

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51663; File No. SR-ISE-2004-40]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto Relating to Procedures for the Allocation of Options on Index-Based Products

May 6, 2005.

#### I. Introduction

On December 14, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") 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 to amend ISE Rule 802 to add criteria for allocating options based on indices and fund shares ("Index-based Products") to Primary Market Makers and Competitive Market Makers. On January 18, 2005, the ISE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 2, 2005, the ISE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On March 21, 2005, the ISE filed Amendment No. 3 to the proposed rule change.<sup>5</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on April 5, 2005.<sup>6</sup> The Commission received no comments on the proposal, as amended. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

The ISE proposes to amend ISE Rule 802 to (a) specify that the ISE's Board or a designated committee of the Board is required to make market maker appointments in the best interest of the Exchange to provide competitive markets, and (b) add criteria for allocating Index-based Products to Primary Market Makers and Competitive Market Makers. Specifically, with respect to the criteria for Index-based Products, the Exchange proposes to require a Primary Market Maker who

seeks an allocation of an Index-based Product to provide specific quotation spread and size commitments for the first year of listing. These commitments would remain in effect, unless a change is approved by the ISE Board or a designated committee of the Board upon the request of the Primary Market Maker. In addition, under the proposal, a Primary Market Maker may, but would not be required to, provide commitments regarding marketing or other support with respect to the Index-based Product, including information regarding order flow arrangements with order flow providers. Finally, the ISE represented that the proposed amendments to ISE Rule 802 would apply only to allocation decisions made after the approval of this proposal.

#### III. Discussion

The Commission finds that the proposed rule change, as amended, 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> and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to require that the Board or designated committee make market maker appointments in the best interest of the Exchange and to add criteria for allocating Index-based Products to Primary Market Makers is consistent with Section 6(b)(5) of the Act<sup>9</sup> because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposal should assist the Board or designated committee in making allocation decisions.

With regard to order flow commitments that a Primary Market Maker may make, the Commission believes that the ISE should use this information solely to evaluate existing order flow arrangements between the applicant and order flow providers.<sup>10</sup>

<sup>7</sup> In approving this proposed rule change, as amended, the Commission has considered the proposed rule's 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> The ISE represented that it would use such information solely to evaluate existing order flow arrangements between the applicant and order flow providers and would not use such information as a basis to terminate an allocation or take remedial action against a Primary Market Maker. See *supra* note 6.

The Commission notes that other exchanges made similar representations regarding their use of order flow commitment information, and the Commission

The Commission notes that ISE represented that it would not use existing order flow commitments as an indicator of potential future order flow that an applicant may be able to bring to the ISE. In addition, the ISE represented that a future change to, or termination of, any order flow arrangements considered by the ISE during the review process would not be used by the ISE at any point in the future to terminate an allocation or to take remedial action against a Primary Market Maker and that the ISE would not take any remedial action solely because orders subject to any order flow arrangements were not subsequently routed to the Exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-ISE-2004-40), as amended, be, and it hereby is, approved.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-2350 Filed 5-11-05; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration, Office of Small Business Development Centers, National Advisory Board will be hosting a public meeting via conference call to discuss such matters that may be presented by members, and the staff of the U.S. Small Business Administration or interested others. The conference call will take place on Tuesday, May 17, 2005, at 1 p.m. eastern time.

Anyone wishing to make an oral presentation to the Board must contact Erika Fischer, Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205-7045 or fax

has emphasized that order flow commitments may be used solely to evaluate existing order flow arrangements and may not be used as a basis for termination of an allocation or for taking remedial action against a market maker. See Securities Exchange Act Release Nos. 49577 (Apr. 19, 2004), 69 FR 22576 (Apr. 26, 2004) (approving File No. SR-CBOE-2004-17); and 51126 (Feb. 2, 2005), 70 FR 6915 (Feb. 9, 2005) (approving File No. SR-Phlx-2004-90).

<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.

<sup>3</sup> See Form 19b-4, dated January 18, 2005, which replaced the original filing in its entirety ("Amendment No. 1").

<sup>4</sup> See Form 19b-4, dated March 2, 2005, which replaced Amendment No. 1 in its entirety ("Amendment No. 2").

<sup>5</sup> See Form 19b-4, dated March 21, 2005, which replaced Amendment No. 2 in its entirety ("Amendment No. 3").

<sup>6</sup> See Securities Exchange Act Release No. 51443 (March 29, 2005), 70 FR 17279.

(202) 481-0681, e-mail:  
*Ericka.Fisher@sba.gov*.

**Matthew K. Becker,**  
*Committee Management Officer.*

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**BILLING CODE 8025-01-M**

## SMALL BUSINESS ADMINISTRATION

### National Women's Business Council; Notice of Public Meeting

In accordance with the Women's Business Ownership Act, Public Law 106-554 as amended, the National Women's Business Council (NWBC) would like to announce a forthcoming Council meeting. The meeting will take place on Thursday, May 26, 2005, starting at 1 p.m. until 5 p.m. The meeting will be held at Carlson Companies, 701 Carlson Parkway, Minnetonka, Minnesota 55305. The meeting will discuss the National Women's Business Council's agenda and action items for fiscal year 2005, included and not limited to procurement, access to capital, access to training and technical assistance, access to markets and affordable health care.

