IPA's account to fund a recycling MP. At that time, the revised MMI system will inquire against the queue of recycling MPs to determine if there is an MP for the same issuer with the same base CUSIP that could be processed against the available credit. Once the appropriate MP is identified, that MP will be taken off the recycle queue and will be processed into the IPA's account. As further issuances for that issuer occur, additional MPs for the issuer will be processed so that MP processing will remain in rough alignment with the related issuance activity. If no offsetting MP is available in the recycle queue, the credit would be applied to an MP from another issuer, as is the case today, to make use of the available liquidity in the IPA's settlement account.

Although the current procedures have worked well, since the events of September 11, 2001, participants in DTC's MMI program have been working with DTC on changes that would reduce risk without introducing processing inefficiencies. The rule change addresses concerns that IPAs have raised about the random nature of DTC's process for updating maturity presentments by providing IPAs with the means to exercise greater control of their intra-day liquidity requirements and credit risks.

## II. Discussion

Section 17A(b)(3)(F) [7] of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. By implementing a targeted, rather than random, processing methodology that provides for a better correlation of MP activity with issuance activity, DTC's proposed rule change will enable IPAs to better manage their intraday risk and liquidity exposures. As such, the proposed rule change is consistent with DTC's statutory obligation to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

[7] 15 U.S.C. 78q–1(b)(3)(F).

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–DTC–2003–12) be and hereby is approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49602; File No. SR–ISE–2003–26]**

## Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Approval to a Proposed Rule Change by the International Securities Exchange, Inc. To Amend Its Rules Governing Limits on the Entry of Orders of Less Than Ten Contracts and Revising the Quotation Size Requirements for Market Makers

April 22, 2004.

On October 14, 2003, the International Securities Exchange, Inc. (''ISE'' or ''Exchange''), 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 repeal the limits on the entry of orders and revise the quotation requirements of market makers. On January 13, 2004, the ISE filed Amendment No. 1 to the proposed rule change.[3] On January 30, 2004, the ISE filed Amendment No. 2 to the proposed rule change.[4] On March 8, 2004, the ISE filed Amendment No. 3 to the proposed rule change.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 17, 2004.[6] The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

The proposed rule change revises the ISE's restrictions on the entry of orders of less than 10 contracts, along with related market maker quotation requirements. Specifically, the proposed rule change removes the prohibition on Electronic Access Members (''EAMs'') submitting orders for non-customers that cause the ISE's best bid and offer (''BBO'') to be for less than 10 contracts, and removes the prohibition on EAMs entering multiple orders for the same trading interest if one or more orders are for less than 10 contracts. Further, the proposed rule change repeals the obligation of the Primary Market Maker (''PMM'') either to ''trade out'' customer orders of less than 10 contracts or ''derive'' additional size to maintain a 10-contract displayed size. PMMs must continue, however, to ''derive'' size by buying or selling the number of contracts needed to maintain a firm quote for at least 10 contracts to incoming orders from the Options Market Linkage. Finally, the proposed rule change repeals the requirement that market makers refresh their quotations if there is an execution that results in the size of the ISE's BBO falling below 10 contracts. The proposed rule change, however, retains the obligation that market makers initially enter quotations for a size of at least 10 contracts, which the ISE believes is a necessary obligation for market makers to provide reasonable liquidity to the market place.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [7] and, in particular, the requirements of section 6 of the Act [8] and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] which, among other things, requires that the ISE's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, as amended,

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 12, 2004 (''Amendment No. 1'').

[4] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 29, 2004. (''Amendment No. 2'').

[5] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 5, 2004. (''Amendment No. 3'').

[6] *See* Securities Exchange Act Release No. 49393 (March 10, 2004), 69 FR 12724.

[7] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

should provide greater transparency to investors and the marketplace and should better reflect the true state of liquidity in the marketplace. Specifically, as proposed, the actual size of customer limit orders representing the ISE's BBO will be disseminated rather than an artificial minimum size. In addition, the Commission notes that this aspect of the proposal is similar to rules on other options exchanges.[10] In addition, the proposal will permit non-customer orders of less than 10 contracts that improve the ISE BBO to be disseminated.

Finally, the Commission notes that market makers will be permitted to maintain a quote that represents the ISE's BBO for a size less than 10 contracts when executions have decremented their initial quote to less than 10 contracts. However, because market makers will be required to initially enter a quote for at least 10 contracts, the Commission believes that market makers would still be obligated to add liquidity to the market.[11]

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–ISE–2003–26) is hereby approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[10] *See* Securities Exchange Act Release Nos. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (SR–Phlx–2002–15); 46029 (June 4, 2002), 67 FR 40362 (June 12, 2002) (SR–PCX–2002–30); 45067 (November 16, 2001), 66 FR 58766 (November 23, 2001) (SR–CBOE–2001–56); 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (SR–CBOE–2002–05); and 48957 (December 18, 2003), 68 FR 79254 (December 30, 2003) (SR–AMEX–2003–24)

[11] The Commission notes that ISE market makers must maintain a continuous quote for the options in which they make a market. *See* ISE Rules 803(b) and 804(e).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49604; File No. SR–NASD–2004–066]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Related to Direct ECN Connection to SuperMontage

April 22, 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 April 19, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to require ''Order-Delivery'' Electronic Communications Networks (''ECNs'') that participate in the Nasdaq National Market Execution System (''NNMS'' or ''SuperMontage'') to access the system using solely direct, dedicated point-to-point communication linkages. Nasdaq will implement the proposed rule change 90 days after approval by the Commission. The exact date will be provided to market participants via a Head Trader Alert on *http://www.nasdaqtrader.com.*

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

4623. Alternative Trading Systems

(a) No Change.

(b) An ATS or ECN that seeks to utilize the Nasdaq-provided means to comply with SEC Rule 301(b)(3), the ECN display alternatives, or to provide orders to Nasdaq voluntarily shall:

(1) through (6) No Change.

*(7) provide orders to Nasdaq only through a dedicated communications linkage as prescribed by Nasdaq.*

(c) No Change.

* * * * *

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

[2] 17 CFR 240.19b–4.

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A)–(B) No Change.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferenced Order in an amount equal to the system-delivered order or execution.

(i) through (iii) No Change.

(iv) If an NNMS ECN regularly fails to meet a 5-second response time [(as measured by the ECN's Service Delivery Platform)] over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ECN's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the NNMS ECN certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market. *The 5-second response time shall be measured by timestamps generated by NNMS.*

(v) No Change.

(D) No Change.

(2)–(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.

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

1. Purpose

ECNs have two options when participating in Nasdaq's SuperMontage system. They can be ''Auto-Ex'' ECNs, in which case their quotes/orders are subject to automatic execution, or they can elect to be Order-Delivery where the system instead delivers a buy or sell