

In applying the hybrid processing to excess credits, the Operations Department, in consultation with the Credit Risk Department, would determine whether it would be appropriate to pass through the excess credit to the repo broker. To the extent that GSD did not pass through to the broker all or a portion of its calculated excess credit, GSD would calculate an interest amount tied to the rate of interest earned by GSD on its overnight cash investment on such unpaid excess credit and pay this interest amount to the repo broker on the subsequent business day.

The proposed rule change would require some manual adjustments when the hybrid approach is used, but these instances will infrequently occur and would not rise to the complexity of the current process.

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will enhance FICC's risk management strategy with regard to the daily funds-only settlement process.

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

FICC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

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

Written comments relating to the proposed rule change have not yet been solicited nor received. FICC will notify the Commission of any written comments received by FICC.

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

Within thirty five 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 ninety 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 the proposed rule change or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

where any non-submission by one counterparty versus a repo broker exceeds \$1 billion.

### **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-FICC-2003-06. 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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of FICC and on FICC's Web site at [www.ficc.com](http://www.ficc.com). All submissions should refer to the File No. SR-FICC-2003-06 and should be submitted by March 15, 2004.

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. 34-49251; File No. SR-ISE-2003-37]

#### **Self-Regulatory Organizations; Order Approving Proposed Rule Change by the International Securities Exchange, Inc. To Amend the Procedures for Executing Stock-Option Orders Under ISE Rule 722**

February 13, 2004.

#### **I. Introduction**

On December 18, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") 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 revise the procedures for executing stock-option orders by: (1) Automating the transmission of the stock leg(s) of a stock-option combination order to a broker-dealer on behalf of members; and (2) allowing for the pricing of the options leg(s) of stock-option combination orders in penny increments. The proposed rule change was published for comment in the **Federal Register** on January 13, 2004.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

#### **II. Description of the Proposal**

Under the ISE's current procedure for executing stock-option orders, each party to a stock-option trade must take steps to immediately transmit the stock leg(s) of a stock-option order to a non-ISE market for execution. The ISE has proposed to amend Supplementary Material .01 to ISE Rule 722 and to adopt Supplementary Material .02 to ISE Rule 722 to provide an automated process for executing stock-option orders. Under the automated process, an ISE member will be able to elect to have the ISE electronically communicate the stock leg(s) of a stock-option order to a designated broker-dealer for execution. To participate in the automated process, an ISE member must enter into a customer agreement with the designated broker-dealer. The ISE member will be responsible for fees and other charges the designated broker-dealer imposes for executing the trades, and the ISE has stated that it will not receive any fees

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

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

<sup>3</sup> See Securities Exchange Act Release No. 49023 (January 5, 2004), 69 FR 2030.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

related to the stock portion of the stock-option trade.

After the stock leg(s) of the orders are communicated to the designated broker-dealer for execution, the designated broker-dealer will be responsible for determining whether the orders may be executed in accordance with all of the rules applicable to the execution of equity orders, including compliance with the applicable short sale, trade-through, and trade reporting rules. As with the current procedure, the stock-option order will not be executed on the ISE if the broker-dealer cannot execute the equity orders at the designated price. ISE members will be able to continue using the current manual procedure for executing stock-option orders if they choose to do so.

Because the options leg of a stock-option order must be executed in \$.05 increments (for options trading below \$3) and \$10 increments (for options trading at or above \$3),<sup>4</sup> while the stock leg(s) of a stock-option order trade in \$.01 increments, the ISE notes that it is not always possible to achieve the desired net price for stock-option orders. Accordingly, the ISE has proposed to amend ISE Rule 722(b)(1) to permit the execution of the option leg(s) of stock-option orders in one-cent increments. The options leg(s) of a stock option order will continue to be reported through the Options Price Reporting Authority ("OPRA") with a code indicating that the trade was part of a complex order. The trade will be reported at its actual price.

### III. Discussion

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>5</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the Exchange's rules 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. The Commission believes that permitting the execution of the options leg(s) of a stock-option order in one-cent increments and allowing ISE members to elect to have the ISE

electronically communicate the stock leg(s) of a stock-option order to a designated broker-dealer for execution should facilitate the execution of stock-option orders. The Commission notes that an ISE member that elects to have the ISE electronically communicate the stock leg(s) of a stock-option order to a designated broker-dealer must enter into a customer agreement with the designated broker-dealer. In addition, the Commission notes that the ISE's current procedure for executing stock-option orders will continue to be available to ISE members that choose not to use the automated procedure.

### IV. Conclusion

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

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-ISE-2003-37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49247; File No. SR-NASD-2004-029]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Dual Listing

February 13, 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 February 12, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq filed the proposed rule change pursuant to section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and

Rule 19b-4(f)(1) thereunder,<sup>4</sup> 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 from interested persons.

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

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in *brackets*.

#### 4400. NASDAQ National Market—Issuer Designation Requirements

Pursuant to SEC Rule 11Aa2-1, those securities for which transaction reporting is required by an effective transaction reporting plan are designated as national market system securities. A transaction reporting plan has been filed with the Commission under which securities satisfying the requirements of this Rule 4400 Series are covered by the transaction reporting plan and transactions in such securities are subject to the transaction reporting provisions of the Rule 4630 Series.

#### IM-4400 *Impact of Non-Designation of Dually Listed Securities*

*To foster competition among markets and further the development of the national market system following the repeal of NYSE Rule 500, Nasdaq shall permit issuers whose securities are listed on the New York Stock Exchange to apply also to list those securities on the Nasdaq National Market ("NNM"). Nasdaq shall make an independent determination of whether such issuers satisfy all applicable listing requirements and shall require issuers to enter into a dual listing agreement with Nasdaq.*

*While Nasdaq shall certify such dually listed securities for listing on the NNM, Nasdaq shall not exercise its authority under the NASD Rule 4400 Series separately to designate or register such dually listed securities as Nasdaq national market system securities within the meaning of Section 11A of the Securities Exchange Act of 1934 or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service ("CQS") and Consolidated Tape Association national market system*

<sup>4</sup> See ISE Rule 710.

<sup>5</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).