

Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to increase the number of authorized shares of Class B Common Stock, Series B-2 from 130 to 160. This increase would result in the creation of 30 additional Competitive Market Maker ("CMM") Memberships. The text of the proposed rule change is available at the Office of the Secretary, the ISE, and at the Commission.

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 ISE 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 ISE 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 ISE proposes to increase the number of authorized shares of Class B Common Stock, Series B-2 from 130 to 160. This increase would result in the creation of 30 additional CMM Memberships.³ CMMs are market makers that compete with a Primary Market Maker ("PMM") and other CMMs to provide liquidity on the Exchange. The Exchange has allocated its listed options into 10 groups or "Bins," and currently assigns one PMM and 13 CMMs to each Bin. Under this proposal, the Exchange will add three additional CMMs to each Bin.

The Board of Directors ("Board") has established a committee of three directors to sell the additional Memberships, identifying both the purchasers of these Memberships and the price at which these Memberships would be sold. The Board's intent is that the new Memberships be sold to broker-

dealers that both would provide market making expertise and liquidity to the Exchange and that have significant customer order flow to send to the Exchange. There are no restrictions or limitations on the price at which the Memberships can be sold. The Exchange would distribute all net proceeds received from these sales to holders of Class A Common Stock by way of a dividend.

The ISE believes that the sale of 30 additional CMM Memberships would increase the depth and liquidity of the Exchange's market. It also would provide more broker-dealers with an opportunity to participate on the Exchange. The Exchange has carefully evaluated its system capacity and believes that it has more than sufficient capacity to be able to handle the increased number of CMM Members without any adverse effects. Finally, the Exchange would require that a purchaser of one of these new Memberships that is not already a CMM to meet all Exchange requirements currently applicable to CMM Members.⁴

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act⁵ in general, and furthers the objectives of section 6(b)(5) of the Act⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles 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 Exchange believes that the sale of 30 additional CMM Memberships would increase the depth and liquidity of the Exchange's market and provide more broker-dealers with an opportunity to participate on the Exchange as market makers.

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

This proposed rule change does not impose any burden on competition. The Exchange believes that the proposal will increase competition on the Exchange by increasing the number of market makers.

⁴ The ISE states that this proposed rule change is the same as a previous proposal to increase the number of Exchange CMM Memberships approved by the Commission. See Securities Exchange Act Release No. 47289 (January 30, 2003), 68 FR 5947 (February 5, 2003) (order approving SR-ISE-2002-28).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 Exchange 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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-ISE-2003-38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-2003-38 and should be submitted by January 20, 2004.

³ ISE Rule 100(19) defines "Membership" as the "trading privileges associated with a share of Class B Common Stock."