

imposition letter unless the member has requested a hearing to dispute the fine. Currently, GSCC's rules require that fines be paid within 90 days. If a hearing has been requested, the fine is waived until the dispute is resolved.

GSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to GSCC because it will promote the prompt and accurate clearance and settlement of securities transactions by clearly setting forth in GSCC's rules its procedures for conducting a review with respect to disputed fines, which procedures afford members a fair and less burdensome method for resolving fine disputes than is currently set forth in the rules.

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

GSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing, and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

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

Within thirty-five 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 ninety 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. Persons making written submissions

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-GSCC-2002-04. This file number should be included on the subject line if e-mail is used. To help us 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC.

All submissions should refer to File No. SR-GSCC-2002-04 and should be submitted by September 23, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48405; File No. SR-ISE-2003-05]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the International Securities Exchange, Inc. Relating to the Establishment of Trading Rules for Index Options and Generic Listing and Maintenance Standards for Narrow-Based Index Options**

August 25, 2003.

**I. Introduction**

On February 24, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") submitted to 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 enable the ISE to trade index options on the Exchange. The ISE filed Amendment No. 1 to the proposed rule change on April 17, 2003.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on May 2, 2003.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

**II. Description of the Proposal**

*A. Introduction*

The ISE proposes to establish trading rules to enable Members to trade index options on the Exchange. In addition, the ISE proposes to establish generic listing standards and maintenance standards for "narrow-based" index options pursuant to Rule 19b-4(e) under the Act.<sup>5</sup> The ISE represents that all of the proposed new Exchange Rules and changes to existing Exchange Rules are based on the existing rules of the other four options exchanges.<sup>6</sup> Many of the new trading rules and generic listing standards will comprise the new Chapter 20 in the ISE Rules.

*B. Index Options Trading Rules*

The proposed rules, among other things, establish general rules that will govern the trading sessions for index options, including the days and hours of business, the rules governing trading rotations at the opening, and the rules related to the trading halts or suspensions.<sup>7</sup> The proposed rules further provide for the procedures Members must follow with respect to the exercise of American-style, cash settled index options.<sup>8</sup> The proposed rules also provide for position limit and

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

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

<sup>3</sup> See letter from Katherine Simmons, Vice President and Associate General Counsel, ISE to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated April 16, 2003. In Amendment No. 1, the ISE submitted a new Form 19b-4, which replaced the original filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 47749 (April 25, 2003), 68 FR 13348.

<sup>5</sup> 17 CFR 240.19b-4(e). The term "narrow-based index" is defined as an index designed to be representative of a particular industry or a group of related industries. See Proposed ISE Rule 2001(i). Narrow-based indices listed and traded on the ISE pursuant to generic listing and maintenance standards, among other characteristics, must consist of ten or more component securities. See Proposed ISE Rule 2002(b)(2).

<sup>6</sup> See, e.g., CBOE Rules 4.11, 4.16, 6.2, 6.7, 8.7, 11.1, 15.10, and 24.1 through 24.20, PCX Rules 7.11 and 13.2, Amex Rule 905C, and Phlx Rule 1033A.

<sup>7</sup> See Proposed ISE Rule 2008.

<sup>8</sup> See Proposed ISE Rule 418(a)(3) and 1100(h).

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

exercise limits for index options.<sup>9</sup> In addition, the proposed rules provide for exemption standards from position limits and procedures for requesting exemptions from those proposed rules.<sup>10</sup> The proposed position limits and exercise limits, as well as the proposed exemptions, are different for broad-based index options and narrow-based index options.<sup>11</sup> The proposed rules establish standards for when a member seeking to sell short a Nasdaq NMS security included in an index underlying an index option listed and traded on the Exchange is exempt from the NASD short sale rule.<sup>12</sup>

### C. Generic Listing Standards and Maintenance Standards for Narrow-Based Index Options

The ISE further proposes to establish generic listing and maintenance standards in Proposed ISE Rule 2002 to enable the Exchange to list and trade new narrow-based index options pursuant to Rule 19b-4(e) under the Act.<sup>13</sup> Proposed ISE Rule 2002 addresses both initial listing and maintenance standards for narrow-based index options.<sup>14</sup> The generic listing and maintenance standards are modeled after standards that the Commission originally approved for streamlined listing and trading pursuant to Section 19(b)(3)(A) of the Act.<sup>15</sup> The options

exchange subsequently filed proposed rule changes with the Commission to eliminate the Section 19(b)(3)(A) rule filing requirement from their existing SRO rules, after the Commission indicated that products meeting the listing criteria approved by the Commission in its 1994 Generic Narrow-Based Index Options Approval Order qualified for filing pursuant to Rule 19b-4(e) under the Act.<sup>16</sup>

