

orders in a timely manner and potentially could decrease the incidence of Trade-Throughs and locked markets.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-ISE-2005-33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52410; File No. SR-ISE-2005-42]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Definition of Firm Customer Quote Size in the Linkage Plan

September 14, 2005.

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 August 31, 2005, 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. On September 7, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 proposes to amend its rules governing the operation of the intermarket option linkage ("Linkage") to conform with a proposed amendment<sup>4</sup> to the Plan for the Purpose of Creating and Operating an Intermarket Linkage ("Linkage Plan").<sup>5</sup>

The Exchange is proposing: (i) to amend the definition of "Firm Customer Quote Size" ("FCQS")<sup>6</sup> to provide automatic executions for Principal Acting as Agent Orders ("P/A Orders")<sup>7</sup> sent via Linkage up to the full size of the receiving exchange's disseminated quotation; and (ii) to eliminate a 15-second waiting period between the sending of P/A Orders.

The text of the proposed rule change is available on ISE's Web site (<http://www.iseoptions.com>), at the ISE's Office of the Secretary, and at the Commission's Public Reference Room.

#### 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 basis for, the proposed rule change, as amended, 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 rules governing Linkage trading in two areas: the definition of FCQS; and limitations on sending multiple P/A Orders. As to the definition of FCQS, the participants in the Linkage Plan ("Participants") provide automatic execution to P/A Orders up to the FCQS. At the time the Participants adopted the Linkage Plan, options quote sizes were not disseminated through the Options Price Reporting Authority, and the floor-based exchanges employed automatic execution systems that guaranteed automatic fills on orders

linkage proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Incorporated, and ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Philadelphia Stock Exchange, Inc., Pacific Exchange, Inc. and Boston Stock Exchange, Inc. the Commission issued orders to permit these exchanges to participate in the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000), 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>6</sup> See Exchange Rule 1900(7).

<sup>7</sup> See Section 2(16)(a) of the Linkage Plan and Exchange Rule 1900(10)(i).

under a certain contract size (which was generally a static number). As such, the FCQS was calculated based on the number of contracts the sending and receiving exchanges guaranteed they would automatically execute. Now that all the Participants disseminate dynamic quotes with size, the Participants believe that it is appropriate to calculate the FCQS based on the size of the disseminated quotation of the exchange receiving the P/A Order. As such, upon implementation of the proposed rule change, the ISE will provide incoming P/A Orders with executions up to the full size of the ISE's disseminated quotation.

With respect to multiple P/A Orders, the proposed rule change will eliminate a 15-second period members must wait before sending a second P/A Order. Specifically, ISE Rule 1901(c)(2)(ii) governs the manner in which the Participants will execute P/A Orders larger than the FCQS. ISE Rule 1901(c)(2)(ii) provides that an initial P/A Order may be sent to a Participant for execution at the FCQS; if the same Participant continues to disseminate the same price 15 seconds after the execution of the initial P/A Order, the market maker can send a second P/A Order, subject to certain restrictions. The Exchange proposes to eliminate the 15-second wait period because the Participants now employ dynamic quotes with size, obviating the need for a manual quote refresh period for P/A Orders.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> 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 transaction 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. In particular, the proposed rule change will help implement the Linkage Plan by providing greater automatic execution of Linkage Orders.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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> Amendment No. 1 made technical corrections to the proposed rule change.

<sup>4</sup> See Securities Exchange Act Release No. 52401 (September 9, 2005) (File No. 4-429).

<sup>5</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option market

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

The ISE does not believe that the proposed rule change, as amended, would 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*

Written comments were neither solicited nor received.

### **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 ISE consents, the Commission will:

A. By order approve such proposed rule change, as amended; or

B. Institute proceedings to determine whether the proposed rule change, as amended, 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. 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-ISE-2005-42 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-42. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 publicly available. All submissions should refer to File Number SR-ISE-2005-42 and should be submitted on or before October 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**  
*Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52421; File No. SR-NYSE-2005-54]

#### **Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change To Amend NYSE Rule 123C (Market on the Close Policy and Expiration Procedures) To Eliminate the Requirement To Publish Pre-Opening Market Order Imbalances on Expiration Fridays**

September 14, 2005.

#### **I. Introduction**

On July 26, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 proposal to amend NYSE Rule 123C (Market on the Close Policy and Expiration Procedures) to eliminate the requirement to publish pre-opening market order imbalances on expiration Fridays. The proposed rule change was published for comment in

the **Federal Register** on August 19, 2005.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change on an accelerated basis.

#### **II. Description of the Proposal**

NYSE Rule 123C contains requirements with respect to operation of the Exchange's market concerning market-on-close ("MOC") and limit-on-close ("LOC") orders as well as order entry and imbalance publication requirements for use on expiration days.<sup>4</sup> Under NYSE Rule 123C(6), the Exchange currently publishes information order imbalances, as promptly as possible after 9 a.m., only with respect to the imbalance of buy and sell market orders, and does not include buy and sell limit orders entered up to that time for execution at the opening. The NYSE proposes to eliminate the publication of pre-opening market order imbalances on expiration Fridays. The NYSE believes that the publication of only market order imbalances does not provide useful information, especially with respect to stocks which are part of an expiring index whose settlement is based on NYSE opening prices on one of those days.

#### **III. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

<sup>3</sup> See Securities Exchange Act Release No. 52255 (August 15, 2005), 70 FR 48792.

<sup>4</sup> NYSE Rule 123C defines an "expiration day" as "a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices on the Exchange, as identified by a qualified clearing corporation (e.g., the Options Clearing Corporation). The twelve expiration days are 'expiration Fridays' which fall on the third Friday in every month." On these expiration days, the Exchange has specific requirements governing the entry of orders in stocks relating to index contracts whose settlement prices are based on the opening prices on the Exchange of the stocks comprising the indices.

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>10</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.