

Commentary .03 which sets forth the participation percentages allocated to the specialist and registered options traders based upon the number of registered options traders participating on the trade.

In addition, the Exchange proposes to codify in Rule 933(d) its procedures regarding the allocation of Auto-Ex executed options trades¹¹, which are automatically allocated on a rotating basis to the specialist and to each trader that has signed on to Auto-Ex¹². Auto-Ex trades of ten contracts or fewer would be allocated to each Auto-Ex participant as set forth below.

If an Auto-Ex trade is greater than ten contracts, the Auto-Ex system divides the execution into lots or ten or fewer contracts and allocates a lot to each Auto-Ex participant¹³. Each lot is considered a separate trade for purposes of allocating trades within Auto-Ex. The rotation is designed to provide that the allocation of Auto-Ex trades between the specialist and traders signed on to Auto-Ex in a given option class is as follows:

| Number of trades signed on to auto-ex | Approximate number of trades allocated to the specialist throughout the day (percent) | Approximate number of traders allocated to the traders signed on to auto-ex throughout the day (as a group) |
|---------------------------------------|---|---|
| 1 | 60 | 40 |
| 2-4 | 40 | 60 |
| 5-7 | 30 | 70 |
| 8-15 | 25 | 75 |
| 16 or more | 20 | 80 |

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act¹⁴ in general and furthers the objectives of Section 6(b)(5) of the Act¹⁵ in particular in that 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, as amended, 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 or the amendments.

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, 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. 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 Amex. All submissions should refer to File No. SR-Amex-00-30 and should be submitted by February 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Fee Changes

January 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on January 9, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") 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 self-regulatory organization. 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 to establish a \$.10 surcharge for non-public customer transactions³ in options on Select Sector SPDR Funds.

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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

¹⁶ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Telephone conversation between Joseph W. Ferraro, Assistant General Counsel, ISE, and Jennifer Colihan, Special Counsel, Division of Market Regulation ("Division"), Commission, January 16, 2003.

¹¹ Auto-Ex automatically executes public customer market and marketable limit orders of a minimum of 10 and a maximum of 500 option contracts or less. Both the specialist and registered options traders are contra-parties to the trades executed on the Auto-Ex system.

¹² At the start of each trading day, the order in which trades are allocated to the specialist and traders signed on to Auto-Ex is randomly determined.

¹³ For example, an option class that allows up to 50 contracts to be executed through Auto-Ex would have a trade of 25 contracts divided into lots of 10, 10 and 5.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).