Notwithstanding the generic listing standards for options on narrow-based indexes, the Exchange will need to file additional proposed rule changes with the Commission when the Exchange identifies specific products because the rules related to trading options on indices are product specific in many areas. For purposes of this proposed rule change, certain rules indicate that they apply to "specified" indices. ISE Rules 2001(l), 2004(a), 2006(a), 2007(a), 2009, and 2011 all contain provisions that are dependant upon the Exchange identifying specific index products in the rule. Accordingly, proposed ISE Rule 2000 states that where the rules in Chapter 20 indicate that particular indices or requirements with respect to particular indices will be "Specified," the ISE shall file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act<sup>17</sup> and Rule 19b-4 thereunder<sup>18</sup> to specify such indices or requirements.

### III. Commission Findings and Order Granting Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6(b)(5) of the Act<sup>19</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>20</sup> The Commission believes that the ISE's proposal to establish trading rules and procedures applicable to index options and establish generic listing and maintenance standards for narrow-based index options strikes a reasonable

balance between the Commission's mandates under section 6(b)(5) of the Act<sup>21</sup> to remove impediments to and perfect the mechanisms of a free and open market and a national market system while protecting investors and the public interest.

#### A. Index Options Trading Rules

The Commission believes that trading options on an index of securities (including a narrow-based index) permits investors to participate in the price movements of the index's underlying securities and allows investors holding positions in some or all of such securities to hedge the risks associated with their portfolios. The Commission further believes that trading options on an index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component stocks. In making this finding the Commission notes that all of the proposed new Exchange Rules and changes to existing Exchange Rules are based on the existing rules of the other four options exchanges.<sup>22</sup>

#### B. Generic Listing and Maintenance Standards for Narrow-Based Index Options

In approving the generic listing and maintenance standards for narrow-based index options, the Commission considered the structure of these securities, their usefulness to investors and to the markets and the ISE rules that govern their trading. The proposal to establish generic standards for narrow-based index options should reduce the ISE's regulatory burden, as well as benefit the public interest, by enabling the ISE to bring qualifying products to the market more quickly. Furthermore, the Commission notes that it has previously approved similar proposals by the Amex, CBOE, NYSE, PSE, and the Phlx to establish generic listing and maintenance standards for narrow-based index options.<sup>23</sup>

The Commission finds that adopting generic listing and maintenance standards for these securities and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those index option products that satisfy the generic standards to start trading, without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b-4(e) for these products potentially reduces the time frame for listing and

<sup>9</sup> See Proposed ISE Rules 2004, 2005, and 2007.

<sup>10</sup> See Proposed ISE Rule 2006.

<sup>11</sup> See Proposed ISE Rules 2004 to 2007.

<sup>12</sup> See Proposed ISE Rule 1407(d)(1)(ii).

<sup>13</sup> 17 CFR 240.19b-4(e). Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that includes the new derivative securities product and the SRO has a surveillance program for the product class. When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the exchange begins trading the new derivative securities products. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98).

<sup>14</sup> The proposed generic listing standards approved herein do not apply to the listing of options on broad-based indices.

<sup>15</sup> In 1994, the Commission approved a proposed rule change submitted by the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively the "options exchanges"), which permitted the options exchanges to list and trade options on narrow-based indexes thirty days after submitting a filing pursuant to Section 19(b)(3)(A) of the Act. The Commission found that such filings would constitute a stated policy, practice, or interpretation with respect to the administration of an existing Exchange rule, pursuant to Section 19(b)(3)(A) of the Act, relieving the Exchange of the former

requirement of obtaining specific Commission approval of such narrow-based index options pursuant to Section 19(b)(2) of the Act. See Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30622 (June 10, 1994) (SR-Amex-92-35) (SR-CBOE-93-59) (SR-NYSE-94-17) (SR-PSE-94-07) and (SR-Phlx-94-10) (the "1994 Generic Narrow-Based Index Options Approval Order").

<sup>16</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98).

<sup>17</sup> See note 1 *supra*.

<sup>18</sup> See note 2 *supra*.

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>21</sup> See note 19 *supra*.

