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 the filing also will be available for inspection and copying at the principal office of the BSE. 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–BSE–2004–20 and should be submitted by June 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–11966 Filed 5–26–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49754; File No. SR–ISE–2003–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc., Relating to Permanent Approval of the Pilot Program for Quotation Spreads

May 21, 2004.

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 September 24, 2003, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE.[3] On May 20, 2004, the ISE filed Amendment No. 1 to the proposed rule change. 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

On March 19, 2003, the Commission approved an ISE proposal to establish a pilot program permitting the allowable quotation spread for options on up to 50 equity securities to be $5, regardless of the price of the bid (''Pilot Program'').[4] The Pilot Program was extended several times, most recently until June 29, 2004, and expanded to include all equity options trading on the ISE.[5] The ISE proposes to make the Pilot Program permanent and to expand the Pilot Program to include index options as well as equity options. The text of the proposed rule change appears below. Additions are italicized; deletions are bracketed.

* * * * *

Rule 803. Obligations of Market Makers

* * * * *

(b) Appointment. With respect to each options class to which a market maker is appointed under Rule 802, the market maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular options contract, or a temporary distortion of the price relationships between options contracts of the same class. Without limiting the foregoing, a market maker is expected to perform the following activities in the course of maintaining a fair and orderly market:

* * * * *

(4) To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than *$5 between the bid and offer following the opening rotation in an equity or index options contract. Prior to the opening rotation, spread differentials shall be no more than* ¼ of $1 between the bid and offer for each options contract for which the bid is less than $2, no more than ⅜ of $1 where the bid is at least $2 but does not exceed $5, no more than ½ of $1 where the bid is more than $5 but does not exceed $10, no more than ¾ of $1 where the bid is more than $10 but does not exceed $20, and no more than $1 where the bid is $20 or greater, provided that the Exchange may establish differences other than the above for one or more options series. The bid/offer differentials stated above shall not apply to in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the quotation on the primary market of the underlying security.

* * * * *

Supplementary Material to Rule 803

[.01 Pursuant to paragraph (b)(4) of Rule 803, during a pilot period expiring on June 29, 2004, all options classes may be quoted with a difference not to exceed $5 between the bid and offer regardless of the price of the bid.]

[.02] *.01* 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 ISE 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 ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 19, 2004 and accompanying Form 19b–4 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 47532, 68 FR 14728 (March 26, 2003) (order approving File No. SR–ISE–2001–15) (''Pilot Program Approval Order'').

[5] *See* Securities Exchange Act Release Nos. 48514 (September 22, 2003), 68 FR 55685 (September 26, 2003) (notice of filing and immediate effectiveness of File No. SR–ISE–2003–21) (extending the Pilot Program through January 31, 2004); 49149 (January 29, 2004) 69 FR 05627 (notice of filing and immediate effectiveness of File No. SR–ISE–2004–02) (extending the Pilot Program through March 31, 2004); and 49509 (March 31, 2004) 69 FR 18411 (April 7, 2004), (notice of filing and immediate effectiveness of File No. SR–ISE–2004–10) (extending the Pilot Program through June 29, 2004, and expanding the Pilot Program to include all equity options listed on the ISE) (''Pilot Expansion Notice'').

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE's rules contain maximum quotation spread requirements that vary from $.25 to $1.00, depending on the price of the option. On March 19, 2003, the Commission approved a proposal to establish a six-month Pilot Program in which the allowable quotation spread for options on up to 50 underlying equity securities would be $5, regardless of the price of the bid.[6] The Pilot Program has been extended several times, most recently until June 29, 2004, and has been expanded to include all equity options listed on the ISE.[7]

As required by the Pilot Program Approval Order, the ISE submitted to the Commission a report detailing the ISE's experience with the Pilot Program, which provided data regarding the 50 options initially included in the Pilot Program (''Initial Pilot Report''). The ISE will provide the Commission with an updated Pilot Program report that covers all of the equity options classes in the expanded Pilot Program by June 15, 2004.

The ISE believes that the Pilot Program has been successful. The ISE notes that its Initial Pilot Report provides all of the information the Commission requested in the Pilot Program Approval Order. The Initial Pilot Report lists the Pilot Program options, details the quotation spreads in these options during the initial six-month Pilot Program period, and discusses the ISE's overall experience during the Pilot Program, as well as any problems the ISE experienced during the Pilot Program. According to the ISE, the Initial Pilot Report indicates that quotation spreads in the 50 equity options initially included in the Pilot Program were virtually unchanged when compared to pre-Pilot Program trading. When compared to non-Pilot Program options, the ISE notes that the options included in the Pilot Program actually had relatively narrower spreads during the Pilot Program compared to the pre-Pilot Program period.

