

Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>18</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-CBOE-2003-57. The 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, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR-CBOE-2003-57 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48955; File No. SR-ISE-2003-31]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Extending the Waiver of Its Marketing Fee

December 18, 2003.

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 November 20, 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 ISE. 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 Substance of the Proposed Rule Change

The Exchange is proposing to extend the waiver of its marketing fee until June 30, 2004.

#### 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.

##### 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 amend the ISE's Schedule of Fees to extend the waiver of its marketing fee until June 30, 2004.<sup>3</sup> That

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

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

<sup>3</sup> The Commission notes that the ISE's marketing fee is \$.10 per contract and applies to market makers only for each public customer contract executed. In its filing initially adopting this fee, the ISE stated that the purpose of the fee is to provide the ISE with a source of funding for marketing efforts aimed at increasing order flow from

waiver currently is scheduled to expire on December 31, 2003.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement of section 6(b)(4) of the Act<sup>4</sup> that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that by extending the fee waiver it is lessening the cost of trading on the ISE and thus encouraging greater competition between exchanges.

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

The ISE does not believe that the proposed rule change will impose any inappropriate burden on competition.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(2)<sup>6</sup> thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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

Electronic Access Members to the Exchange. See Securities Exchange Act Release No. 44101 (March 26, 2001), 66 FR 17590 (April 2, 2001) (SR-ISE-01-06) (implementing the marketing fee). The marketing fee was first waived in SR-ISE-2002-16. Securities Exchange Act Release No. 46189 (July 11, 2002), 67 FR 27587 (July 19, 2002). The waiver has subsequently been extended twice. See Securities Exchange Act Release Nos. 46976 (December 9, 2002), 67 FR 72116 (December 16, 2002) (SR-ISE-2002-26); and 48129 (July 3, 2003), 68 FR 41409 (July 11, 2003) (SR-ISE-2003-16).

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 19b-4(f)(2).

<sup>18</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-ISE-2003-31. 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, 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 Room. 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. ISE-2003-31 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48958; File No. SR-NYSE-2003-29]

### Self-Regulatory Organizations; New York Stock Exchange Inc.; Notice of Filing of Proposed Rule Change to Amend Rule 412 and its Interpretation Relating to Partial Customer Account Transfers

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 1, 2003, the New York Stock Exchange Inc. ("NYSE") 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 primarily by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend Rule 412 and the Interpretation of Rule 412 in order to apply the same procedural standards regarding use of the Automated Customer Account Transfer System ("ACATS") to both standard and partial customer account transfers.

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

In its filing with the Commission, NYSE 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 NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

Rule 412 of the NYSE's Rules ("Customer Account Transfer Contracts") prescribes procedures for member organizations to transfer customer accounts. It requires use of the Automated Customer Account Transfer Service ("ACATS"), an electronic system administered by the National Securities Clearing Corporation ("NSCC") to facilitate the transfer of customer assets between broker-dealers. Since its inception in 1985, numerous enhancements to ACATS and to Rule 412 allowed for faster and more efficient transfers of customer accounts. For example, the most recent amendments to the Interpretation of Rule 412 have provided for the expedited transfer of accounts containing third party or proprietary products (e.g., mutual funds).<sup>3</sup>

Currently, the requirements of Rule 412 and its Interpretation apply only to "standard" transfers (i.e., instances where account assets in their entirety are transferred from one member organization to another) processed through ACATS. While ACATS is also utilized to process "partial" or "non-standard" transfers (i.e., the transfer of

specifically designated assets from an account held at one member organization to an account held at another member organization), Rule 412 currently does not require that partial transfers be accomplished in accordance with Rule 412 timeframes and does not require use of automated processing capabilities of ACATS.

There is strong industry support to generally apply the same procedural standards, where applicable, to both standard and partial transfers of customer account assets. NYSE has worked closely with industry representatives in the development of amendments to that purpose. The proposed amendments are expected to significantly expedite partial transfers and to increase accountability through use of ACATS. This, in turn, will improve customers' services and will reduce customers' problems related to transfers.

##### 1. Partial Transfers

The requirements of Rule 412 and its Interpretation, as currently applied to standard transactions, include specified response times between a delivering and a receiving firm within which to verify assets, resolve discrepancies, and complete the transfer. Standard transfers processed through ACATS are also subject to the automated processing of transfer-related fails (e.g., monies posted by a delivering firm where the security to be transferred is not transferred), reclaims (e.g., claims by delivering firm for the return of securities transferred), and of residual credits (e.g., transfer of dividends, etc., received after an account has been transferred).

The NYSE proposes to amend Rule 412 and its Interpretation that would generally apply the same procedural standards to both standard and partial transfers processed through ACATS. The proposed amendments would mandate use of ACATS for partial transfers unless otherwise specifically requested by a customer.<sup>4</sup> For example, customers would not be precluded from using alternate authorized instructions to effect partial transfers.

However, certain aspects of Rule 412 and its Interpretation, as proposed to be amended, would be applicable to standard transfers but not partial transfers. The amendments would

<sup>4</sup> As proposed, Rule 412(e)(1) would provide for an exception to the members' obligation to accomplish transfers in accordance with NSCC's rules when the customer authorizes alternative instructions to transfer "specifically designated assets." The phrase "specifically designated assets" refers to partial transfers only. Telephone conversation between the NYSE, NSCC, and Commission staff (November 20, 2003).

<sup>2</sup> The Commission has modified the text of the summaries prepared by the NYSE.

<sup>3</sup> Securities Exchange Act Release No. 44596 (July 26, 2001), 66 FR 40306 (August 2, 2001) (SR-NYSE-00-61). See also NYSE Information Memorandum No. 01-23 (August 16, 2001).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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