

addition, the dissemination of the actual size of customer limit orders representing the BBO should also enable specialists and ROTs to better manage their risks by enabling such specialists and/or ROTs to reflect the size in quotes based on market factors rather than regulatory requirements. The Amex seeks through this proposal to match other option exchanges that currently are able to disseminate actual size market quotations for customer orders.¹⁵ The Exchange believes that this should lead to increased competition on the basis of size among the options exchanges, enabling investors to receive better executions.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act¹⁶ in general, and furthers the objectives of section 6(b)(5)¹⁷ 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition.

(permanent approval of XMI pilot); 24714 (July 17, 1987), 52 FR 28396 (July 29, 1987) (expansion to competitively traded options); and 46479 (September 10, 2002), 67 FR 58654 (September 17, 2002) (automatic execution of broker-dealer option orders). Auto-Ex is an automated execution system that enables member firms to route public customer market and limit orders in options for automatic execution at the bid or offer at the time the order is entered. Auto-Ex executes, at the displayed bid or offer, customer market and immediately executable limit option orders up to a specified number of contracts routed through the Common Message Switch ("CMS") and the Amex Order File ("AOF"). There are, however, some situations in which orders otherwise eligible for execution on Auto-Ex are routed to the specialist's book, known as the Amex Options Display Book or "AODB," for an execution. These situations occur when (i) the best bid or offer is represented by a limit order on the AODB, (ii) the best bid or offer is locked or crossed, (iii) there is a better bid or offer being displayed by a competing market, or (iv) when certain systems allowable parameters have been exceeded.

¹⁵ See Securities Exchange Act Release Nos. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (File No. SR-Phlx-2002-15); 46029 (June 4, 2002), 67 FR 40362 (June 12, 2002) (File No. SR-PCX-2002-30); 45067 (November 16, 2001), 66 FR 58766 (November 23, 2001) (File No. SR-COE-2001-56); and 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (File No. SR-CBOE-2002-05).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

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

No written comments were solicited or received with respect to the proposed rule change.

III. 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 by Amendment No. 3, 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 should be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-Amex-2003-24. 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 hard copy 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2003-24 and should be submitted by January 20, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, 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.¹⁸ In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

¹⁸ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove.¹⁹ The Commission believes that the proposed rule change, as amended, should provide greater transparency to investors and the marketplace and should better reflect the true state of liquidity in the marketplace, because the actual size of customer limit orders representing the best bid or offer will be disclosed rather than an artificial minimum size. In addition, the Commission notes that the proposed rule change is consistent with the rules of other options exchanges.²⁰ Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,²¹ for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²² that the proposed rule change (SR-Amex-2003-24), as amended, is hereby approved, and Amendment No. 3 is approved, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48959; File No. SR-ISE-2003-38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc. To Increase the Number of Authorized Shares of Class B Common Stock, Series B-2 from 130 to 160

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 11, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ See *supra* note 15.

²¹ 15 U.S.C. 78s(b)(2).

²² *Id.*

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 ISE proposes to increase the number of authorized shares of Class B Common Stock, Series B-2 from 130 to 160. This increase would result in the creation of 30 additional Competitive Market Maker ("CMM") Memberships. The text of the proposed rule change is available at the Office of the Secretary, the ISE, and at the Commission.

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 ISE proposes to increase the number of authorized shares of Class B Common Stock, Series B-2 from 130 to 160. This increase would result in the creation of 30 additional CMM Memberships.³ CMMs are market makers that compete with a Primary Market Maker ("PMM") and other CMMs to provide liquidity on the Exchange. The Exchange has allocated its listed options into 10 groups or "Bins," and currently assigns one PMM and 13 CMMs to each Bin. Under this proposal, the Exchange will add three additional CMMs to each Bin.

The Board of Directors ("Board") has established a committee of three directors to sell the additional Memberships, identifying both the purchasers of these Memberships and the price at which these Memberships would be sold. The Board's intent is that the new Memberships be sold to broker-

dealers that both would provide market making expertise and liquidity to the Exchange and that have significant customer order flow to send to the Exchange. There are no restrictions or limitations on the price at which the Memberships can be sold. The Exchange would distribute all net proceeds received from these sales to holders of Class A Common Stock by way of a dividend.

