

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 available publicly. All submissions should refer to File Number SR-Amex-2005-035 and should be submitted on or before August 8, 2005.

## V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change, as amended (SR-Amex-2005-035), is hereby approved on an accelerated basis and as a pilot program, through July 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52012; File No. SR-ISE-2005-17]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto to List and Trade Short Term Option Series

July 12, 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 March 7, 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 and II below, which Items have been substantially prepared by the Exchange. ISE filed Amendment No. 1 with the Commission on April 25, 2005.<sup>3</sup> This notice and order requests comment on the proposal from interested persons and approves the amended proposal on an accelerated basis.

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

The Exchange proposes to establish a pilot program to list and trade option series that expire one week after being opened for trading ("Short Term Option Series"). The Exchange proposed that the pilot program extend one year from the date of this approval. The text of the proposed rule change, as amended, is available on ISE's Web site ([http://www.iseoptions.com/legal/proposed\\_rule\\_changes.asp](http://www.iseoptions.com/legal/proposed_rule_changes.asp)), at ISE's principal office, 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, ISE included statements concerning the purpose of and basis for the proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. 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 Exchange proposes to establish a pilot program to list and trade Short Term Option Series, which would expire one week after the date on which a series is opened. Under the proposal, the Exchange could select up to five approved option classes<sup>4</sup> on which Short Term Option Series could be opened. A series could be opened on any Friday that is a business day ("Short Term Option Opening Date") and would

expire at the close of business on the next Friday that is a business day ("Short Term Option Expiration Date"). If a Friday were not a business day, the series could be opened (or would expire) on the first business day immediately prior to that Friday.

The proposal would allow the Exchange to open up to five Short Term Option Series for each Short Term Option Expiration Date. The strike price for each series would be fixed at a price per share, with at least two strike prices above and two strike prices below the approximate value of the underlying security, or the calculated index value in the case of an index class, at about the time that Short Term Option Series was opened for trading on the Exchange. No Short Term Option Series on an option class would be opened in the same week in which a monthly option series on the same class is expiring, because the monthly option series in its last week before expiration is functionally equivalent to the Short Term Option Series. The intervals between strike prices on Short Term Option Series would be the same as with the corresponding monthly option series.

The Exchange believes that Short Term Option Series would provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. At the same time, the Exchange is cognizant of the need to be cautious in introducing a product that can increase the number of outstanding strike prices. For that reason, the Exchange proposes to employ a limited pilot program for Short Term Option Series. Under the terms of the pilot program, the Exchange could select up to five options classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. The Exchange also could list and trade any Short Term Option Series on an option class that is selected by another exchange with a similar pilot program. The Exchange believes that limiting the number of option classes on which Short Term Option Series may be opened would help ensure that the addition of the new series through this pilot program would have only a negligible impact on the Exchange's and OPRA's quoting capacity. Also, limiting the term of the pilot program to a period of one year would allow the Exchange and the Commission to determine whether the Short Term Option Series program should be extended, expanded, and/or made permanent.

As originally proposed, all Short Term Option Series would be p.m.-

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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 revised the settlement times for the proposed Short Term Options Series.

<sup>4</sup> Short Term Option Series could be opened in any option class that satisfied the applicable listing criteria under ISE rules (*i.e.*, stock options, options on exchange traded funds (as defined under ISE Rule 502(h)), or options on indexes).

settled. However, in Amendment No. 1, the Exchange revised the proposal to provide that Short Term Option Series listed on currently approved option classes shall settle, with respect to a.m. or p.m. settlement, in the same manner as do the monthly expiration series in the same options class.

The Exchange represents that it has the system capacity to adequately handle the new option series contemplated by this proposal. The Exchange provided the Commission information in a confidential submission to support that representation.

The Exchange proposed that the pilot program extend one year from the date of this approval.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, because 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 would impose any burden on competition 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 on the proposed rule change were neither solicited nor received.

## III. Discussion

After careful review, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission believes that the proposal is consistent with the requirements of

Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange be designed 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 listing and trading Short Term Option Series, under the terms described in the Exchange's proposal, will further the public interest by allowing investors new means of managing their risk exposures and carrying out their investment objectives. The Commission also believes that the pilot program strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of option series that could compromise options quotation capacity. The Commission expects the Exchange to monitor the trading and quotation volume associated with the additional option series created under the pilot program and the effect of these additional series on the capacity of the Exchange's, the Options Price Reporting Authority's, and vendors' systems.

The Commission finds good cause pursuant to Section 19(b)(2) of the Act<sup>9</sup> for approving the amended proposal prior to the thirtieth day after its publication in the **Federal Register**. The Commission recently approved a rule change proposed by the Chicago Board Options Exchange, Incorporated ("CBOE") to list and trade short-term options series.<sup>10</sup> Because the CBOE proposal was open for a full comment period and CBOE adequately responded to the issues raised by commenters, the Commission does not believe that an additional comment period for ISE's substantially identical proposal is necessary. The Commission believes that accelerating approval of ISE's proposal will benefit investors by furthering competition, without undue delay, among the markets that wish to trade these products.

