

orders are more actively represented in the opening.

Lastly, the third condition required CBOE to study issues related to the Commission's concerns and report back to the Commission. In response, CBOE submitted a report to the Commission addressing each of the Commission's concerns. The Commission believes that CBOE has satisfied this condition.

In conclusion, the Commission notes that ROS has successfully operated since 1999 and since that time, has facilitated expedited openings of options classes on CBOE. The Commission hereby approves the ROS pilot on a permanent basis.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, 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,¹⁸ that the proposed rule change (SR-CBOE-2002-55) and Amendment No. 1 thereto, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48539; File No. SR-ISE-2003-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by International Securities Exchange, Inc., Relating to Market Maker Obligations

September 25, 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 February 19, 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 self-regulatory organization. On September 15, 2003, the Exchange amended the

proposed rule change.³ 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

The Exchange is proposing to amend ISE Rule 803 to clarify the obligations of the ISE's Primary Market Makers ("PMMs") if they receive orders from persons who are not brokers or dealers in securities ("Public Customers") when there is a better price available on another exchange. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].⁴

* * * * *

Rule 803. Obligations of Market Makers

* * * * *

(c) Primary Market Makers. In addition to the obligations contained in this Rule for market makers generally, for options classes to which a market maker is the appointed Primary Market Maker, it shall have the responsibility to:

(1) Assure that each disseminated market quotation in each series of options is for a minimum of ten (10) contracts, or such other minimum number as the Exchange shall set from time to time. When the best bid (offer) on the Exchange represents one or more Public Customer Orders for less than a total of ten (10) contracts at that price, the Primary Market Maker is obligated to buy (sell) at that price the number of contracts needed to make the disseminated quote firm for ten (10) contracts.

(2) *As soon as practical*, [A]address Public Customer Orders that are not automatically executed because there is a displayed bid or offer on another

³ See letter from Michael J. Simon, Senior Vice President and General Counsel, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 12, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposed rule change to be more specific in the obligations of Primary Market Makers in handling customer orders.

⁴ At the request of the Exchange, Commission staff has revised the text of the proposed rule change set forth in Amendment No. 1 to (i) correct a typographical error; and (ii) make a non-substantive technical change correcting the numbering of the Supplementary Material to Rule 803. The Exchange plans to submit an amendment to the Commission to make these technical corrections. Telephone conversation among Michael J. Simon, Senior Vice President and General Counsel, Exchange, Jennifer Colihan, Special Counsel, Division, Commission, and Ann E. Leddy, Attorney, Division, Commission on September 24, 2003.

exchange trading the same options contract that is better than the best bid or offer on the Exchange, *either (i) by executing a Public Customer Order at a price that matches the better price displayed or (ii) by sending to any other exchange(s) displaying a better price a Linkage Order(s) according to the Rules contained in Chapter 19.*

* * * * *

Supplementary Material to Rule 803

.01 No change.

.02 *A Primary Market Maker must act with due diligence in handling orders of Public Customers and must accord priority to such orders addressed pursuant to paragraph (c) of this Rule over the Primary Market Maker's principal orders.*

* * * * *

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the obligations of PMMs when they receive orders from Public Customers and there is a better price available on another exchange. When the ISE receives a Public Customer order in this situation, the ISE does not provide immediate execution of that order. Rather, the PMM is informed that the order is pending, and ISE Rule 803 requires that the PMM "address" such order. In practice, the PMM historically either has executed the order at the better price or has attempted to use whatever means the PMM had available to access the better market on behalf of the customer.

On January 31, 2003, the intermarket linkage ("Linkage") between the ISE and the other options exchanges became operational. Among other things, the Linkage permits PMMs to send Principal Acting as Agent Orders ("P/A Orders") to other exchanges. This is a

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.