

organizations that are largely owned and managed by individual seat owners, were no longer able to satisfy the provisions of the Rule despite the fact that their seat ownerships previously complied and were originally intended to count towards compliance with the Rule when it was originally proposed.

As proposed, the revised rule would allow an individual seat owner who has a significant ownership and profit interest in a DPM organization (*i.e.*, at least 45%), and who is actively involved in the management of the DPM operation and maintains a constant presence on the trading floor as a DPM designee, to use his seat to comply with the requirements of the Rule. CBOE notes that, for purposes of the proposed rule, a "constant presence" would not mean every minute of every trading day, but rather that the individual is primarily working on the trading floor as a DPM designee.

2. Statutory Basis

The Exchange believes the proposed rule change will contribute toward assuring that DPMs have a long-term commitment to the Exchange. Accordingly, the CBOE believes it is consistent with section 6(b) of the Act,⁶ in general, and further the objectives of section 6(b)(5) in particular,⁷ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and 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

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 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. 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 the file number in the caption above and should be submitted by October 21, 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. 34-48530; File No. SR-ISE-2003-15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, by the International Securities Exchange, Inc. Relating to the Limitation of Liability of the Options Clearing Corporation to Exchange Members

September 24, 2003.

On May 29, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") submitted to 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 provide that the Options Clearing Corporation ("OCC") will have no liability to ISE Members, with respect to the use, non-use, or inability to use the Options Intermarket Linkage ("Linkage"). The ISE filed Amendment No. 1 to the proposal on July 30, 2003.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on August 19, 2003.⁴ The Commission received no comments on the proposed rule change, as amended. This order approves the proposed rule change, as amended.

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 exchange⁵ and, in particular, the requirements of section 6(b) of the Act⁶ and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,⁷ which requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulation, 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 notes that the ISE, along with the other exchanges that are Participants in the Linkage Plan, entered into an agreement with the OCC, which operates the central core or "hub" to and from which all Linkage orders are routed.⁸ In the Agreement, the ISE committed to file a proposed rule change with the Commission that would limit the liability of the OCC to ISE

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mike Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 30, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a technical correction to clarify that the proposed rule change would establish ISE Rule 1905.

⁴ Securities Exchange Act Release No. 48321 (August 12, 2003), 68 FR 49829.

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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ Linkage Project and Facilities Management Agreement ("the Agreement") (January 30, 2003).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(12).

Members. The Commission believes that this proposed rule change, as amended, should foster cooperation and promote a relationship between the ISE and the OCC that is conducive to the effective operation of the Linkage.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change, as amended, (File No. SR-ISE-2003-15) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48501; File No. SR-NASD-2003-128]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Establishing a Maximum ECN Access Fees in SuperMontage and Elimination of SuperMontage's Price/Time With Fee Consideration and Price/Size Execution Algorithms

September 17, 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 August 11, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On September 10, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.³ Nasdaq filed Amendment No. 2 to the proposed rule change on September 15, 2003.⁴ The

Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to amend NASD Rules 4623 and 4710 to: (1) establish a maximum level of quote/order access fees for Electronic Communications Networks ("ECNs") that elect to participate in Nasdaq's National Market Execution System ("NNMS" or "SuperMontage"); (2) eliminate SuperMontage's Price/Time with access fee consideration execution algorithm; and (3) eliminate SuperMontage's Price/Size execution algorithm. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

4623. Alternative Trading Systems

(a) No Change.

(b) An ATS or ECN that seeks to utilize the Nasdaq-provided means to comply with SEC Rule 301(b)(3), the ECN display alternatives, or to provide orders to Nasdaq voluntarily shall:

(1) through (5) No Change.

(6) not charge to broker-dealers that access the ATS or ECN through *The Nasdaq National Market Execution System (SuperMontage)* any fee that is inconsistent with the requirements of SEC Rule 301(b)(4) *or that exceeds \$0.003 per share.*

(c) No Change.

* * * * *

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (v) No Change.

(w) The term "NNMS Order Entry Firm" shall mean a member of the Association who is registered as an Order Entry Firm for purposes of participation in NNMS. *This term shall also include any Electronic Communications Network or Alternative Trading System that fails to meet all the requirements of Rule 4623. NNMS Order Entry Firms shall not charge any fee to a broker-dealer that accesses the NNMS Order Entry Firm's quote/order through NNMS.*

(x) through (jj) No Change.

* * * * *

Amendment No. 2, Nasdaq made technical corrections to its rule text.

4710. Participant Obligations in NNMS

(a) Registration—Upon the effectiveness of registration as a NNMS Market Maker, NNMS ECN, or NNMS Order Entry Firm, the NNMS Participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) Obligations For each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and NNMS Order Entry Firms, shall participate in the NNMS as follows:

(i) NNMS Market Makers, NNMS Auto-Ex ECNs, and NNMS Order Entry Firms to the extent they enter a Non-Attributable Quote/Order shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN.

(iii) UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 9, 2003, replacing Nasdaq's original Form 19b-4 filing in its entirety ("Amendment No. 1").

⁴ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 12, 2003 ("Amendment No. 2"). In