<sup>22</sup> See, e.g., CBOE Rules 4.11, 4.16, 6.2, 6.7, 8.7, 11.1, 15.10, and 24.1 through 24.20, PCX Rules 7.11 and 13.2, Amex Rule 905C, and Phlx Rule 1033A.

<sup>23</sup> See note 15 *supra*.

trading these securities, and thus enhances investors' opportunities. The Exchange, however, must maintain regulatory oversight over any products listed under the generic listing standards through adequate surveillance. ISE represents that its surveillance procedures are sufficient to detect fraudulent trading among members in the trading of narrow-based index options pursuant to the generic listing and maintenance standards. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading of the narrow-based index options.

The Commission believes that the listing and maintenance standards set forth herein are consistent with the listing and maintenance standards for narrow-based index options that the Amex, CBOE, PCX and the Phlx have developed and are reasonably designed to ensure the protection of investors and the public interest. Specifically, the Commission finds that the generic standards covering minimum capitalization, monthly trading volume, and relative weightings of component stocks are designed to ensure that the trading markets for component stocks are adequately capitalized and sufficiently liquid, and that no one stock or stock group dominates the index. Thus, the Commission believes that the satisfaction of these requirements significantly minimizes the potential for manipulation of the index.

Two other important requirements included in the proposal are that at least 90 percent of the component securities, by weight, and 80 percent of the total number of component securities, must be eligible individually for options trading, and that no more than 20 percent of the weight of the index may be comprised of ADRs that are not subject to a comprehensive surveillance sharing agreement. The Commission believes that these standards are necessary to ensure that index options are not used as surrogate instruments to trade options on stocks and/or ADRs that otherwise are not eligible for options trading.

The Commission also believes that the number of securities required to constitute the narrow-based index is large enough to ensure that an index is not created for the purpose of obtaining more favorable regulatory treatment, e.g., with respect to position and exercise limits, as compared with the trading of options in the underlying stocks.

The Commission also finds the requirements that all securities comprising the index be "reported

securities," as defined in Rule 11Aa3-1 under the Act,<sup>24</sup> and that the index value be disseminated at least once every 15 seconds during trading hours of the index, will contribute significantly to the transparency of the market for such index options. The Commission further believes that basing the settlement value of expiring index options upon the opening prices of the component securities on the primary market on which they are listed and traded may help contain the volatility of related markets upon their expiration.

The Commission further notes that ISE's rules that are applicable to narrow-based index options, including provisions addressing sales practices, floor trading procedures, position and exercise limits, margin requirements, and trading halts and suspensions, will continue to apply to any narrow-based index listed pursuant Rule 19b-4(e) under the Act.

The Commission believes that a surveillance sharing agreement between an Exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. The Commission believes that such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. When a new derivative securities product based upon domestic securities is listed and traded on an exchange pursuant to Rule 19b-4(e) under the Act, the exchange should determine that the markets upon which all of the U.S. component securities trade are members of the Intermarket Surveillance Group ("ISG"),<sup>25</sup> which provides information relevant to the surveillance of the trading of securities on other market centers.<sup>26</sup> In this regard, all of the registered national securities exchanges, including the ISE, as well as the National Association of Securities Dealers, Inc. ("NASD"), are members of the ISG.

For new derivative securities products based on securities from a foreign market, the SRO should have a comprehensive Intermarket Surveillance Agreement with the market for the securities underlying the new securities

product.<sup>27</sup> Accordingly, the Commission finds that the requirement that no more than 20 percent of the weight of the index may be comprised of ADRs that are not subject to a comprehensive surveillance sharing agreement between the particular U.S. exchange and the primary market of the underlying security will continue to ensure that the Exchanges have the ability to adequately surveil trading in the narrow-based index options and the ADR components of the index.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change, as amended, (File No. SR-ISE-2003-05) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>29</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48407; File No. SR-NASD-00-08]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to Margin Requirements

August 25, 2003.

#### I. Introduction

On March 3, 2000, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend NASD Rule 2520, "Margin Requirements." The NASD's proposal was published for comment in the **Federal Register** on May 26, 2000.<sup>3</sup> The Commission received one comment

<sup>24</sup> 17 CFR 240.11Aa3-1.

<sup>25</sup> ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets.

<sup>26</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98).

<sup>27</sup> *Id.*

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</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.

<sup>3</sup> See Securities Exchange Act Release No. 42801 (May 19, 2000), 65 FR 34240 ("2000 Release").