

customers. The Exchange now proposes to charge customer fees for MNX options orders as it does for any other index product.

## 2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act ("Act"),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

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

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

## 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

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>7</sup> of the Act and subapplicable (f)(2) of Rule 19b-4 thereunder.<sup>8</sup> 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. 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 the File No. SR-CBOE-00-64 and should be submitted by January 18, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43743; File No. SR-ISE-00-15]

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, LLC Relating to an Interim Intermarket Linkage

December 19, 2000.

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 15, 2000, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On December 13, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 a rule authorizing implementation of "interim linkages" with the other options

exchanges. The interim linkage will permit qualified market makers on participating exchanges to send specified types of principal orders to other participating exchanges for automatic execution as if such orders were customer orders. Below is the text of the proposed rule change. Proposed new language is italicized.

## Rule 721. Pilot Program for Away Market Maker Access

(a) *Definitions. Solely for the purpose of this Rule:*

(1) "Corresponding Rule" means a rule of a Participating Exchange that is substantially identical to this Rule 721.  
(2) "Customer Size" means the lesser of (i) the number of option contracts that the Participating Exchange sending the order guarantees it will automatically execute at its disseminated quotation in an Eligible Option Class for Public Customer Orders and (ii) the number of option contracts that the Participating Exchange receiving the order guarantees it will automatically execute at its disseminated quotation in an Eligible Option Class for Public Customer Orders. This number shall be no fewer than 10.

(3) "Eligible Away Market Maker" ("EAMM") means, with respect to an Eligible Option Class, a market maker, as that term is defined in Section 3(a)(22) of the Exchange Act, on a Participating Exchange that:

(i) is assigned to, and is providing two-sided quotations in the Eligible Option Class; and

(ii) that is participating in its market's automatic execution system in such Eligible Option Class.

(4) "Eligible Away Principal Market Maker" ("EAPMM") means: with respect to the American Stock Exchange and the Philadelphia Stock Exchange, a Specialist in an Eligible Option Class; with respect to the Chicago Board Options Exchange, a Designated Primary Market Maker in an Eligible Option Class; and with respect to the Pacific Exchange, a Lead Market Maker in an Eligible Option Class.

(5) "Eligible Option Class" means all option series overlying a security, including both put and call options, which class is traded by the Exchange and at least one other Participating Exchange, to the extent that such Participating Exchanges have mutually agreed to include the option class in the Pilot Program.

(6) "Eligible Order" means an order for the account of a market maker, an EAMM or an EAPMM that can be sent to a Participating Exchange marked as a Public Customer Order pursuant to

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</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> In Amendment No. 1, the Exchange specified that the proposed interim linkage would be for a pilot period expiring on January 31, 2002. See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 11, 2000 ("Amendment No. 1").

provisions of paragraphs (b), (c), and (d) of this Rule.

(7) "Participating Exchange" means (i) the Exchange and (ii) one or more of the American Stock Exchange, the Chicago Board Options Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange, as the President of the Exchange, or his designee, has designated from time to time as having adopted a Corresponding Rule.

(8) "Pilot Program" means the program established by this Rule and the Corresponding Rules of the other Participating Exchanges.

(9) "Principal Size" means the number of option contracts that two or more Participating Exchanges mutually agree that they will automatically execute during the Pilot Program at their disseminated quotation for orders sent for the principal account of a market maker, an EAMM or an EAPMM that does not correspond to a Underlying Customer Order. This number shall be no fewer than 10.

(10) "Underlying Customer Order" means an unexecuted Public Customer Order for which a Primary Market Maker or EAPMM is acting as agent and which underlies an Eligible Order.

(b) Access to Other Participating Exchanges by Market Makers. Pursuant to the Pilot Program, a market maker participating in the program may send an order to another Participating Exchange for execution as a Public Customer Order only if the market maker complies with the following conditions:

(1) the order is an immediate-or-cancel order;

(2) the price of the order is equal to the bid (offer) disseminated by the Participating Exchange at the time the market maker sends an order to sell (buy), and such bid (offer) is equal to the national highest bid (offer) in that series of an Eligible Option Class, as calculated by the Exchange;

(3) the Exchange's bid (offer) at the time the market maker sends the order to sell (buy) is not then equal to the national highest bid (offer) in that series of an Eligible Option Class, as calculated by the Exchange;

(4) the order is no larger than the Principal Size; and

(5) except with respect to orders a Primary Market Maker is sending pursuant to paragraph (c), below, the market maker has not received an execution of another such order in the same series of an Eligible Option Class on the same Participating Exchange pursuant to the Pilot Program in the previous one minute period.

(c) Additional Access to Other Participating Exchanges by Primary

Market Makers. In addition to the access to other Participating Exchanges provided in paragraph (b), above, a Primary Market Maker participating in the Pilot Program may send an order to another Participating Exchange for execution as a Public Customer if:

(1) the Primary Market Maker complies with subparagraphs (1) through (3) of paragraph (b), above:

(2) the order reflects the same terms as an Underlying Customer Order the Primary Market Maker is holding; and

(3) the order is no larger than the Customer Size.

