

broader range of orders to automatically secure disseminated prices. The Exchange therefore believes the proposal is consistent with section 6(b)<sup>7</sup> of the Act in general and furthers the objectives of section 6(b)(5)<sup>8</sup> in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition 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**

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and rule 19b-4(f)(6) thereunder<sup>10</sup> because the 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 until more than 30 days from the date on which it was filed, and the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date.<sup>11</sup> 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.

The CBOE has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest in that it will enable the CBOE to guarantee execution of broker-dealer orders at the disseminated price at the full disseminated size (except in the case where CBOE's NBBO quote is represented by an order on the Exchange's limit order book). For this reason, the Commission designates the proposal to be effective and operative immediately.<sup>12</sup>

### **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 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 CBOE. All submissions should refer to File No. SR-CBOE-2003-09, and should be submitted by April 9, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

<sup>12</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47483; File No. SR-ISE-2003-04]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. To Amend the Price Criteria for Securities That Underlie Options Traded on the Exchange**

March 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on February 27, 2002, 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 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 amend its initial listing standards to allow options to be listed on "covered securities" when, among other things, the trading price of the underlying security was at least \$3 for the five business days prior to certification with The Options Clearing Corporation.

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

#### **Rule 502. Criteria for Underlying Securities**

\* \* \* \* \*

(b) No change.

(1)-(4) No change.

(5) Either:

*(i) If the underlying security is a "covered security" as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least \$3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; or*

*[(i)] (ii) If the underlying security is not a "covered security," [T]he market*

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

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

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> The Exchange submitted a letter to the Division of Market Regulation ("Division") of the Commission stating its belief that the proposal is consistent with Section 11(a) of the Act, 15 U.S.C. 78k(a), and Rule 11a2-2(T) under the Act, 17 CFR 240.11a2-2(T), and requesting interpretive guidance. See letter to Catherine McGuire, Chief Counsel, Division, Commission, from Stephen M. Youhn, Senior Attorney, CBOE, dated March 12, 2003. In response to the Exchange's request, Commission staff has provided interpretive guidance to the Exchange under Section 11(a) of the Act. See letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Stephen M. Youhn, CBOE, dated March 12, 2003.

price per share of the underlying security has been at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days: or

[ii] (iii) The underlying security meets the guidelines for continued approval in Rule 503; options on such underlying security are traded on at least one other registered national securities exchange; and the average daily trading volume for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

(c) Securities of Restructured Companies.

(1)–(3) No change.

(4) “Market Price” Guideline. In determining whether a Restructure Security satisfies the market price history guidelines set forth in Rule 502(b)(5) (the Market Price Guideline’), the Exchange may consider the market price history of the Original Equity Security prior to the “ex-date” of the Restructuring Transaction if:

(i) the Restructure security satisfies the “Substantiality Test” set forth in subparagraph (c)(5) below; and

(ii) in the case of the application of the Market Price Guideline to a Restructure Security that is distributed pursuant to a public offering or a rights distribution:

(A) the Restructure Security trades “regular way” on an exchange or automatic quotation system for at least the five trading days immediately preceding the date of selection; and

(B) at the close of trading on each trading day on which the Restructure Security trades “regular way” prior to the date of selection, and the opening of trading on the date of selection, the market price of the Restructure Security was at least \$7.50, *or, if the Restructure Security is a “covered security,” as defined in Rule 502(b)(5)(i), the market price of the Restructure Security was at least \$3.00.*

## 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 amend its pricing requirement for securities underlying options traded on the Exchange (“underlying securities”). ISE Rule 502(b)(5) currently provides that options can be listed on underlying securities if (i) the market price per share of the underlying security has been at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection, or (ii) options on the underlying security are traded on at least one other registered national securities exchange and have an average daily trading volume of at least 5,000 contracts.

The Exchange now proposes to amend ISE Rule 502(b)(5) to allow the listing of options on underlying securities that are “covered securities” under section 18(b)(1)(A) of the Securities Act of 1933<sup>3</sup> (“1933 Act”) so long as the market price per share of the underlying security has been at least \$3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation for listing and trading. For purposes of this provision, the market price of an underlying security will be measured by the closing price reported in the primary market in which the underlying security is traded.

