

proposed NASD arbitration rules governing the same subject matter.<sup>16</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market by strengthening the integrity of the CBOE Arbitration program.

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

CBOE does not believe that the proposed rule amendments 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 amendments.

## 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 self-regulatory organization 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. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2004-65 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2004-65. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, Station Place, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2004-65 and should be submitted by April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Nancy M. Morris,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53419; File No. SR-ISE-2005-50]

### **Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto, To Amend ISE Rule 803 To Provide for a Back-Up Primary Market Maker**

March 6, 2006.

## I. Introduction

On October 14, 2005, the International Securities Exchange, Inc. ("Exchange" or "ISE") 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 803 to provide for a Back-Up Market Maker. On January 12, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on January 30, 2006.<sup>4</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as amended.

## II. Description of Proposed Rule

The Exchange proposes to amend ISE Rule 803 to provide for a Back-Up Primary Market Maker and to correct an inconsistency in the Exchange's Rules. Specifically, the Exchange proposes to enhance the ISE System to allow Competitive Market Makers that are also Primary Market Makers on the Exchange to voluntarily act as Back-Up Primary Market Makers when the appointed Primary Market Maker experiences technical difficulties that interrupt its participation in the market. Under the proposal, only Competitive Market Makers that are also Primary Market Makers on the Exchange would be eligible to be designated as a Back-Up Primary Market Maker because, according to the Exchange, these members are readily able to assume all of the responsibilities of a Primary Market Maker on the Exchange, such as handling customer orders when an away market has a better price.

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

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

<sup>3</sup> Amendment No. 1, which replaced the original filing in its entirety, made technical and clarifying changes to the proposed rule change.

<sup>4</sup> See Securities Exchange Act Release No. 53164 (January 20, 2006), 71 FR 4949 (January 30, 2006) ("Notice").

<sup>16</sup> See Proposed Customer Code and Proposed Industry Code, *supra* note 11.

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

Under the proposed rule change, the ISE System would automatically switch a Competitive Market Maker quoting in the affected options series to an active Back-Up Primary Market Maker if the appointed Primary Market Maker stops quoting as a result of technical difficulties.<sup>5</sup> The ISE System would automatically switch back to the appointed Primary Market Maker when it re-establishes its quotes in the series, but the Back-Up Primary Market Maker would continue to be responsible for any outstanding unexecuted orders it is handling. During the period that the services of the Back-Up Primary Market Maker are required, it would assume most of the responsibilities and privileges of a Primary Market Maker under the ISE Rules with respect to any series in which the appointed Primary Market Maker fails to have a quote in the ISE System.<sup>6</sup>

The Exchange also proposes to correct an inconsistency in its rules. In April 2004, the Exchange received Commission approval of a proposed rule change that allowed it to disseminate a quotation for less than ten contracts.<sup>7</sup> Because the options intermarket linkage plan and the Exchange's rules continued to require the Exchange to guarantee that the Firm Customer Quote Size ("FCQS") and Firm Principal Quote Size ("FPQS") would be at least 10 contracts, ISE Rule 803(c)(1) was amended to provide that the Primary Market Maker had the obligation to buy or sell the number of contracts necessary to provide an execution of at least 10 contracts to incoming linkage orders when the Exchange's disseminated market quotation was for less than 10 contracts.<sup>8</sup>

In August 2004, the intermarket linkage plan was amended to provide that the 10 contract minimum FCQS and FPQS does not apply when the Exchange is disseminating a quotation of fewer than 10 contracts.<sup>9</sup> In October 2004, the Exchange, and all of the other options exchanges, received approval for changes to their linkage rules to implement this change to the

intermarket linkage plan.<sup>10</sup> Accordingly, the Primary Market Maker no longer is required to guarantee a minimum of 10 contracts to an incoming linkage order when the Exchange's disseminated market quotation is for less than 10 contracts. However, the Exchange neglected to remove the language in ISE Rule 803(c)(1) at the time the changes to the linkage rules were approved, thereby creating an inconsistency in the ISE Rules. The Exchange now proposes to delete the language in ISE Rule 803(c)(1) as a purely non-substantive clean-up of the ISE Rules.

### III. Discussion

After careful review, 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>11</sup> In particular, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

The Commission believes that the proposal should help to ensure that the functions of the Primary Market Maker are performed in an uninterrupted fashion even when a Primary Market Maker experiences difficulties that cause it to remove its quotes from the market. In particular, the Commission believes that the proposed rule change should help to ensure that the Back-Up Primary Market Makers would provide continuous quotations in all of the series of the options classes in a manner consistent with the obligations of the Primary Market Maker, set forth in ISE Rule 803. Further, this proposed rule change should reduce the number of non-firm quotes or "fast market" states disseminated by the ISE.<sup>13</sup>

The ISE proposal to indicate that a Primary Market Maker is not required to guarantee a minimum of 10 contracts to an incoming linkage order when the Exchange's disseminated market quotation is less than 10 contracts is of a clarifying and technical nature. Accordingly, based on the foregoing the Commission believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-ISE-2005-50) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53424; File No. SR-NSCC-2005-17]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify Its Rules and Procedures Related to the Collection of Commission Payments

March 6, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 29, 2005, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on February 3, 2006, amended, the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The purpose of this proposed rule change is to modify NSCC's Rules and Procedures with regard to the collection of commission payments.

Dumler, Attorney, Division, Commission on November 2, 2005.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

<sup>5</sup> If there is more than one eligible member quoting in the series, the ISE System would automatically switch to the member with the largest offer in the series.

<sup>6</sup> A Competitive Market Maker would not become subject to the requirement in ISE Rule 804(e)(1) to enter continuous quotations in all of the series of all of the options classes to which it is appointed, as opposed to only 60% of the options classes under ISE Rule 804(e)(2), by acting as a Back-Up Primary Market Maker.

<sup>7</sup> See Exchange Act Release No. 49602 (April 22, 2004), 69 FR 23841 (April 30, 2004) (the "Real Size Filing").

<sup>8</sup> See *id.*

<sup>9</sup> See Exchange Act Release No. 50211 (August 18, 2004), 69 FR 52050 (August 24, 2004).

<sup>10</sup> See Exchange Act Release Nos. 50562 (October 19, 2004), 69 FR 62925 (October 28, 2004) and 50587 (October 25, 2004), 69 FR 63417 (November 1, 2004).

<sup>11</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> The Commission notes that the Exchange represents that most interruptions in Primary Market Maker quoting are very brief in duration. Telephone conversation between Katherine Simmons, Deputy General Counsel, ISE, Marc F. McKayle, Special Counsel, Division of Market Regulation ("Division"), Commission and Johnna B.