

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-49509; File No. SR-ISE-2004-10)

March 31, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. Relating to the Extension and Expansion of the Pilot Program for Quotation Spreads

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 March 30, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The proposed rule change has been filed by the ISE under Rule 19b-4(f)(6) of the Act.<sup>3</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 Substance of the Proposed Rule Change

On March 19, 2003, the Commission approved an ISE proposal to establish a pilot program permitting the allowable quotation spread for options on up to 50 equity securities to be \$5, regardless of the price of the bid ("Pilot Program").<sup>4</sup> The ISE proposes to extend the Pilot Program until June 29, 2004, and to expand the Pilot Program to include all equity options trading on the ISE. Pursuant to Rule 19b-4(f)(6) under the Act, the ISE requests that the Commission waive the 30-day pre-operative requirement contained in Rule 19b-4(f)(6)(iii).<sup>5</sup>

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Securities Exchange Act Release No. 47532, 68 FR 14728 (March 26, 2003) (order approving File No. SR-ISE-2001-15) ("Pilot Program Approval Order").

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

The text of the proposed rule change appears below. Additions are italicized; deletions are bracketed.

**Rule 803. Obligations of Market Makers**

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**Supplementary Material To Rule 803**

.01 Pursuant to paragraph (b)(4) of Rule 803, during a [six-month] pilot period expiring on [March 31] June 29, 2004, [the Exchange may designate options on up to fifty (50) underlying securities that] all options classes may be quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid.

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(b) Inapplicable.

(c) Inapplicable.

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 ISE 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 ISE 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 ISE's rules contain maximum quotation spread requirements that vary from \$.25 to \$1.00, depending on the price of the option. On March 19, 2003, the Commission approved a proposal to amend Supplementary Material .01 to ISE Rule 803, "Obligations of Market Makers," to establish a six-month Pilot Program in which the allowable quotation spread for options on up to 50 underlying equity securities would be \$5, regardless of the price of the bid.<sup>6</sup> The Pilot Program has been extended twice.<sup>7</sup> As required by the Pilot Program Approval Order, the ISE has submitted to the Commission a report detailing the ISE's experience with the Pilot Program.

The ISE believes that the Pilot Program has been successful, and the ISE has filed a proposal with the Commission to make the Pilot Program permanent and to apply it to all ISE listed equity options.<sup>8</sup> The purpose of the current proposal is to expand the Pilot Program to cover all equity options trading on the ISE and to extend the Pilot Program until June 29, 2004, while the Commission considers the ISE's proposal to make the Pilot Program permanent. During the extension, the ISE will provide the Commission with an updated Pilot Program report that covers all of the equity options classes in the expanded Pilot Program. The ISE will provide the updated report to the Commission by June 15, 2004.

## 2. Statutory Basis

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<sup>6</sup> See Pilot Program Approval Order, *supra* note 4.

<sup>7</sup> See Securities Exchange Act Release Nos. 48514 (September 22, 2003), 68 FR 55685 (September 26, 2003) (notice of filing and immediate effectiveness of File No. SR-ISE-2003-21) (extending the Pilot Program through January 31, 2004); and 49149 (January 29, 2004), 69 FR 05627 (notice of filing and immediate effectiveness of File No. SR-ISE-2004-02) (extending the Pilot Program through March 31, 2004).

<sup>8</sup> See File No. SR-ISE-2003-22.

According to the ISE, the statutory basis for the proposal is the requirement under Section 6(b)(5) of the Act<sup>9</sup> that a national securities exchange have rules that are designed 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.

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

The ISE does not believe that the proposed rule change imposes 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 ISE has not solicited, and does not intend to solicit, comments on the proposed rule change. The ISE has not received any unsolicited written comments from members or other interested persons.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The ISE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. As required under Rule 19b-4(f)(6)(iii), the ISE provided the Commission with written notice of its

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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE has requested that the Commission waive the 30-day operative delay to prevent a lapse in the operation of the Pilot Program.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will permit the Pilot Program to continue without interruption through June 29, 2004, and will expand the Pilot Program to include all equity options trading on the ISE, thereby helping the ISE to assess the effects of the \$5 spreads permitted under the Pilot Program.<sup>12</sup> For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such 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 it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth

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<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-ISE-2004-10. The file number should be included on the subject line if e-mail is used. To help the Commission process and review 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 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 ISE. All submissions should refer to File No. SR-ISE-2004-10 and should be submitted by [insert date 21 days after the date of this publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

J. Lynn Taylor  
Assistant Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).