

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 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-CBOE-2001-04 and should be submitted by October 27, 2003.

#### V. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 3 on a Pilot Basis

After careful review, the Commission finds that proposed paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>16</sup> In particular, the Commission finds that these proposed rules are consistent with the requirements of Section 6(b)(5)<sup>17</sup> of the Act, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions where there has been a documented Exchange

system disruption or malfunction, the execution of a trade under such circumstances indicates that an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether such an "obvious error" has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Commission believes that the CBOE's proposed rule relating to an obvious error resulting from a verifiable Exchange system disruptions and malfunctions establishes such specific and objective criteria for determining when a trade may involve an "obvious error" and thus may be adjusted or nullified. The CBOE has specified that trading officials may adjust or bust transactions resulting from a verifiable disruption or malfunction in the use or operation of any automated Exchange quotation, dissemination, execution, or communication system. The Commission also believes that the proposal establishes specific and objective procedures governing the adjustment or nullification of such trades.

The Commission finds good cause, pursuant to Section 6(b)(5)<sup>18</sup> and Section 19(b)<sup>19</sup> of the Act, to accelerate approval of paragraphs (a)(3), (b), (c), (d), and (e) of the proposed CBOE Rule 6.25 on a pilot basis, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the provisions of the proposal regarding verifiable disruptions or malfunctions of Exchange systems; procedures for reviewing transactions; adjustments of obvious error trades; review by the appeals committee; and negotiated trade nullification, are substantially similar to proposed rule changes submitted by the International Securities Exchange, Inc. and Pacific Exchange, Inc., as well as the rules for CBOEdirect, all of which the Commission has approved.<sup>20</sup> Furthermore, pursuant to Amendment No. 3 to the proposed rule change, these provisions of the proposed rule change are in effect on a pilot basis until December 3, 2003. The Commission

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78s(b).

<sup>20</sup> See Securities Exchange Act Release No. 48538 (September 25, 2003) (SR-PCX-2002-01); Securities Exchange Act Release No. 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (SR-ISE-2003-10); and Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (SR-CBOE-00-55).

finds, therefore, that granting partial accelerated approval of the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**, is appropriate and consistent with Section 6(b)(5)<sup>21</sup> of the Act.

#### VI. Conclusion

For the reasons discussed above, the Commission finds that paragraphs (a)(3), (b), (c), (d), and (e) of CBOE Rule 6.25, as set forth in the proposed rule change, as amended, are consistent with the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that paragraphs (a)(3), (b), (c), (d), and (e) of CBOE Rule 6.25, as set forth in the proposed rule change, as amended, be and hereby are approved on an accelerated basis, on a pilot basis until December 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48568; File No. SR-ISE-2003-23]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc., Relating to Payment-for-Order-Flow Fees

September 30, 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 September 24, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the Exchange has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</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>16</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>17</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange is proposing to lower the cap on each payment-for-order-flow fund from \$550,000 to \$450,000. The text of the proposed rule change is available at 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of those statements.

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

#### 1. Purpose

The Exchange operates a payment for order flow program as approved by the Commission.<sup>3</sup> This program is currently funded through a \$.55 fee paid by ISE market makers for each customer contract they execute. The Exchange also has established a ceiling of \$550,000 in each of the ten payment-for-order-flow funds it maintains.<sup>4</sup> The Exchange states that it seeks to ensure that the ten payment-for-order-flow funds are sufficiently high, but no higher than necessary. The Exchange states that it continues to collect more money for the funds than its Primary Market Makers have paid out. Therefore, the Exchange proposes to reduce the ceiling on each payment-for-order-flow fund from \$550,000 to \$450,000,

<sup>3</sup> See Securities Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (approving File No. SR-ISE-00-10).

<sup>4</sup> See Securities Exchange Act Release Nos. 45128 (December 4, 2001), 66 FR 64325 (December 12, 2001) (File No. SR-ISE-2001-31), 45772 (April 17, 2002), 67 FR 20563 (April 25, 2002) (File No. SR-ISE-2002-09), 45857 (May 1, 2002), 67 FR 30988 (May 8, 2002) (File No. SR-ISE-2002-12), and 46976 (December 9, 2002), 67 FR 77116 (December 16, 2002) (File No. SR-ISE-2002-26). Under ISE Rule 802(b), the Exchange has divided the options it trades into ten groups, with one Primary Market Maker assigned to each group. The Exchange maintains a payment-for-order-flow fund for each group, consisting of the fees collected from market makers trading options in that group. The Primary Market Maker for the group is responsible for arranging and making all payments to Electronic Access Members for order flow sent to the Exchange in options in that group.

because it believes that it can adequately maintain this program with the reduced ceiling.<sup>5</sup>

#### 2. Statutory Basis

The basis for this proposed rule change is the requirement of section 6(b)(4) under the Act<sup>6</sup> that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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

The Exchange believes that the proposed rule change will 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(2) thereunder<sup>8</sup> because it changes an ISE fee. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the 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 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>5</sup> The Commission notes that the payment for order flow fee would be suspended for a group of options when the fund balance for the group reaches \$450,000, but would be reinstated when any such fund balance falls below \$450,000. See Securities Exchange Act Release No. 45857 (May 1, 2002), 67 FR 30988 (May 8, 2002) (File No. SR-ISE-2002-12).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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

<sup>8</sup> 17 CFR 19b-4(f)(2).

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-ISE-2003-23 and should be submitted by October 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48569; File No. SR-PCX-2003-52]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Exchange's Designated Examining Authority Fee Exemption

September 30, 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 September 24, 2003, the Pacific Exchange, Inc. ("PCX" 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. 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 Exchange is proposing to amend the regulatory fee portion of its Schedule of Fees and Charges ("Fees")

<sup>9</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.