For the purposes of consistency within the ISE Rules, the Exchange proposes to amend ISE Rule 502(c)(4)(ii)(B), which provides a method to certify that the market price of a Restructure Security satisfies the pricing requirement of ISE Rule 502(b)(5) and specifically references the \$7.50 market price per share requirement. The amendment would reflect that the market price standard for Restructure Securities also is reduced from \$7.50 to \$3.00 as long as the Restructure Security is a “covered security” as defined in ISE Rule 502(b)(5).

<sup>3</sup> Section 18(b)(1)(A) of the 1933 Act provides that “[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities) \* \* \*” 15 U.S.C. 77r(b)(1)(A). The term “covered security,” for operation of the proposed amendment to ISE Rule 502(b)(5), would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

This proposed rule change is identical to a change by the Chicago Board Options Exchange, Inc. (“CBOE”) to its initial listing standards that became effective January 15, 2003.<sup>4</sup> The ISE seeks to amend its initial listing standards to be consistent with those of the CBOE so that the ISE is not at a competitive disadvantage with respect to the options classes it may list. In addition, changing the pricing standard to the proposed \$3.00 market price per share requirement would allow the Exchange to evaluate whether to list options on a greater number of classes without compromising investor protection. In determining to list any number of new option classes, the Exchange must ensure that its own systems and those of the Options Price Reporting Authority (“OPRA”) have the capacity to handle the potential increased capacity requirements.

The Exchange believes that the proposed \$3.00 market price per share standard is consistent with the guideline contained in ISE Rule 503(b)(4) related to the withdrawal of approval of underlying securities, which sets a \$3.00 market price per share as the threshold for determining whether the Exchange may continue listing and trading options on an underlying security. In addition, the Exchange believes that a “look back” period of five consecutive days would provide a sufficient measure of protection from any attempts to manipulate the market price of the underlying security. The proposed \$3 price standard and the five-day look-back period would provide a reliable test for stability and, at the same time, presents a more reasonable time period for qualifying the price of an underlying security. The Exchange further believes that this proposed abbreviated qualification period, in combination with the Exchange’s existing quarterly delisting program,<sup>5</sup> would contribute to reducing unnecessary quote traffic.

#### (2) Statutory Basis

The Exchange’s basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act<sup>6</sup> that an exchange have rules to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in

<sup>4</sup> See Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003).

<sup>5</sup> The Exchange states that it maintains an active delisting program that requires the quarterly delisting of multiply listed option classes that do not trade more than 20 contracts per day on the Exchange.

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

securities, 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.

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

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(6) of rule 19b-4<sup>8</sup> thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.

Under rule 19b-4(f)(6)(iii) of the Act,<sup>9</sup> the proposal does not become operative for 30 days after the date of its filing, or

such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has requested that the Commission waive the 30-day operative date in order for it to implement the proposed rule change as quickly as possible. The Exchange contends that this proposed rule is substantially similar to comparable rules the Commission approved for the CBOE, which was published for public notice and comment.<sup>10</sup> As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period,<sup>11</sup> and, therefore, the proposal is effective and operative upon filing with the Commission.

**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

Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE-2003-04 and should be submitted by April 9, 2003.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47484; File No. SR-ISE-2003-11]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc., Relating to a One-Year Pilot for Options Intermarket Linkage Fees**

March 11, 2003.

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 6, 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 ISE. 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 is proposing to amend its fee structure to clarify which fees apply to trades pertaining to the options intermarket linkage ("Linkage") and to specify that such fees are for a one-year pilot. The text of the proposed rule change is below; proposed new language is in italics.

\* \* \* \* \*

**SCHEDULE OF FEES**

	Amount	Billable unit	Frequency	Notes
<b>Electronic Market Place Execution Fees</b>				
• Customer .....	\$0.05	contract/side .....	Transaction .....	Fee waived through June 30, 2003.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> See Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (approving SR-CBOE-2002-62).

<sup>11</sup> For purposes only of waiving the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<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.