

Agency Order would be executed against the book if there is sufficient size available at the bid or offer to execute the entire size of the Agency Order.<sup>10</sup> If there is insufficient size to execute the entire Agency Order, the proposed cross would not be executed and would be cancelled. Similarly, the transaction would be cancelled if the execution price would be inferior to the BBO on the Exchange.

The proposed rule also would require members to deliver to customers a written document describing the terms and conditions of the Solicited Order Mechanism prior to executing Agency Orders using the Solicited Order Mechanism. Such written document would be required to be in a form approved by the Exchange.

Finally, the proposed rule change specifies in new Supplemental Material to Rule 716 that members would be prohibited from using the Solicited Order Mechanism to circumvent Rule 717(d) limiting principal transactions. The proposed rule change also adds a reference to the Solicited Order Mechanism in the Supplemental Material to Rule 400 (Just and Equitable Principles of Trade) that prohibits anticipatory hedging activities prior to the entry of an order on the Exchange.

## 2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under section 6(b)(5) of the Act<sup>11</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 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. The Exchange states that the implementation of the Solicited Order Mechanism will allow the Exchange to better compete for solicited transactions, while providing an opportunity for price improvement for Agency Orders and assuring that public customers on the book are protected.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>10</sup> When the Agency Order is executed at an improved price or at the proposed execution price against the book, Public Customer orders are given priority in the execution, and then all other non-professional interest at the same price would participate pro-rata based on size.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

The proposed rule change will allow the Exchange to better compete for solicited transactions.

### *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, 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](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-ISE-2001-22. 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 the filing will also be

available for inspection and copying at the principal offices of the ISE. All submissions should refer to File No. SR-ISE-2001-22 and should be submitted by February 26, 2004.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04-2329 Filed 2-4-04; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49149; File No. SR-ISE-2004-02]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. Relating to the Extension of the Pilot Program for Quotation Spreads**

January 29, 2004.

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 January 22, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the ISE. The proposed rule change has been filed by the ISE under Rule 19b-4(f)(6) of the Act.<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 ISE proposes to extend until March 31, 2004, a pilot program permitting the allowable quotation spread for options on up to 50 equity securities to be \$5, regardless of the price of the bid ("Pilot Program"). The ISE proposes no substantive changes to the Pilot Program other than extending its operation through March 31, 2004. Pursuant to Rule 19b-4(f)(6) under the Act, the ISE requests that the Commission waive the 30-day pre-operative requirement contained in Rule 19b-4(f)(6)(iii).<sup>4</sup>

<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> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

## 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's rules contain maximum quotation spread requirements that vary from \$.25 to \$1.00, depending on the price of the option. On March 19, 2003, the Commission approved a proposal to amend Supplementary Material .01 to ISE Rule 803, "Obligations of Market Makers," to establish a six-month Pilot Program in which the allowable quotation spread for options on up to 50 underlying equity securities would be \$5, regardless of the price of the bid.<sup>5</sup> The six-month period expired on September 19, 2003, and the Pilot Program was extended through January 31, 2004.<sup>6</sup> As required by the Pilot Program Approval Order, the ISE has submitted to the Commission a report detailing the ISE's experience with the Pilot Program.

The ISE believes that the Pilot Program has been successful, and the ISE has filed a proposal with the Commission to make the quote spread Pilot Program permanent and to apply it to all ISE listed equity options.<sup>7</sup> The purpose of the current proposal is to extend the Pilot Program in its present form until March 31, 2004, while the Commission reviews the ISE's Pilot Program report and considers the ISE's proposal to make the Pilot Program permanent.

#### 2. Statutory Basis

According to the ISE, the statutory basis for the proposal is the requirement under section 6(b)(5) of the Act<sup>8</sup> that a

national securities exchange have rules that are 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.

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

The ISE does not believe that the proposed rule change imposes any burden on competition that is 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

The ISE has not solicited, and does not intend to solicit, comments on the proposed rule change. The ISE has not received any unsolicited written comments from members or other interested persons.

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

The ISE has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup> Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE has requested that the Commission waive the 30-day operative delay to prevent a lapse in the operation of the Pilot Program.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest

because it will permit the Pilot Program to continue without interruption through March 31, 2004. For this reason, the Commission designates the proposal to be operative upon filing with the Commission.<sup>12</sup>

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 it 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-ISE-2004-02. The file number should be included on the subject line if e-mail is used. To help the Commission process and review 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 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 ISE. All submissions should refer to File No. SR-ISE-2004-02 and should be submitted by February 26, 2004.

<sup>5</sup> See Securities Exchange Act Release No. 47532, 68 FR 14728 (March 26, 2003) (order approving File No. SR-ISE-2001-15) ("Pilot Program Approval Order").

<sup>6</sup> See Securities Exchange Act Release No. 48514 (September 22, 2003), 68 FR 55685 (September 26, 2003) (notice of filing and immediate effectiveness of File No. SR-ISE-2003-21).

<sup>7</sup> See File No. SR-ISE-2003-22.

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> The ISE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>12</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04-2336 Filed 2-4-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49147; File No. SR-ISE-2003-32]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc. Relating to a Fee Reduction and Fee Cap

January 29, 2004.

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. On January 2, 2004, the ISE filed 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, as amended, from interested persons.

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

ISE is proposing, on a pilot basis from December 1, 2003 through May 31, 2004, a reduction in and a cap on execution fees, and a cap on comparison fees for options on the Nasdaq 100 Index Tracking Stock<sup>sm</sup> ("QQQ").

#### 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. 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 is proposing to amend its Schedule of Fees to impose, on a pilot basis through May 31, 2004, both a reduction in and a cap on execution fees, and a cap on comparison fees for QQQ options. Specifically, any member with monthly average daily trading volume ("ADV") of 8,000 contracts in QQQ options would receive a \$.10 discount from the standard execution fees (excluding surcharge fees) for contracts traded above that amount, up to ADV of 10,000 contracts. For contracts in QQQ options traded in excess of 10,000 ADV for a month, the Exchange will waive all execution fees (excluding surcharge fees) and comparison fees. Current ISE execution fees (excluding surcharge fees) range from \$.21 to \$.12 a contract, depending on the exchange's trading volume; the comparison fee is \$.03 a contract. The proposed fee changes are intended to increase the Exchange's competitiveness in trading the QQQ options.

##### 2. Basis

The ISE believes that the proposal is consistent with section 6(b) of the Act,<sup>4</sup> and in particular, with the requirements of section 6(b)(4) of the Act,<sup>5</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

#### 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

The ISE has neither solicited nor received written comments on the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to section

19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> thereunder, in that it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing. At any time within 60 days of the filing of Amendment No. 1 to 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.<sup>8</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, 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-ISE-2003-32. 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of ISE. All submissions should refer to file number SR-ISE-2003-32 and should be submitted by February 26, 2004.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 19b-4(f)(2).

<sup>8</sup> For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on January 2, 2004, the date on which the Commission received Amendment No. 1.

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

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

<sup>3</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 2, 2004 ("Amendment No. 1"). Amendment No. 1 replaces the original proposal in its entirety.

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).