

Misrepresentations or omissions in communications to the Exchange or OCC and improper position adjustments that are neither willfully made nor of a material nature could be charged under new CBOE Rule 4.22. Offenses charged under proposed CBOE Rule 4.22 will allow the Exchange to fashion more appropriate disciplinary measures. A violation of proposed CBOE Rule 4.22 may be deemed minor in nature and therefore subject to summary fine. CBOE Rule 17.50 (Minor Rule Violation Fine Plan) is proposed to be amended to add a new fine schedule applicable to violations of proposed CBOE Rule 4.22. However, nothing in proposed CBOE Rule 4.22 shall prevent the Exchange, whenever it determines that any violation of that Rule is intentional, egregious, or otherwise not minor in nature, from proceeding under the Exchange's formal disciplinary rules.

The proposed rule changes are similar to existing rules at other exchanges that distinguish between willfully made false or misleading statements or omissions of material fact and other types of statements or omissions.<sup>3</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change will advance the objectives of Section 6(b)(6) of the Act<sup>4</sup> in that it will provide that Exchange members and persons associated with members shall be appropriately disciplined in those instances when a rule violation is minor in nature, but warrants a sanction more serious than a warning or cautionary letter. The Exchange believes that the proposed rule change provides a fair procedure for disciplining members and persons associated with members in accordance with the requirements of Sections 6(b)(7)<sup>5</sup> and 6(d)(1)<sup>6</sup> of the Act. Finally, the Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in that it is designed to prevent fraudulent and manipulative acts or practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest.

<sup>3</sup> See e.g., New York Stock Exchange, Inc. Rules 476 and 476A.

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

<sup>5</sup> 15 U.S.C. 78f(b)(7).

<sup>6</sup> 15 U.S.C. 78f(d)(1).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change will 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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

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 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-CBOE-2003-54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 CBOE. All submissions should refer to file number SR-CBOE-2003-54 and should be submitted by February 3, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jill M. Peterson,**  
Assistant Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49023; File No. SR-ISE-2003-37]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc. To Amend the Procedures for Executing Stock-Option Orders Under ISE Rule 722**

January 5, 2004.

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 December 18, 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. 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 proposes to revise the procedures for executing stock-option orders by: (1) automating the transmission of the stock leg(s) of a stock-option combination order to a broker-dealer on behalf of members; and (2) allowing for the pricing of the options leg(s) of stock-option combination orders in penny increments.

The text of the proposed rule change appears below. New text is in *italic*. Deleted text is in brackets.<sup>3</sup>

<sup>8</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> With the Exchange's consent, the Commission has made technical corrections to the proposed rule text. Telephone conversation between Katherine Simmons, Vice President and Associate General Counsel, ISE, and Christopher Solgan, Attorney,

## Rule 722. Complex Orders

\* \* \* \* \*

(b) Applicability of Exchange Rules. Except as otherwise provided in this Rule, complex orders shall be subject to all other Exchange Rules that pertain to orders generally.

(1) Minimum Increments. Bids and offers on complex orders may be expressed in any decimal price, and the option leg(s) of a stock-option order may be executed in one cent increments, regardless of the minimum increments otherwise [appropriate] applicable to the individual option legs of the order. Complex orders expressed in net price increments that are not multiples of the minimum increment are not entitled to the same priority under subparagraph (b)(2) of this Rule as such orders expressed in increments that are multiples of the minimum increment.

\* \* \* \* \*

## Supplementary Material to Rule 722

.01 A bid or offer made as part of a stock-option order (as defined in (a)(5)(i) above) or a SSF-option order (as defined in (a)(5)(ii) above) is made and accepted subject to the following conditions: (1) the order must disclose all legs of the order and must identify the security (which in the case of a single stock future requires sufficient identification to determine the market(s) on which the single stock future trades) and the price at which the non-option leg(s) of the order is to be filled; and (2) concurrent with the execution of the options leg of the order, the initiating member and each member that agrees to be a counterparty on the non-option leg(s) of the order must either elect to have the stock leg(s) of a stock-option order electronically communicated to a designated broker-dealer for execution as provided in .02 below or take steps immediately to transmit the non-option leg(s) to a non-Exchange market(s) for execution. Failure to observe these requirements will be considered conduct inconsistent with just and equitable principles of trade and a violation of Rule 400.

A trade representing the execution of the options leg of a stock-option or SSF-option order may be cancelled at the request of any member that is a party to that trade only if market conditions in any of the non-Exchange market(s) prevent the execution of the non-option leg(s) at the price(s) agreed upon.

.02 Automated Stock-Option Orders. A Member may elect to have the Exchange electronically communicate

the stock leg(s) of a stock-option order to a designated broker-dealer for execution. To make such an election, the Member must enter into a brokerage agreement with the designated broker-dealer. The Exchange will automatically transmit the stock leg(s) of a trade to the designated broker-dealer for execution on behalf of the Member. A trade of a stock-option order will be automatically cancelled if market conditions prevent the execution of the stock or option leg(s) at the prices necessary to achieve the agreed upon net price.

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## 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 received on the proposed rule change. 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 such statements.