(d) Access to the Exchange by Eligible Market Makers on other Participating Exchanges. Notwithstanding any other Rule of the Exchange, an Electronic Access Member may send to the Exchange for execution as a Public Customer Order an order for the account of an EAMM or an EAPMM that complies with the Corresponding Rule of the EAMM's or EAPMM's Participating Exchange.

(e) Implementation of the Pilot Program. The President, or his designee, may implement the Pilot Program, in whole or in part, with respect to specific Participating Exchanges, to the extent that any such Participating Exchange has agreed to implement corresponding aspects of the Pilot Program. Primary Market Maker participation in the Pilot Program shall be voluntary.

## 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 implement certain aspects of an intermarket options linkage on an "interim" basis.<sup>4</sup> This interim linkage would utilize existing order types to facilitate the sending and receiving of order flow between ISE market makers

and their counterparts on the other options exchanges as an interim step towards development of a "permanent" linkage.

By way of background, the Commission has approved a linkage plan that now includes all five options exchanges.<sup>5</sup> The options exchanges continue to work towards implementation of this linkage, which likely will include contracting with a third party to build a linkage infrastructure. Since this will take a significant amount of time, the options exchanges have discussed implementing an "interim" linkage. Such a linkage would use the existing market infrastructure to route orders between market makers on the participating exchanges in a more efficient manner.

The key component of the interim linkage would be for the participating exchanges to open their automated customer execution systems, on a limited basis, to market maker orders. Specifically, market makers would be able to designate certain orders as "customer" orders, and thus would receive automatic execution of those orders on participating exchanges.

This proposed rule would authorize the ISE to implement bilateral or multilateral interim arrangements with the other exchanges to provide for equal access between market makers on our respective exchanges. The Exchange currently anticipates that the initial arrangements would allow ISE Primary Market Makers ("PMMs") and their equivalents on the other exchanges, when they are holding customer orders, to send orders reflecting the customer orders to the other market for execution when the other market has a better quote. Such orders would be limited in size to the lesser of the size of the two markets "firm" quotes for customer orders. The Exchange expects that the interim linkage may expand to include limited access for pure principal orders, for orders of no more than 10 contracts.

All interim linkage orders must be "immediate or cancel" (that is, they cannot be placed on an exchange's limit order book), and a market maker can send a linkage order only when the other (receiving) market is displaying the best national bid or offer and the sending market is an inferior price. This will allow a market maker to access the better price for its customer. In addition, if the interim linkage includes principal orders, it would allow market makers to attempt to "clear" another market

<sup>5</sup> See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000).

<sup>4</sup> Under the proposal, the interim linkage would be for a pilot period expiring on January 31, 2002. See Amendment No. 1, *supra* note 3.

displaying a superior quote. Any exchange participating in the interim linkage will implement heightened surveillance procedures to help ensure that their market makers send only properly-qualified orders through the linkage.

PMM participation in the interim linkage will be voluntary. Only when a PMM and its equivalent on another exchange believe that this form of mutual access would be advantageous will the exchanges employ the interim linkage procedures. The ISE believes that the interim linkage will benefit investors and will provide useful experience that will help the exchanges in implementing the full linkage.

## 2. Statutory Basis

The ISE believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>6</sup> 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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 CBOE does not believe that the proposed rule change will impose any 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 solicited or received with respect to the proposed rule change.

## 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 self-regulatory organization 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 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. 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 ISE. All submissions should refer to File No. SR-ISE-00-15 and should be submitted by January 18, 2001.

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. 34-43507A; File No. SR-NASD-98-11]

### Self-Regulatory Organizations; Extension of Comment Period for Proposed Rule Change and Amendment Nos. 1, 2 and 3 by the National Association of Securities Dealers, Inc. Concerning Related Performance Information

December 20, 2000.

This proposed rule change was originally published with a 45-day comment period.<sup>1</sup> Because the original notice contained a typographical error in the proposed new rule language, the Commission has decided to extend the comment period until January 18, 2001.

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

<sup>1</sup> Securities Exchange Act Release No. 43507 (November 2, 2000) 65 FR 67025 (November 8, 2000).

The correction to the original document is being published simultaneously elsewhere in today's issue of the **Federal Register**.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43726; File No. SR-NYSE-00-57]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. to Implement a New Trading Floor Regulatory Fee

December 14, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice hereby is given that on December 13, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 Exchange. 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

The NYSE proposes to implement a new Trading Floor Regulatory Fee to be charged to members doing business on the trading floor. Each specialist firm would contribute according to the number of memberships associated with the firm. Other floor members would be assessed an annual fee, subject to a maximum fee per firm. The proposed rule change is available at the principal office of the NYSE 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, the NYSE included statements concerning the purpose of and basis for the

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

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

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