

organizations that are largely owned and managed by individual seat owners, were no longer able to satisfy the provisions of the Rule despite the fact that their seat ownerships previously complied and were originally intended to count towards compliance with the Rule when it was originally proposed.

As proposed, the revised rule would allow an individual seat owner who has a significant ownership and profit interest in a DPM organization (*i.e.*, at least 45%), and who is actively involved in the management of the DPM operation and maintains a constant presence on the trading floor as a DPM designee, to use his seat to comply with the requirements of the Rule. CBOE notes that, for purposes of the proposed rule, a "constant presence" would not mean every minute of every trading day, but rather that the individual is primarily working on the trading floor as a DPM designee.

2. Statutory Basis

The Exchange believes the proposed rule change will contribute toward assuring that DPMs have a long-term commitment to the Exchange. Accordingly, the CBOE believes it is consistent with section 6(b) of the Act,⁶ in general, and further the objectives of section 6(b)(5) in particular,⁷ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

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

This proposed rule change does not impose 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

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. 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 CBOE. All submissions should refer to the file number in the caption above and should be submitted by October 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-24756 Filed 9-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48530; File No. SR-ISE-2003-15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, by the International Securities Exchange, Inc. Relating to the Limitation of Liability of the Options Clearing Corporation to Exchange Members

September 24, 2003.

On May 29, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section

19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to provide that the Options Clearing Corporation ("OCC") will have no liability to ISE Members, with respect to the use, non-use, or inability to use the Options Intermarket Linkage ("Linkage"). The ISE filed Amendment No. 1 to the proposal on July 30, 2003.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on August 19, 2003.⁴ The Commission received no comments on the proposed rule change, as amended. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁵ and, in particular, the requirements of section 6(b) of the Act⁶ and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,⁷ which requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 notes that the ISE, along with the other exchanges that are Participants in the Linkage Plan, entered into an agreement with the OCC, which operates the central core or "hub" to and from which all Linkage orders are routed.⁸ In the Agreement, the ISE committed to file a proposed rule change with the Commission that would limit the liability of the OCC to ISE

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mike Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 30, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a technical correction to clarify that the proposed rule change would establish ISE Rule 1905.

⁴ Securities Exchange Act Release No. 48321 (August 12, 2003), 68 FR 49829.

⁵ In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ Linkage Project and Facilities Management Agreement ("the Agreement") (January 30, 2003).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(12).