

member may be a full-time employee [of the member], [or with the prior written approval of the Exchange, may be] a part-time employee or independent contractor of the member. *Member firms for which the Exchange is the Designated Examining Authority ("DEA") must provide prompt written notice to the Exchange's Department of Financial and Sales Practice Compliance for each person designated as a Financial/Operations Principal reporting whether such person is a full-time employee, part-time employee, independent contractor or has any outside business affiliations.*

(b) No change.

\* \* \* *Interpretations and Policies:*  
.01—.03 No change.

\* \* \* \* \*

## CHAPTER IX

\* \* \* \* \*

### Doing Business with the Public

Rule 9.4. Other Affiliations of Registered [Representatives] *Associated Persons*

(a) *No person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person or entity as a result of any business activity, other than a passive investment, outside the scope of his/her relationship with his/her employer firm, unless the person has provided prompt written notice to the member and has received prior written consent of the member.*

(b) *Except with the prior written consent of the member and [express] prompt written notice to [permission of] the Exchange, every Registered Options Principal, Sales Supervisor, and Financial/Operations Principal, registered with a member for which the Exchange is the Designated Examining Authority ("DEA") [and Registered Representative] shall devote his/her entire time during business hours to the business of the member organization employing [him] or compensating him/her. [or to the business of its affiliates which are engaged in the transaction of business as a broker or dealer in securities or commodities or in such other businesses as have been approved by the Exchange.]*

\* \* \* \* \*

#### B. Description of the Proposed Rule Change

Currently, CBOE rule 9.4 ("Other Affiliations of Registered Representatives") requires a member firm's Registered Representatives and Registered Options Principals ("ROPs") to obtain express written permission

from the Exchange in order to engage in any business, other than that of their member organization, during business hours. Further, CBOE rule 3.6A ("Qualification and Registration of Certain Associated Persons") provides that a member firm may employ a part-time employee or independent contractor as a Financial/Operations Principal, provided that it receives the prior written approval of the Exchange to do so.

Pursuant to the proposed rule change, CBOE would amend rule 9.4 to apply to all of a member firm's registered APs. The rule would now provide that, other than in the case of a passive investment, all such persons would be required to give prompt written notice to the employing member, and to receive the member's prior written consent, with respect to outside business activities. Where CBOE is the firm's Designated Examining Authority, and the AP in question is a ROP, Sales Supervisor, or Financial / Operations Principal, the CBOE will also require prompt written notice to the Exchange. CBOE rule 3.6A's restrictions on FINOPs would also be amended with changes corresponding to the new provisions of rule 9.4.

### III. Discussion

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> In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposed rule change will provide CBOE with information that it needs to regulate its member firms. The Commission further notes that the proposed rules are similar to rules of other self-regulatory organizations.<sup>9</sup> Finally, the proposed rule change does not alter in any way the obligation of a CBOE member or member organization to oversee the operation of its business and supervise the performance of its

<sup>7</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

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

<sup>9</sup> See American Stock Exchange rule 342(b), National Association of Securities Dealers rule 3030, New York Stock Exchange rule 346(b), Pacific Exchange rule 1.26(d) and Philadelphia Stock Exchange rule 793.

associated persons, including any potential conflicts of interest involving any associated person, in a manner that assures compliance with the Act and rules and regulations thereunder, as well as applicable rules of the CBOE. To this end, the Commission notes that CBOE member firms will be obligated to review and approve in writing any outside business arrangements of their personnel.

Therefore, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, and to protect investors and the public interest.

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change, as amended (File No. SR-CBOE-2003-02) be, and it hereby is, approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-12145 Filed 5-14-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47812; File No. SR-CME-2003-01]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Mercantile Exchange To Adopt, on a Permanent Basis, a Standard Under Which a Market Maker Can Qualify for Exclusion From CME's Margin Rules

May 7, 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 May 7, 2003, the Chicago Mercantile Exchange ("CME" or "Exchange") 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 CME. The Commission is publishing this notice to solicit comments on the proposed rule change from interested

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

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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.

persons and to grant accelerated approval of the proposed rule change.

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

CME proposes to adopt, on a permanent basis, CME Rule 930.B.2.b.(3) (herein referred to as "Market Maker Exclusion"). On November 8, 2002, the Commission approved the Market Maker Exclusion on a pilot basis, ending May 7, 2003 (the "Pilot").<sup>3</sup> CME believes that permanent approval of the Market Maker Exclusion is consistent with the jointly adopted margin rules of the Commission and the Commodity Futures Trading Commission ("CFTC") (collectively, "Commissions").

Below is the text of the proposed rule change that CME proposes to adopt on a permanent basis.

\* \* \* \* \*

#### 930.B. Performance Bond Rates

##### 1. Non-Security Futures (No Change).

##### 2. Security Futures

##### a.-b. (1) and (2) (No change).

##### (3) The Market Maker:

(i) Is assigned to a group of Security Futures Contracts listed on the Exchange that is either unlimited in nature ("Unlimited Assignment"); or, is assigned to no more than 20% of the Security Futures Contracts listed on the Exchange ("Limited Assignment");

(ii) At least 75% of the Market Maker's total trading activity in Exchange Security Futures Contracts is in its assigned Security Futures Contracts, measured on a quarterly basis;

(iii) During at least 50% of the trading day the Market Maker has bids or offers in the market that are at or near the best market, except in unusual market conditions as determined by the Exchange (such as a fast market in either a Security Futures Contract or a security underlying a Security Futures Contract), with respect to at least 25% (in the case of an Unlimited Assignment) or at least one (in the case of a Limited Assignment) of its assigned Security Futures Contracts; and

(iv) The requirements in (ii) and (iii) are satisfied on (a) at least 90% of the trading days in each calendar quarter by Market Makers who have undertaken an Unlimited Assignment; or (b) at least 80% of the trading days in each calendar quarter by Market Makers who have undertaken a Limited Assignment; or (c) on at least 80% of the trading days

in each calendar quarter by Market Makers who have undertaken either an Unlimited Assignment or Limited Assignment but where the Exchange is listing four (4) or fewer Security Futures Contracts.