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

#### 1. Purpose

The Exchange proposes to revise the procedures for executing stock-option orders by: (1) Automating the transmission of the stock leg(s) of a stock-option combination order to a broker-dealer on behalf of members; and (2) allowing for the pricing of the options leg(s) of stock-option combination orders in penny increments.

#### Automatic Transmission of Stock Legs

Supplementary Material .01 to ISE Rule 722 currently describes a manual procedure by which a stock-option order may be executed on the Exchange. This manual procedure requires each party to a stock-option trade to take steps immediately to transmit the stock leg(s) of the order to a non-Exchange market for execution. The Exchange proposes to offer an automated process for the communication of stock-option orders by electronically transmitting the orders related to the stock leg(s) for execution on behalf of the parties to the trade. To participate in this automated process for stock-option orders, an ISE member must enter into a customer agreement with the designated broker-

dealer. In addition, each member will be responsible for whatever fees and other charges the designated broker-dealer imposes for executing the trades. The Exchange will not receive any fees related to the stock portion of the stock-option trade. Members will be able to continue using the current manual procedure for execution of stock-option orders if they choose.

The electronic communication of the orders by the Exchange eliminates the necessity for each party to the trade to separately communicate orders to the broker-dealer for execution, thereby making the process more efficient. Once the orders are communicated to the broker-dealer for execution, the broker-dealer has complete responsibility for determining whether the orders may be executed in accordance with all of the rules applicable to execution of equity orders, including compliance with the applicable short-sale, trade-through and trade reporting rules. As with the current manual procedure, if the broker-dealer cannot execute the equity orders at the designated price, the stock-option combination order will not be executed on the Exchange.

#### Penny Pricing for Options Legs of Stock-Option Orders

Because the options leg(s) of a stock-option order must be executed in \$.05 increments (for options trading below \$3) and \$.10 increments (for options trading at or above \$3),<sup>4</sup> while the stock leg(s) of a stock-option order trades in \$.01 increments, it is not always possible to achieve a proposed net price for stock-option orders. For example, suppose an investor proposes to buy stock and sell options at a net price of \$8.50. If the stock is \$11.72 bid to \$11.74 offered, and the option is \$3.20 bid to \$3.30 offered, a net price of \$8.50 cannot be achieved without executing the option leg at \$3.22, \$3.23, or \$3.24.<sup>5</sup> Therefore, the Exchange proposes to allow for the execution of the option leg(s) of stock-option combination orders in one-cent increments to allow investors greater opportunities to receive execution of their stock-option orders. The options leg(s) of a stock-option order will continue to be reported through the Options Price Reporting Authority ("OPRA") with a code that indicates that the trade was

<sup>4</sup> See ISE Rule 710.

<sup>5</sup> To execute the order within the bid and offer for the stock and the option, a net price of \$8.50 could only be achieved by (1) executing the stock at \$11.72 and the option at \$3.22 (\$11.72-\$8.50); (2) executing the stock at \$11.73 and the option at \$3.23 (\$11.73-\$8.50); or (3) executing the stock at \$11.74 and the option at \$3.24 (\$11.74-\$8.50).

part of a complex order. The actual price of the trade will be reported.

#### (2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Act in general, and Section 6(b)(5)<sup>6</sup> in particular. The Exchange states that the proposed rule change is intended 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. The Exchange further believes that the automated procedure for transmitting the stock leg(s) of a stock-option order would provide a more efficient means for members to execute orders, and the execution of the options leg(s) of a stock-option order in \$.01 minimum increments would improve investors' ability to receive execution of their orders.

#### *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.

#### *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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(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 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. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-ISE-2003-37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE-2003-37 and should be submitted by February 3, 2004.

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

**Jill M. Peterson,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49030; File No. SR-NASD-2003-194]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Elimination of Duplicate Assessments and Fees Contained in Schedule A of the NASD By-Laws

January 6, 2004.

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 December 29, 2003, the National Association of Securities Dealers, Inc. ("NASD"), 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 NASD. NASD has designated the proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder<sup>4</sup> and as establishing or changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</sup> which render the proposal effective upon receipt of this filing by the Commission.<sup>7</sup> 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

NASD is proposing to amend Section 5 of Schedule A to the NASD By-Laws ("Section 5") to clarify that two or more members that are under substantially the same ownership or control (commonly referred to as a "simultaneous filing group" or "SFG") may eliminate certain duplicate fees and assessments and to remind members to provide NASD with prior notice in the format specified by NASD if they wish to establish eligibility for the reduced fees. Below is the text of the proposed rule change. Proposed new language is in *italic*; proposed deletions are in brackets.

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#### Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Sections 1 through 4. No change.

#### Section 5—Elimination of Duplicate Assessments and Fees

Two or more members under substantially the same ownership or control shall be required to pay (1) only one personnel assessment and one [registration renewal] *system processing* fee annually for those individuals

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

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

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> NASD clarified that it filed the proposed rule change pursuant to both Section 19(b)(3)(A)(i) and Section 19(b)(3)(A)(ii) of the Act, as discussed in the purpose section of the notice and in the body of NASD's Form 19b-4 filing. Telephone conversation between Shirley H. Weiss, Associate General Counsel, NASD, and David A. Hsu, Attorney, Division of Market Regulation, Commission, on January 6, 2004.

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