

exemption pursuant to Section 36 of the Act from the rule filing procedures of Section 19(b) of the Act and Rule 19b-4 thereunder,¹⁴ with respect to the arbitration and margin rules of other self-regulatory organizations it has incorporated by reference, in accordance with the section 36 exemptive request filing procedures published by the Commission.¹⁵ According to the ISE, the purpose of this request is to avoid having to file duplicative proposed rule changes with the Commission pursuant to section 19(b) and Rule 19b-4 each time the NASD changes its Code of Arbitration. In its letter, the ISE also represents that its proposed incorporations by reference are regulatory in nature and are intended to be a comprehensive integration of the relevant rules of the other exchange into the ISE rules, and that the ISE agrees to provide written notice to its members whenever the Commission publishes for comment a proposed rule change to the NASD Code of Arbitration.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-ISE-00-17), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45087; File No. SR-ISE-2001-29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Relating to Changes to the Exchange's Delisting Criteria

November 20, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November

19, 2001, the International Securities Exchange LLC ("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 ISE. The proposed rule change has been filed by the ISE as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.³ The Commission is publishing this notice to solicit comments on the proposed change from interested persons.

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

The ISE proposes to amend ISE Rule 503, Withdrawal of Approval of Underlying Securities, governing the circumstances under which the Exchange may not continue to add new options series for underlying securities.

The text of the proposed rule change is available at the ISE 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 ISE included statements concerning the purpose of and statutory 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

ISE Rule 503, Withdrawal of Approval of Underlying Securities, contains certain criteria with respect to the securities underlying options classes traded on the Exchange. The rule restricts the Exchange from adding additional series of an options class in the event that the underlying security fails to meet these criteria. These criteria currently are uniform across all of the options exchanges. However, due to the complexity of the requirements, it has become apparent that the options exchanges do not always interpret and apply these rules in a consistent manner.

ISE Rule 503 currently provides that the Exchange may not list additional

series if, among other things, the underlying security has not closed above \$5 for the majority of business days during the preceding six calendar months as measured by the highest closing price reported in any market in which the underlying security traded. ISE Rule 503 further provides that new series may not be added unless the closing price from the preceding day was at least \$5. However, there is an exception to these two \$5 criteria that permits the Exchange to add additional series, so long as the underlying security has closed above \$3 for the majority of business days during the preceding six calendar months and the underlying price is at least \$3 at the time the new series are authorized, in addition to certain other criteria being satisfied, provided that if this exception were relied upon to add any new series during the preceding calendar months, each of the \$3 requirements becomes a \$4 requirement.

The ISE represents that the application of the current requirements and exceptions in ISE Rule 503 creates unnecessary confusion and administrative burdens on the Exchange, and often results in disputes between the exchanges, as inconsistent application of the criteria can competitively disadvantage an exchange that interprets the requirements differently. Accordingly, the ISE proposes to amend ISE Rule 503 to simplify the criteria used to determine whether new options series may be added with respect to particular options classes, and to clarify when new options series may not be added by the Exchange. The Exchange believes its proposal is consistent with a similar proposal by the Chicago Board Options Exchange ("CBOE").⁴

Under the ISE proposal, the \$5 criteria described above, as well as the \$3 and \$4 exceptions, would be replaced by a single \$3 requirement. None of the other requirements currently contained in Rule 503 (such as the number of shares that must be held by non-insiders, number of holders and trading volume) would be changed. The new proposed requirement specifies the following: (1) New series may not be added for the next day unless, in addition to satisfying the other requirements of the rule, the underlying security closed at or above \$3 on the previous trading day; and (2) new series may not be added intra-day unless, in addition to satisfying the other requirements of the rule, including that the underlying security

¹⁴ See Letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Jonathan G. Katz, Secretary, Commission, dated October 29, 2001.

¹⁵ See Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ See Securities Exchange Act Release No. 44964 (October 19, 2001), 66 FR 54559 (October 29, 2001) (order approving File No. SR-CBOE-2001-29).

closed at or above \$3 on the previous trading day, the last reported trade in the underlying security at the time the Exchange determines to add the new series is at or above \$3. When determining the closing price and last reported trade for an underlying security, the Exchange will look to the primary market in which the underlying security trades.

The Exchange believes this proposal is reasonably designed to assure that options are not listed on securities that lack sufficient liquidity needed to maintain fair and orderly markets, while removing unnecessarily complex requirements. In addition, the ISE does not believe that it is necessary or desirable to restrict the ability of investors to trade options on securities trading between \$3 and \$5. In determining to list any number of new options series under the new less restrictive standard, the Exchange will ensure that its own systems and those of the Options Price Reporting Authority can handle any increased capacity requirements.

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with section 6 of the Act,⁵ general, and with section 6(b)(5) of the Act,⁶ specifically, in that is designated to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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.

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

Because the foregoing proposed rule change, as amended: (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 after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change,⁷ or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6)⁹ thereunder.

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 seeks to have the proposed rule change, as amended, become operative immediately. The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative as of November 19, 2001.¹⁰ The Commission notes that the proposed rule change, as amended, is substantially similar in all material respects to the rule of another exchange that the Commission has already noticed for public comment and approved¹¹ and, therefore, the proposed rule change raises no new issues of regulatory concern.

At any time within 60 days of the filing of the 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.¹²

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. 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 ISE.

All submissions should refer to File No. SR-ISE-2001-29 and should be submitted by December 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45096; File No. SR-NYSE-2001-28]

Self-Regulatory Organizations; the New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Administer NYSE Rule 91.10 Pursuant to the NYSE's Minor Rule Violation Plan

November 21, 2001.

On August 21, 2001, the New York Stock Exchange, Inc. ("NYSE" "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to administer NYSE Rule 91.10, Taking or Supplying Securities Named in Order pursuant to the NYSE's Minor Rule Violation Plan ("Plan"). NYSE Rule 91.10 requires that whenever a specialist has elected to take or supply for his or her account the securities named in an order entrusted to the specialist, he or she must summon a representative of the firm that entered

⁷ See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 8, 2001.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ See *supra* note 4.

¹² See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).