

amendment is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>6</sup> The Commission believes that the proposed OPRA Plan amendment is consistent with section 11A of the Act<sup>7</sup> and rule 11Aa3-2 thereunder<sup>8</sup> in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

Specifically, the Commission notes that the Vendor Agreement governs the terms and conditions under which vendors are permitted to redistribute options market data to subscribers and other end users of the information, and includes new provisions to implement various aspects of OPRA's best bid and offer ("BBO") Service, which the Commission recently approved.<sup>9</sup> In particular, the revised Vendor Agreement would allow a vendor, subject to certain limitations, to exclude information regarding quotation size and market identification from its redistribution of OPRA's BBO Service. The Commission notes that if a vendor excludes either the quotation size or market identifier from its service, or both, it must not discriminate on the basis of the market in which quotations were entered. In addition, if a vendor excludes the market identifier associated with the BBO from a dynamically updated service, it would be required to make that information available to recipients of the dynamically updated service through an inquiry-only service provided without additional cost. The Commission believes that this provision of the proposal is consistent with the purposes of section 11A of the Act because vendors would be required to make available to their subscribers the information investors need to make informed investment decisions.

It is therefore ordered, pursuant to section 11A of the Act,<sup>10</sup> and rule 11Aa3-2 thereunder,<sup>11</sup> that the proposed OPRA Plan amendment, (SR-OPRA-2002-03) is approved.

<sup>6</sup>In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78k-1.

<sup>8</sup> 17 CFR 240.11Aa3-2.

<sup>9</sup> See *supra* note .

<sup>10</sup> 15 U.S.C. 78k-1.

<sup>11</sup> 17 CFR 240.11Aa3-2.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47220; File No. SR-ISE-2002-24]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change Relating to Quotation Size and Notice of Filing and Order Granting Accelerated Approval of an Amendment to the Proposal

January 21, 2003.

On October 11, 2002, the International Securities Exchange, Inc. ("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 that would require ISE quotations to be firm for their published sizes for all orders entered by ISE members, regardless of whether such orders are for the accounts of customers or broker-dealers. The proposal would allow ISE to eliminate its current distinction between the sizes of quotations for all orders, except for trades involving the interaction of ISE market maker quotations. On November 1, 2002, the Exchange's rule proposal was published for comment in the **Federal Register**.<sup>3</sup> No comments letters were received on the proposal. On November 21, 2002, the ISE submitted a letter to withdraw proposed paragraph (c) of ISE rule 805, which would have limited market makers from sending more than one order every fifteen seconds in an option on the same underlying security.<sup>4</sup> This order approves the proposed rule change, as amended by the ISE letter, publishes notice of the ISE letter, and grants accelerated approval to ISE's withdrawal of proposed ISE rule 805(c).

The proposal would require that all ISE quotations be firm for all incoming

orders for their full disseminated size, except for matching quotations of ISE market makers. Specifically, each ISE Primary Market Maker and Competitive Market Maker would enter a quotation with a single size, available in full for all incoming orders, whether from customers, broker-dealers, ISE market makers or market makers on other exchanges, except for ISE market maker quotations. In the case of ISE market maker quotations, the ISE proposes to establish by rule that ISE market makers must be firm for at least one contract for quotations of other ISE market makers. To implement this proposal, the ISE would require a limited exemption from rule 11Ac1-1 (the "Quote rule")<sup>5</sup> to permit the Exchange to establish by rule a quotation size for which a responsible broker or dealer is obligated to trade with matching ISE market maker quotations, provided that such responsible broker or dealer is firm to all other customer and broker-dealer orders for the amount of its quotation size communicated to the ISE.<sup>6</sup>

Finally, the ISE proposes two technical changes to update its rules. First, the Exchange proposes to delete language from ISE rule 804 regarding the "enhanced size pilot" that expired on October 31, 2002. Second, the Exchange proposes to delete language from ISE rule 805 regarding limited exemptive authority that expired a year after the Exchange commenced trading.

