

Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-DTC-2003-12. This file number should be included on the subject line if e-mail is used to help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of DTC. Copies of the proposed rule change and all subsequent amendments are also available at www.dtc.org/impNtc/mor/index.html. All submissions should refer to File No. SR-DTC-2003-12 and should be submitted by December 10, 2003.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48756; File No. SR-ISE-2003-03]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the International Securities Exchange, Inc., Relating to Market Maker Obligations

November 7, 2003.

I. Introduction

On February 19, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with 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 amend ISE Rule 803 to clarify the obligations of the ISE's Primary Market Makers ("PMMs") when handling orders from persons who are not brokers or dealers in securities ("Public Customers") when there is a better price available on another exchange. On September 15, 2003, the Exchange amended the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on October 1, 2003.⁴ On October 1, 2003, the Exchange amended the proposed rule change.⁵

The Commission received no comments on the proposal. This order approves the proposed rule change, as amended. In addition, the order approves, on an accelerated basis, Amendment No. 2.

II. Discussion

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 exchange.⁶ In particular, the Commission believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ 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 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.

The Commission finds that the proposed rule change, as amended, is reasonably designed to accomplish these ends because it clarifies the obligations of a PMM when addressing a Public Customer order when there is a better price displayed by another market. Given the intermarket linkage between the ISE and the other options exchanges ("Linkage"), this clarity should provide guidance to PMMs in the satisfaction of their best execution obligations with respect to Public Customer orders.

The Commission notes that the proposed rule change, as amended, would require specifically that, upon receiving a Public Customer order, a PMM must, as soon as practical, either execute the order at the best available price or send a Principal Acting as Agent Order through Linkage to obtain the best price for the order. The proposed rule change, as amended, also would require that a PMM must act with due diligence in handling Public Customer orders and must accord such orders priority over the PMM's principal orders. The Commission believes that the proposed rule change, as amended, should protect investors and the public interest by providing additional safeguards designed to ensure that PMMs handle Public Customer orders appropriately. Moreover, the Commission believes that the proposed rule change, as amended, should enhance competition and increase liquidity in the options markets by affirmatively requiring that PMMs react to an incoming order as soon as practical by either executing the order or routing it through Linkage.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-ISE-2003-03), as amended, be, and it hereby is, approved.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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").

⁴ See Securities Exchange Act Release No. 48539 (September 25, 2003), 68 FR 56660.

⁵ See letter from Michael J. Simon, Senior Vice President and General Counsel, Exchange, to Nancy Sanow, Assistant Director, Division, Commission, dated September 30, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange proposed to amend the proposed rule change to correct a typographical error in the rule text and to renumber the new Supplementary Material. The Commission notes that the technical changes to the proposed rule change, as amended, contained in Amendment No. 2 were included in the notice published for public comment. See note 4, Securities Exchange Act Release No. 48539 (September 25, 2003), 68 FR 56660 (October 1, 2003) (SR-ISE-2003-03).

⁶ In approving the proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).