The ISE believes that the sale of 30 additional CMM Memberships would increase the depth and liquidity of the Exchange's market. It also would provide more broker-dealers with an opportunity to participate on the Exchange. The Exchange has carefully evaluated its system capacity and believes that it has more than sufficient capacity to be able to handle the increased number of CMM Members without any adverse effects. Finally, the Exchange would require that a purchaser of one of these new Memberships that is not already a CMM to meet all Exchange requirements currently applicable to CMM Members.⁴

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act⁵ in general, and furthers the objectives of section 6(b)(5) of the Act⁶ in particular, because it is 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 open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the sale of 30 additional CMM Memberships would increase the depth and liquidity of the Exchange's market and provide more broker-dealers with an opportunity to participate on the Exchange as market makers.

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

This proposed rule change does not impose any burden on competition. The Exchange believes that the proposal will increase competition on the Exchange by increasing the number of market makers.

⁴ The ISE states that this proposed rule change is the same as a previous proposal to increase the number of Exchange CMM Memberships approved by the Commission. See Securities Exchange Act Release No. 47289 (January 30, 2003), 68 FR 5947 (February 5, 2003) (order approving SR-ISE-2002-28).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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-ISE-2003-38. 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. SR-ISE-2003-38 and should be submitted by January 20, 2004.

³ ISE Rule 100(19) defines "Membership" as the "trading privileges associated with a share of Class B Common Stock."

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48965; File No. SR-NASD-2003-166]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Correct Inaccurate Descriptions of the Territorial Boundaries of Two NASD District Offices

December 19, 2003.

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 November 12, 2003, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. NASD amended the proposed rule change on December 18, 2003.³ NASD filed the proposed rule change pursuant to section 19(b)(3)(A)(i) of the Act,⁴ and Rule 19b-4(f)(1) thereunder,⁵ as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective upon filing with the Commission. 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

NASD proposes to amend Schedule B to the NASD By-Laws to correct the inaccurate descriptions of the territorial boundaries of two NASD District Offices. The text of the proposed rule change is available at NASD and at the Commission.

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD 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 proposed rule change would amend Schedule B to the NASD By-Laws to correct inaccurate descriptions of Districts 9 and 10. Before 1997, the New York counties of Orange, Rockland, Putnam, and Westchester were assigned to NASD's District 10 office. In late 1997, during a reorganization of the District Offices, District 11 assumed responsibility for Orange, Rockland, Putnam, and Westchester counties. However, NASD failed to amend Schedule B to reflect this change.

In 2003, NASD conducted its most recent reorganization of the District Offices and, among other things, transferred responsibility for the New York counties of Orange, Rockland, Putnam, and Westchester from District 11 to District 9. After filing a rule change to Schedule B to the NASD By-Laws to reflect the Districts' new descriptions,⁶ NASD became aware that the 1997 change was never reflected in Schedule B, and that Schedule B still lists District 10 as being responsible for the New York counties of Orange, Rockland, Putnam, and Westchester. Accordingly, NASD is filing the proposed rule change to amend Schedule B to the NASD By-Laws to accurately align these counties within District 9.

⁶ See Securities Exchange Act Release No. 48488 (September 3, 2003), 68 FR 54762 (September 12, 2003) (SR-NASD-2003-138).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁷ which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,⁸ and Rule 19b-4(f)(1)⁹ thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule. At any time within 60 days of the filing of the 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 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-NASD-2003-166. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78s(b)(3)(A)(i).

⁹ 17 CFR 240.19b-4(f)(1).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See December 17, 2003 letter from Patricia M. Albrecht, Assistant General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, NASD corrected a typographical error in the proposed rule text, and added language to clarify the reason for the proposed rule change. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on December 18, 2003, the day NASD filed Amendment No. 1.

⁴ 15 U.S.C. 78s(b)(3)(A)(i).

⁵ 17 CFR 240.19b-4(f)(1).