The purpose of the proposal is to make the Pilot Program permanent and to apply the relaxed spread requirements to all ISE-listed equity and index options. The one adjustment that the ISE is proposing to the structure of the Pilot Program is to apply the Pilot Program's relaxed spread requirements only after the opening in an option to assure fair and orderly markets at the opening. The ISE states that during the operation of the Pilot Program the ISE observed some indications that the relaxed spread requirements were having a negative effect on the quality of the ISE's market opening. Accordingly, the ISE issued a Regulatory Information Circular (''RIC'') informing market makers that, for the Pilot Program options, they should quote pursuant to the traditional spread requirements for the opening.[8] Consistent with this position, the relaxed quotation requirements in the proposal would become operative immediately following the opening rotation.

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with the requirement under section 6(b)(5) of the Act that an exchange have rules that are 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 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 believes that the proposed rule change does 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 ISE has not solicited, and does not intend to solicit, comments on the proposed rule change. The ISE 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 Exchange 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. 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.* Please include File Number SR–ISE–2003–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2003–22. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2003–22 and should be submitted on or before June 17, 2004.

[6] *See* Pilot Program Approval Order, *supra* note 4.

[7] *See* Pilot Expansion Notice, *supra* note 5.

[8] *See* ISE RIC 2003–08, ''Bid/Ask Spreads—$5 Maximum Pilot Program Policy Change.''

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12025 Filed 5–26–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49752; File No. SR–NASD–2004–055]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Related to Clarification of the Price/Time Execution Algorithm in SuperMontage

May 21, 2004.

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 March 29, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. On May 10, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Nasdaq filed Amendment No. 2 to the proposed rule change on May 20, 2004.[4] 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 the Substance of the Proposed Rule Change

Nasdaq proposes to clarify rule language describing the operation of the price/time execution algorithm in the Nasdaq Market Center system when using the ''I'' anti-internalization qualifier. Nasdaq will implement the proposed rule change immediately.

Below is the text of the proposed rule change. Proposed new language is *italics;* proposed deletions are in [brackets].

* * * * *

4710. Participant Obligations in the Nasdaq Market Center

(a) No Change.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in a Nasdaq Market Center eligible security, as well as Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) No Change.

(i) through (iv) No Change.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the Nasdaq Market Center will ascertain who the next Quoting Market Participant or Order Entry Firm in queue to receive an order is and shall deliver an execution to Quoting Market Participants or Order Entry Firms that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the Nasdaq Market Center system shall be delivered to or automatically executed against Quoting Market Participants' or Order Entry Firms' Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. The individual time priority of each Quote/Order submitted to the Nasdaq Market Center shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithm described below, ''Displayed Quotes/Orders'' shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the quotation montage of the Nasdaq Market Center, remain in system and available for execution.

(i) Execution Algorithm—Price/Time—The system will access interest in the system in the following priority and order:

a. through c. No Change.

(ii) Exceptions—The following exceptions shall apply to the above execution parameters:

a. If a Nasdaq Quoting Market Participant or Order Entry Firm enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the Nasdaq Market Center will first attempt to match off the order against the Nasdaq Quoting Market Participant's or Order Entry Firm's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Nasdaq Quoting Market Participants and Order Entry Firms may avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: ''Y'' or ''I'', subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of [Nasdaq] Quoting Market Participants and Order Entry Firms other than the party entering the AIQ ''Y'' flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ ''Y'' flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party; provided, however, that in the case of a Discretionary Order interacting with a bid/offer entered by the system pursuant to Rule 4710(b)(5), the Discretionary Order (or unexecuted portions thereof) will be returned.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ ''I'' flagged order *based on the price/time execution algorithm* [in price/time priority].

b. through f. No Change.

(C) through (D) No Change.

(2) through (8) No Change.

(c) through (e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 7, 2004 (''Amendment No. 1''). Amendment No. 1 replaces the original 19b–4 in its entirety.

[4] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division, Commission, dated May 20, 2004 (''Amendment No. 2''). Amendment No. 2 makes technical changes to the rule text.