For purposes of clauses (1) and (2) above, beginning on the 181st calendar day after the commencement of trading of Security Futures Contracts on the Exchange, a "meaningful proportion of the total trading volume of Security Futures Contracts on the Exchange" shall mean a minimum of 20% of such trading volume.

Any Market Maker that fails to comply with the applicable Rules of the Exchange, CFTC Regulations 41.41 through 41.49 and SEC Regulations 242.400 through 242.406 shall be subject to disciplinary action in accordance with Chapter 4. Appropriate sanctions in the case of any such failure shall include, without limitation, a revocation of such Market Maker's registration as a Security Futures Dealer.

c.-d. (No Change).

\* \* \* \* \*

### 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 CME 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 CME 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 CME proposes to adopt, on a permanent basis, the Market Maker Exclusion, which sets forth the standards under which a CME member may be excluded from the Exchange's margin requirements as a "market maker." The CME believes that the proposed rule change is consistent with Commission Rule 400(c)(2)(v) under the Act<sup>4</sup> and CFTC Rule 41.42(c)(2)(v),<sup>5</sup> which establish standards by which members of national securities exchanges may qualify as Security Futures Dealers and therefore be

excluded from customer margin requirements for security futures.

The CME notes that the Market Maker Exclusion has not actually been deployed in practice at the Exchange to date. In addition, the CME notes that the Commission has received no comment letters on this matter during the pilot period. The CME proposes no changes to the Market Maker Exclusion and, therefore, CME proposes to adopt the proposed rule change on a permanent basis.

##### 2. Statutory Basis

The CME believes that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>6</sup> in that it promotes competition and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The CME believes that the proposed rule change is designed to accomplish these goals by permitting members to trade security futures, as permitted under the Commission's Rule.

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

The CME does not believe that the proposed rule change will have an impact on competition.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited and none have been received.

### 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., 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

<sup>3</sup> See Securities Exchange Act Release No. 46792 (November 8, 2002), 67 FR 69273 (November 15, 2002).

<sup>4</sup> 17 CFR 242.400(c)(2)(v).

<sup>5</sup> 17 CFR 41.42(c)(2)(v).

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

Room. Copies of such filing will also be available for inspection and copying at the principal office of the CME. All submissions should refer to File No. SR-CME-2003-01 and should be submitted by June 5, 2003.

**IV. Commission Findings and Order Granting Accelerated Approval of a 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>7</sup> In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.<sup>9</sup> In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,<sup>10</sup> which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provide that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

The Commission believes that the CME's standards for market makers under Rule 930.B.2.b.(3) are consistent with the Act, and Rule 400(c)(2)(v) thereunder.<sup>11</sup> Specifically, Rule 400(c)(2)(v) provides that the Commissions' joint margin rules do not apply to a member of a national securities exchange that is registered with such exchange as a "Security Futures Dealer" pursuant to exchange rules that must meet several criteria, including a requirement that a Security Futures Dealer be required to "to hold itself out as being willing to buy and sell security futures for its own account on a regular and continuous basis." The Commission believes that the affirmative obligations required by the

CME pursuant to Rule 930.B.2.b.(3) satisfy this requirement.

The CME has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register**. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable CME members to trade security futures as market makers under the Market Maker Exclusion without undue delay. The Commission notes that it approved the Market Maker Exclusion as a temporary pilot to give members of the public an opportunity to comment on the substance of the Market Maker Exclusion. The Commission received no comments on the Pilot. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>12</sup> to approve the proposed rule change prior to the thirtieth day after publication of the notice of filing.

**V. Conclusion**

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (File No. SR-CME-2003-01) be approved, on a permanent basis, on an accelerated basis.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-12148 Filed 5-14-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-47817; File No. SR-ISE-2003-10]**

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc. To Amend Its Obvious Error Rule**

May 8, 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, 2003, 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 Exchange. On May 1, 2003, the ISE submitted Amendment No. 1 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.

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

The Exchange is proposing to amend ISE Rule 720 (the "Obvious Error Rule"). Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

**Rule 720. Obvious Errors**

The Exchange shall either bust a transaction or adjust the execution price of a transaction that results from an Obvious Error as provided in this Rule.

(a) Definition of Obvious Error. For purposes of this Rule only, an Obvious Error will be deemed to have occurred when the *execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:*

<i>Theoretical price</i>	<i>Minimum amount</i>
<i>Below \$2</i> .....	<i>.25</i>
<i>\$2 to \$5</i> .....	<i>.40</i>
<i>Above \$5 to \$10</i> .....	<i>.50</i>
<i>Above \$10 to \$20</i> .....	<i>.80</i>
<i>Above \$20</i> .....	<i>1.00</i>

[(1) If the Theoretical Price of the option is less than \$3.00:

(i) During regular market conditions (including rotations), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 35 cents or more; or

(ii) During fast market conditions (*i.e.*, the Exchange has declared a fast market status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 50 cents or more.

(2) If the Theoretical Price of the option is \$3.00 or higher:

(i) During regular market conditions (including rotations), the execution

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

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

<sup>9</sup> In approving the proposed rule, the Commission 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. 78g(c)(2)(B).

<sup>11</sup> 17 CFR 240.400(c)(2)(v).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<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.

<sup>3</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 30, 2003 ("Amendment No. 1"). In Amendment No. 1, the ISE replaced the proposed rule text in its entirety.