

maintain narrow and competitive quotation spreads. Consequently, the Commission believes that the ISE's proposal to establish a \$5 maximum spread on a pilot basis in 50 options classes is consistent with the Act.

The ISE is implementing the proposal on a six-month pilot basis. Prior to the conclusion of the pilot program, the ISE has agreed to submit a report to the Commission assessing the operation of the pilot program and, in particular, the quality of the quotations for the Pilot Options.⁷ The report will include: (1) The identity of the Pilot Options; (2) information concerning the frequency with which quotations for the Pilot Options were narrower than the current quote spread parameters for options at that price, at the current quote spread parameters for options at that price, and wider than the current quote spread parameters for options at that price; (3) the average quotation spread for each Pilot Option during each month of the pilot program; (4) the widest and narrowest quote spreads for each Pilot Option during each month of the pilot program; (5) any problems that developed during the pilot program and how the ISE addressed those problems; and (6) any additional information that would help the Commission assess the pilot program.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal 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,⁸ that the proposed rule change (SR-ISE-2001-15) is approved as a six-month pilot program to expire on September 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47538; File No. SR-ISE-2003-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Limiting the Liability of Index Licensors for Options on Fund Shares

March 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4² thereunder, notice is hereby given that on March 12, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") submitted to 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 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 is proposing to limit the liability of index licensors who grant the ISE a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. The text of the proposed rule change appears below. Proposed new language is *italicized*.

* * * * *

Rule 507. Limitation on the Liability of Index Licensors for Options on Fund Shares.

(a) The term "index licensor" as used in this Rule refers to any entity that grants the Exchange a license to use one or more indexes or portfolios in connection with the trading of options on Fund Shares (as defined in rule 502(h)).

(b) No index licensor with respect to any index or portfolio underlying an option on Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Fund Shares based thereon or for any other purpose. The index licensor shall obtain information for inclusion in, or for use in the calculation of, such index or

portfolio from sources it believes to be reliable, but the index licensor does not guarantee the accuracy or completeness of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or related thereto. The index licensor hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to any such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Fund Shares based thereon. The index licensor shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Fund Shares based thereon, or arising out of any errors or delays in calculating or disseminating such index or portfolio.

* * * * *

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 limit the liability of index licensors who grant the ISE a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. The ISE recently entered into a license agreement with an index licensor, and that agreement calls for the ISE to adopt a rule limiting the index licensor's liability. This proposed rule is

⁷ Telephone conversation between Mike Simon, Senior Vice President and General Counsel, ISE, and Yvonne Fraticelli, Special Counsel, Division, Commission, on March 19, 2003.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

substantially similar to Chicago Board Options Exchange rule 6.15.³

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with section 6(b)(5) of the Act⁴ in that it is designed 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The ISE has not solicited, and does not intend to solicit, comments in connection with this proposed rule change. The ISE 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

The ISE has designated the foregoing rule change as effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days from the date of filing. In addition, the ISE provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date.⁵ Accordingly, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁶ and rule 19b-4(f)(6) thereunder.⁷ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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 the ISE. All submissions should refer to File No. SR-ISE-2003-09 and should be submitted by April 16, 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. 34-47530; File No. SR-NASD-2003-30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify SuperMontage Fees for NNMS Order Entry Firms

March 19, 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 March 3, 2003, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), 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 Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act³ and rule 19b-4(f)(2) thereunder,⁴ which renders the rule effective upon Commission receipt of this filing. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to modify the fees paid by NNMS Order Entry Firms (“OE Firms”) for certain order executions through Nasdaq's SuperMontage system. Nasdaq will implement the rule change on the later of: (i) April 1, 2003; or (ii) the date on which Nasdaq implements a change to its SuperMontage system that inhibits automatic matching of OE Firms' orders, as described in SR-NASD-2002-173.⁵

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 7010. System Services

(a) –(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

³ See Securities Exchange Act Release No. 45817 (April 24, 2002), 67 FR 21785 (May 1, 2002) (SR-CBOE-2002-19).

⁴ 15 U.S.C. 78f(b)(5).

⁵ As required under Securities Exchange Act rule 19b-4(f)(6)(iii), the ISE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the

filing date or such shorter period as designated by the Commission. See Prefiling Notice of Proposed Rule Change (SR-ISE-2003-09), dated February 25, 2003.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release No. 47301 (January 31, 2003), 68 FR 6236 (February 6, 2003) (SR-NASD-2002-173).