Anyone wishing to attend and make an oral presentation must contact Katherine Stanley in writing or by fax no later than Monday, May 23, 2005, in order to be put on the agenda. Katherine Stanley, Administrative Officer, U.S. Small Business Administration, National Women's Business Council, 409 3rd Street, SW., Washington, DC 20416, phone (202) 205-3850, fax (202) 481-2101, e-mail:  
*Katherine.Stanley@sba.gov*.

**Matthew K. Becker,**  
*Committee Management Officer.*

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**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### Small Business Size Standards; Public Hearings

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of public hearings.

**SUMMARY:** The U.S. Small Business Administration (SBA) announces that it is holding a series of public hearings throughout the country on the topic of small business size standards and other issues such as the possible participation of businesses majority-owned by venture capital companies in the Small Business Innovation Research Program. Testimony presented at these hearings will become part of the administrative

record for SBA's consideration when the Agency deliberates on approaches to simplify and restructure size standards and other changes to make size standards easier to understand and use.

**DATES:** The Public Hearings Section below specifies the dates and locations of the public hearings. Attendees must pre-register 5 business days prior to the scheduled hearing date.

**ADDRESSES:** Parties interested in testifying at or attending a public hearing must pre-register by providing a request to SBA's Office of Size Standards at

*Hearings.sizestandards@sba.gov*.

**FOR FURTHER INFORMATION CONTACT:** Gary M. Jackson, Assistant Administrator for Size Standards, at (202) 205-6618 or at *sizestandards@sba.gov*.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On March 19, 2004, SBA published a proposed rule to simplify and restructure its small business size standards by establishing most size standards based on the number of employees of a business concern and by significantly reducing the number of different size standard levels (69 FR 13130). Based on concerns expressed by a large number of commenters, SBA decided to withdraw that proposal on July 1, 2004 (69 FR 39874). However, a large number of commenters also supported the proposal in general or supported certain aspects of the proposed changes. As a result, SBA decided to reconsider its initial approach to simplifying and restructuring size standards and seek public input on the general issue of size standards, including how best to simplify and restructure size standards.

SBA is pursuing two actions to engage the public in providing its views of SBA's size standards. First, SBA published an Advance Notice of Proposed Rulemaking (ANPRM) on December 3, 2004, requesting comment on a variety of size standards issues (69 FR 70197). Most of those issues were presented in the comments SBA had received in response to the March 19, 2004, proposed rule, but were not part of the proposed changes. SBA believes that it is beneficial to its evaluation of the comments raising those issues to provide the public at large with an opportunity to consider and comment upon them. SBA also included several issues in the ANPRM that it had under consideration as separate policy changes apart from the simplification and restructuring proposal. Specifically, the issues presented in the ANPRM consist of: (1) The approach to simplify size

standards, (2) the calculation of number of employees (including how SBA defines an employee for size purposes), (3) the use of receipts-based size standards, (4) the designation of size standards for Federal procurements, (5) the establishment of separate and distinct size standards for use solely in Federal procurement programs, (6) the establishment of tiered size standards, (7) the simplification of the affiliation regulations, (8) the simplification of the small business joint venture eligibility regulations, (9) the possible grandfathering of small business eligibility, (10) the impact of SBA size standards on the regulations of other Federal agencies, and (11) the possible participation of businesses majority-owned by venture capital companies in the Small Business Innovation Research Program and the effect such participation would have on the Program. The ANPRM comment period closed on April 3, 2005.

Second, because of the significance of the size standards initiative and importance of the other issues being considered, SBA decided to conduct a series of public hearings around the country to provide interested parties with an opportunity to meet with SBA officials and discuss their views on the issues. SBA considers the public hearings a valuable component of its deliberations. While the comments received to the ANPRM are greatly assisting SBA with its deliberations, the public hearings allow for a constructive dialogue with the public on these issues enabling SBA to more fully comprehend the views of the public. This notice provides information on the purpose, format, scheduling, and registration for the public hearings.

##### II. Public Hearings

A panel of SBA officials will preside over 11 formal public hearings. The purpose of the hearings is to obtain the views of SBA's stakeholders on approaches to simplify and restructure size standards, to identify other policy changes which may make size standards easier to understand and use, and to obtain stakeholder views on the other issues being considered such as the possible participation of businesses majority-owned by venture capital companies in the Small Business Innovation Research Program. Oral and written testimony will become part of the hearing record for SBA's consideration. SBA will analyze the hearing testimony along with the comments it received to the March 19, 2004, proposed rule and the December 3, 2004, ANPRM in formulating a new proposal regarding approaches