

orders are more actively represented in the opening.

Lastly, the third condition required CBOE to study issues related to the Commission's concerns and report back to the Commission. In response, CBOE submitted a report to the Commission addressing each of the Commission's concerns. The Commission believes that CBOE has satisfied this condition.

In conclusion, the Commission notes that ROS has successfully operated since 1999 and since that time, has facilitated expedited openings of options classes on CBOE. The Commission hereby approves the ROS pilot on a permanent basis.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-CBOE-2002-55) and Amendment No. 1 thereto, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48539; File No. SR-ISE-2003-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by International Securities Exchange, Inc., Relating to Market Maker Obligations

September 25, 2003.

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 February 19, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") 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 self-regulatory organization. On September 15, 2003, the Exchange amended the

proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 ISE Rule 803 to clarify the obligations of the ISE's Primary Market Makers ("PMMs") if they receive orders from persons who are not brokers or dealers in securities ("Public Customers") when there is a better price available on another exchange. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].⁴

* * * * *

Rule 803. Obligations of Market Makers

* * * * *

(c) Primary Market Makers. In addition to the obligations contained in this Rule for market makers generally, for options classes to which a market maker is the appointed Primary Market Maker, it shall have the responsibility to:

(1) Assure that each disseminated market quotation in each series of options is for a minimum of ten (10) contracts, or such other minimum number as the Exchange shall set from time to time. When the best bid (offer) on the Exchange represents one or more Public Customer Orders for less than a total of ten (10) contracts at that price, the Primary Market Maker is obligated to buy (sell) at that price the number of contracts needed to make the disseminated quote firm for ten (10) contracts.

(2) *As soon as practical*, [A]address Public Customer Orders that are not automatically executed because there is a displayed bid or offer on another

³ See letter from Michael J. Simon, Senior Vice President and General Counsel, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 12, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposed rule change to be more specific in the obligations of Primary Market Makers in handling customer orders.

⁴ At the request of the Exchange, Commission staff has revised the text of the proposed rule change set forth in Amendment No. 1 to (i) correct a typographical error; and (ii) make a non-substantive technical change correcting the numbering of the Supplementary Material to Rule 803. The Exchange plans to submit an amendment to the Commission to make these technical corrections. Telephone conversation among Michael J. Simon, Senior Vice President and General Counsel, Exchange, Jennifer Colihan, Special Counsel, Division, Commission, and Ann E. Leddy, Attorney, Division, Commission on September 24, 2003.

exchange trading the same options contract that is better than the best bid or offer on the Exchange, *either (i) by executing a Public Customer Order at a price that matches the better price displayed or (ii) by sending to any other exchange(s) displaying a better price a Linkage Order(s) according to the Rules contained in Chapter 19.*

* * * * *

Supplementary Material to Rule 803

- .01 No change.
- .02 *A Primary Market Maker must act with due diligence in handling orders of Public Customers and must accord priority to such orders addressed pursuant to paragraph (c) of this Rule over the Primary Market Maker's principal orders.*

* * * * *

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 purpose of the proposed rule change is to clarify the obligations of PMMs when they receive orders from Public Customers and there is a better price available on another exchange. When the ISE receives a Public Customer order in this situation, the ISE does not provide immediate execution of that order. Rather, the PMM is informed that the order is pending, and ISE Rule 803 requires that the PMM "address" such order. In practice, the PMM historically either has executed the order at the better price or has attempted to use whatever means the PMM had available to access the better market on behalf of the customer.

On January 31, 2003, the intermarket linkage ("Linkage") between the ISE and the other options exchanges became operational. Among other things, the Linkage permits PMMs to send Principal Acting as Agent Orders ("P/A Orders") to other exchanges. This is a

¹⁸ 15 U.S.C. 78s(b)(2).
¹⁹ 17 CFR 200.30-3(a)(12).
¹ 15 U.S.C. 78s(b)(1).
² 17 CFR 240.19b-4.

vehicle that provides PMMs with much-improved access to away markets on behalf of Public Customer orders they are holding.

With Linkage in place, the ISE believes that it is appropriate to be more specific regarding the PMM's obligations to "address" Public Customer orders when there is a better price on another market. Accordingly, the Exchange proposes to amend ISE Rule 803 to specify that the PMM must, as soon as practical, either execute the order at the best available price or send a P/A Order through Linkage to obtain the best price for the order. Proposed Supplementary Material .02 to ISE Rule 803 states that a PMM must act with due diligence in handling such Public Customers orders and must accord such orders priority over the PMM's principal orders.

2. Statutory Basis

The ISE believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,⁵ in general, and section 6(b)(5) of the Act,⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in 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 ISE does not believe that the proposed rule change, as amended, 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 Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change, as amended. 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

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, as amended, 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, 450 Fifth Street, NW, Washington, DC 20549-0609. 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-2003-03 and should be submitted by October 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-24866 Filed 9-30-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48541; File No. SR-NASD-2003-122]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposal To Conduct Background Verification and Charge Application Fee for NASD Neutral Roster Applicants

September 25, 2003.

On August 5, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") 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 conduct background verification and charge an application fee for NASD neutral roster applicants. NASD does not propose any textual changes to the By-Laws or Rules of NASD.

The Commission published the proposed rule change for comment in the **Federal Register** on August 14, 2003.³ The Commission received no comments relating to the proposal. This order approves the proposed rule change.

NASD maintains a pool of approximately 7000 available arbitrators. Currently, arbitrator applicants submit biographical profile forms, together with two letters of reference. The biographical profile forms require applicants to provide detailed information on their business and employment histories, education, training, possible conflicts, experience, expertise, associations with industry members, and other matters. The application also requires a narrative background information statement in which applicants are asked to explain why they believe their experience and knowledge would benefit the process. Attorneys and accountants are further directed to provide specific details about their practices.

Arbitrator information is entered into NASD's database and is provided to parties in the form of a disclosure report during the arbitrator selection process. Arbitrators must update this biographical information on a regular

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48294 (August 6, 2003), 68 FR 48653 ("Notice of Proposal").

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).