

maintain narrow and competitive quotation spreads. Consequently, the Commission believes that the ISE's proposal to establish a \$5 maximum spread on a pilot basis in 50 options classes is consistent with the Act.

The ISE is implementing the proposal on a six-month pilot basis. Prior to the conclusion of the pilot program, the ISE has agreed to submit a report to the Commission assessing the operation of the pilot program and, in particular, the quality of the quotations for the Pilot Options.<sup>7</sup> The report will include: (1) The identity of the Pilot Options; (2) information concerning the frequency with which quotations for the Pilot Options were narrower than the current quote spread parameters for options at that price, at the current quote spread parameters for options at that price, and wider than the current quote spread parameters for options at that price; (3) the average quotation spread for each Pilot Option during each month of the pilot program; (4) the widest and narrowest quote spreads for each Pilot Option during each month of the pilot program; (5) any problems that developed during the pilot program and how the ISE addressed those problems; and (6) any additional information that would help the Commission assess the pilot program.

#### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal 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>8</sup> that the proposed rule change (SR-ISE-2001-15) is approved as a six-month pilot program to expire on September 19, 2003.

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. 34-47538; File No. SR-ISE-2003-09]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Limiting the Liability of Index Licensors for Options on Fund Shares

March 19, 2003.

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 is hereby given that on March 12, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") submitted to 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. 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 is proposing to limit the liability of index licensors who grant the ISE a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. The text of the proposed rule change appears below. Proposed new language is *italicized*.

\* \* \* \* \*

*Rule 507. Limitation on the Liability of Index Licensors for Options on Fund Shares.*

*(a) The term "index licensor" as used in this Rule refers to any entity that grants the Exchange a license to use one or more indexes or portfolios in connection with the trading of options on Fund Shares (as defined in rule 502(h)).*

*(b) No index licensor with respect to any index or portfolio underlying an option on Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Fund Shares based thereon or for any other purpose. The index licensor shall obtain information for inclusion in, or for use in the calculation of, such index or*

*portfolio from sources it believes to be reliable, but the index licensor does not guarantee the accuracy or completeness of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or related thereto. The index licensor hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to any such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Fund Shares based thereon. The index licensor shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Fund Shares based thereon, or arising out of any errors or delays in calculating or disseminating such index or portfolio.*

\* \* \* \* \*

#### 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 limit the liability of index licensors who grant the ISE a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. The ISE recently entered into a license agreement with an index licensor, and that agreement calls for the ISE to adopt a rule limiting the index licensor's liability. This proposed rule is

<sup>7</sup> Telephone conversation between Mike Simon, Senior Vice President and General Counsel, ISE, and Yvonne Fraticelli, Special Counsel, Division, Commission, on March 19, 2003.

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