## 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-2005-17 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-2005-17. 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 available publicly. All submissions should refer to File Number SR-ISE-2005-17 and should be submitted on or before August 8, 2005.

## V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change, as amended (SR-ISE-2005-17), is hereby approved on an accelerated basis and as a pilot program, through July 12, 2006.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital information. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

<sup>10</sup> See Securities Exchange Act Release No. 52011 (July 12, 2005) (order approving SR-CBOE-2004-63).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Jill M. Peterson,

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52007; File No. SR-NSX-2005-02]

### Self-Regulatory Organizations; National Stock Exchange; Order Granting Approval to Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to the Composition of NSX's Board of Directors and Committees

July 11, 2005.

On March 31, 2005, the National Stock Exchange (the "Exchange" or "NSX") 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 proposed rule change to amend its By-Laws to make modifications to the composition of its Board of Directors ("Board") and committees. On March 31, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On May 19, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on June 7, 2005.<sup>5</sup> The Commission received no comments on the proposal.

In connection with a termination of rights agreement ("Termination Agreement") entered into between NSX and the Chicago Board Options Exchange, Incorporated ("CBOE") on September 27, 2004, and in order to conform to recent industry trends and comply with regulatory requirements that the Commission may impose upon self-regulatory organizations, the Exchange proposed various changes to its By-Laws. The Exchange proposed the following changes relating to Board composition, terms of office and candidate selection: (A) Change the position on the Board reserved for the President of the Exchange in favor of the

NSX's Chief Executive Officer;<sup>6</sup> (B) combine the two Designated Dealer and one At-Large Member positions on the Board into a single "Member Director" category, which would be defined in proposed Article V, Section 1(a)(ii) of the NSX By-Laws as "Proprietary Members or executive officers of Proprietary Member organizations," and which would continue to consist of three positions; (C) modify the Member Director candidate selection process described in Article V, Section 2.2 of the NSX By-Laws to clarify that the annual election, at which Proprietary Members vote for the candidate(s), occurs during the annual meeting of the membership, which is in January; (D) eliminate the existing Public Director<sup>7</sup> category in favor of an "Independent Director" category, which would be defined in proposed Article I, Section 1(k) of the NSX By-Laws as "a member of the Board that the Board has determined to have no material relationship with the Exchange or any affiliate of the Exchange, any member of the Exchange or any affiliate of any such member, other than as a member of the Board" and increase the number of such directors from three to six positions; (E) delete provisions relating to the procedure for selecting Public Directors and replace such provisions with the procedure for selecting Independent Directors; (F) combine the CBOE Chairman, CBOE President and CBOE Member Director positions on the Board into a single "CBOE Director" category, which would be defined in proposed Article V, Section 1(a)(iv) of the NSX By-Laws as "executive officers of CBOE, CBOE members or executive officers of CBOE member organizations" and decrease the number of such directors from six to three positions; (G) modify the definition of "CBOE member(s)" to delete the requirement, in the case of a transferable regular CBOE membership that is subject to a lease agreement, that the lessee and not the lessor be deemed to be the CBOE member and reorganize the list of definitions in alphabetical order and renumber the provisions accordingly; and (H) modify the provisions relating to Directors' terms of office to, among other things, add procedures to account for when new Member Directors' and new

Independent Directors' initial terms would begin.

Further, the Exchange proposed to adopt provisions to accommodate future Board composition changes, which would achieve a Board comprised of a majority of Independent Directors, resulting from subsequent closings under the Termination Agreement.

Finally, the Exchange proposed to revise the general composition requirements for committees contained in Article VI, Section 1.4 of the NSX By-Laws to provide that the membership of such committees would be chosen in such a way as to assure the fair representation of the public and, as appropriate, all classes of members, and to delete references in: (a) Article VI, Section 1.4 of the NSX By-Laws to the requirements that at least one member of each committee be a member of the Board and that all members of the Executive Committee be members of the Board, and (b) Article VI, Section 3.1 of the NSX By-Laws to the requirements that the Securities Committee have at least one Proprietary Member and at least one representative of issuers and investors who is not associated with a member or a broker or dealer, and certain other composition requirements that are no longer applicable.

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>8</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>9</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>10</sup> in particular, which requires, among other things, that the rules of an exchange 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 and Section 6(b)(1) of the Act,<sup>11</sup> which requires that an Exchange be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act.

The Commission notes that the proposal is designed to implement

<sup>12</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 replaced the original filing in its entirety.

<sup>4</sup> In Amendment No. 2, the Exchange revised the proposed definition of "Independent Director."

<sup>5</sup> See Securities Exchange Act Release No. 51765 (May 31, 2005), 70 FR 33238.

<sup>6</sup> The President and Chief Executive Officer are currently the same person.

<sup>7</sup> "Public Directors" are defined as "representatives of issuers and investors who shall not be associated with any member of the Exchange or with any registered broker or dealer or with another self-regulatory organization, other than as a public trustee or director[.]" Article V, Section 1.1(g) of the NSX By-Laws.

<sup>8</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(1).