

(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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-2001-04 and should be submitted by October 27, 2003.

V. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 3 on a Pilot Basis

After careful review, the Commission finds that proposed paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that these proposed rules are consistent with the requirements of Section 6(b)(5)¹⁷ of the Act, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principals 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 considers that in most circumstances trades that are executed between parties should be honored. On rare occasions where there has been a documented Exchange

system disruption or malfunction, the execution of a trade under such circumstances indicates that an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether such an "obvious error" has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Commission believes that the CBOE's proposed rule relating to an obvious error resulting from a verifiable Exchange system disruptions and malfunctions establishes such specific and objective criteria for determining when a trade may involve an "obvious error" and thus may be adjusted or nullified. The CBOE has specified that trading officials may adjust or bust transactions resulting from a verifiable disruption or malfunction in the use or operation of any automated Exchange quotation, dissemination, execution, or communication system. The Commission also believes that the proposal establishes specific and objective procedures governing the adjustment or nullification of such trades.

The Commission finds good cause, pursuant to Section 6(b)(5)¹⁸ and Section 19(b)¹⁹ of the Act, to accelerate approval of paragraphs (a)(3), (b), (c), (d), and (e) of the proposed CBOE Rule 6.25 on a pilot basis, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the provisions of the proposal regarding verifiable disruptions or malfunctions of Exchange systems; procedures for reviewing transactions; adjustments of obvious error trades; review by the appeals committee; and negotiated trade nullification, are substantially similar to proposed rule changes submitted by the International Securities Exchange, Inc. and Pacific Exchange, Inc., as well as the rules for CBOEdirect, all of which the Commission has approved.²⁰ Furthermore, pursuant to Amendment No. 3 to the proposed rule change, these provisions of the proposed rule change are in effect on a pilot basis until December 3, 2003. The Commission

finds, therefore, that granting partial accelerated approval of the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**, is appropriate and consistent with Section 6(b)(5)²¹ of the Act.

VI. Conclusion

For the reasons discussed above, the Commission finds that paragraphs (a)(3), (b), (c), (d), and (e) of CBOE Rule 6.25, as set forth in the proposed rule change, as amended, are consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²² that paragraphs (a)(3), (b), (c), (d), and (e) of CBOE Rule 6.25, as set forth in the proposed rule change, as amended, be and hereby are approved on an accelerated basis, on a pilot basis until December 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-25263 Filed 10-3-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48568; File No. SR-ISE-2003-23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc., Relating to Payment-for-Order-Flow Fees

September 30, 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 September 24, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the Exchange has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78s(b).

²⁰ See Securities Exchange Act Release No. 48538 (September 25, 2003) (SR-PCX-2002-01); Securities Exchange Act Release No. 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (SR-ISE-2003-10); and Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (SR-CBOE-00-55).

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.