Interested persons are invited to submit written data, views and arguments concerning the ISE Letter, including whether it is consistent with the Act. Persons making written submissions should file six copies

<sup>5</sup> 17 CFR 240.11Ac1-1

<sup>6</sup>In connection with this proposal, the ISE submitted a separate letter requesting an exemption from certain requirements of the Quote rule. See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division, Commission, dated October 10, 2002. Concurrent with approval of this proposal, the Commission granted ISE's request for a limited exemption from the Quote rule. Specifically, the Commission determined to grant responsible brokers or dealers on the ISE an exemption from their obligations under rule 11Ac1-1(c)(1) to communicate to the ISE their quotation sizes applicable to the quotations of ISE market makers, provided that: (1) Such responsible brokers or dealers promptly communicate to the ISE the quotation sizes for which they are obligated to execute at their published quotation any order, other than a quotation by an ISE market maker; (ii) such responsible brokers or dealers comply with their obligations under paragraph (c)(2) of rule 11Ac1-1 by trading with quotations by other ISE market makers, in an amount up to the size established by the ISE; and (iii) the ISE and its responsible broker or dealers do not rely on paragraphs (d)(1) and (2) of the Quote rule. See letter from Robert Colby, Deputy Director, Division, Commission, to Michael Simon, Senior Vice President and General Counsel, ISE, dated January 21, 2003.

<sup>12</sup> 17 CFR 200.30-3(29).

<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. 46723 (October 25, 2002), 67 FR 66693.

<sup>4</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 20, 2002 ("ISE letter").

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 the ISE letter of File No. SR-ISE-2002-24 and should be submitted by February 18, 2003.

After careful review, 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>7</sup> and, in particular, the requirements of section 6 of the Act.<sup>8</sup> Specifically, the Commission finds that the proposal to require ISE market makers to be firm for up to their disseminated amount to all orders, other than matching ISE market maker quotations, is consistent with section 6(b)(5) of the Act,<sup>9</sup> in that by ensuring that a larger number of orders may be executed at a better price, the proposed rule change has been designed to remove impediments to and to perfect the mechanism of a free and open market and a national market system, while also protecting investors and the public interest.

The original rule proposal, including the proposal to add ISE rule 805(c), which the ISE subsequently withdrew by letter, was noticed for public comment on November 1, 2002. No comments were received on any aspect of the proposal. Because the ISE letter merely withdraws one provision of the proposal, which was previously published for comment, and because by withdrawing the one provision to add ISE rule 805(c), no other aspect of the proposal is affected, the Commission believes that approving this change to the proposal on an accelerated basis is appropriate. Accordingly, pursuant to section 19(b)(2) of the Act,<sup>10</sup> the

Commission finds good cause to approve the change to the proposal set forth in the ISE Letter prior to the thirtieth day after notice of the ISE letter is published in the **Federal Register**.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-ISE-2002-24) is hereby approved, as amended by the ISE letter, which is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47221; File No. SR-NYSE-2002-11]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Establish a Six-Month Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Issued Portable Telephone on the Exchange Floor

January 21, 2003.

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 February 28, 2002, the New York Stock Exchange, Inc. ("NYSE" 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 Exchange. On December 30, 2002, the Exchange filed an amendment to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 30, 2002 ("Amendment No. 1"). Amendment No. 1 replaces the filing in its entirety and provides, in the proposed rule text and the purpose section of the filing, clarification and further details on the use of Exchange authorized and issued portable telephones on the Exchange floor.

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

The Exchange proposes to amend NYSE rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the Exchange, by deleting the current prohibition against such use. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in brackets.

#### Rule 36 Communications Between Exchange and Members' Offices

No member or member organization shall establish or maintain any telephonic or electronic communication between the Floor and any other location without the approval of the Exchange. The Exchange may to the extent not inconsistent with the Securities Exchange Act of 1934, as amended, deny, limit or revoke such approval whenever it determines, in accordance with the procedures set forth in Rule 475, that such communication is inconsistent with the public interest, the protection of investors or just and equitable principles of trade.

#### Supplementary Material

.10 Installation of telephone lines to Exchange.—The Telephone Company will not recognize any order for the installation or disconnection of a telephone line between the Floor and any other location, except such orders as are issued by the Exchange directly to the Telephone Company.

Requests for telephone lines should be sent to Market Operations Division. Members or member organizations who desire such installations or disconnections should present their requests sufficiently in advance of the desired effective date to avoid any inconvenience resulting from insufficient notice to the Telephone Company.

.20 With the approval of the Exchange, a member or member organization *other than a specialist or specialist member organization* may maintain a telephone line or use an *Exchange authorized and provided portable telephone* which permits a non-member off the Floor to communicate with a member or member organization on the Floor. *However, use of an Exchange authorized and provided portable telephone is not permitted for orders in Investment Company Units (as defined in Section*

<sup>7</sup> The Commission has considered the proposed rules' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

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

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