seconds.

#### 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 Exchange included statements concerning the purpose of and basis for 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.

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

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

<sup>3</sup> The Commission supplied additional text to the description of the proposed rule change, with the consent of the ISE, to reflect ISE's deletion of rules that otherwise permitted "crossing" of orders. Telephone conversation between Michael Simon, Senior Vice President and General Counsel, ISE, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission (October 10, 2002).

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

##### 1. Purpose

On October 18, 2001, the Commission approved the ISE's Complex Order Rule.<sup>4</sup> The Rule established priority and order handling principles for complex orders such as spreads and straddles. By its terms, the Rule was effective for one year, or until October 18, 2002. The purpose of this proposed rule change is to adopt the Rule on a permanent basis. The ISE's complex order rule is similar to those of the other exchanges with respect to order handling and priority afforded complex orders.<sup>5</sup> The one provision that is unique to the ISE permits a Member to execute 40 percent of certain complex orders as principal, or as agent against an order solicited from a Member or non-Member broker-dealer, without the need for the order to be exposed for 30 seconds. The Exchange now proposes to delete that provision.

The ISE notes the complex order rule has been effective in providing a framework for the trading of complex orders. While the ISE continues to consider ways to improve upon the handling of complex orders, over the last year the basic trading mechanism and complex order priority structure have proven sound. The ISE therefore seeks approval of this rule on a permanent basis.

##### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed 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.

<sup>4</sup> File No. SR-ISE-2002-18; Release No. 34-44955 (October 18, 2001); 66 FR 53819 (October 24, 2001).

<sup>5</sup> Chicago Board Options Exchange ("CBOE") Rule 6.45; American Stock Exchange ("Amex") Rule 950(d), Commentary .01; Philadelphia Stock Exchange ("Phlx") Rule 1033; Pacific Exchange Rule 6.75.

<sup>7</sup> *Id.*

<sup>8</sup> The Commission notes that such series must have been properly listed by the original options exchange.

<sup>9</sup> 15 U.S.C. 78f(b)(5). 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>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 17 CFR 240.30-3(a)(12).