

Exchange believes that it is appropriate to replace the current Exchange approval process with a notice requirement only where the employing member is designated to the CBOE for financial oversight.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general and furthers the objectives of Section 6(b)(5)<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of 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 proposal 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 such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. CBOE-2003-02 and should be submitted by February 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47289; File No. SR-ISE-2002-28]

### **Self-Regulatory Organizations; International Securities Exchange LLC; Order Granting Approval to Proposed Rule Change To Increase the Number of Authorized Shares of Class B Common Stock, Series B-2 From 100 to 130**

January 30, 2003.

On November 21, 2002, the International Securities Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to increase the number of authorized shares of Class B Common Stock, Series B-2 from 100 to 130. This increase would result in the creation of 30 additional Competitive Market Maker ("CMM") Memberships.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on December 27, 2002.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

applicable to a national securities exchange,<sup>5</sup> and in particular, the requirements of Section 6 of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds that the proposal to increase the number of authorized shares of Class B Common Stock, Series B-2 from 100 to 130, resulting in the creation of 30 additional CMM Memberships, is consistent with Section 6(b)(5) of the Act<sup>7</sup> because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, 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.

Specifically, the Commission believes that the sale of 30 additional CMM Memberships may increase the depth and liquidity of the Exchange's market. It may also provide more broker-dealers with an opportunity to participate on the Exchange. The Exchange also represented that it has carefully evaluated its systems capacity and believes that it has more than sufficient capacity to handle the increased number of CMM Members without any adverse effects. Furthermore, the Exchange noted that it would require a purchaser of one of these new Memberships that is not already a CMM to meet all Exchange requirements currently applicable to CMM Members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-ISE-2002-28) be, and it hereby is, approved.

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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<sup>7</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.

<sup>3</sup> CMMs are market makers that compete with a Primary Market Maker and other CMMs to provide liquidity on the Exchange.

<sup>4</sup> See Securities Exchange Act Release No. 47035 (December 19, 2002), 67 FR 79202.

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

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).