

Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

When the Exchange drafted the rules that would govern the allocation of customer orders on BOX with respect to the PIP, it took care to comply with the requirements of Section 11(a) of the Act⁷ and provide priority to public customer and non-member orders as well as adhere to a policy of not allowing a trade allocation guarantee of more than 40% of a facilitated order to the facilitator of that customer order. At that time, the Exchange believed it was necessary to allocate any guaranteed portion of the Primary Improvement Order⁸ based on what remained of the customer order at a given price level after all public customer and non-member orders had been executed, and drafted the BOX rules accordingly. It has since come to the attention of the Exchange that the rules of at least one other options exchange provide for the allocation of a guaranteed portion of comparable facilitated orders based on the original size of such facilitated orders, and not on the amount that remains at a price level after orders with priority have been executed.⁹ Members of the Exchange who participate on BOX requested that, in this regard, the BOX rules be modified to match those of other options exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and Section 6(b)(5) of the Act,¹¹ 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

The Exchange does not believe that the proposed rule change will 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 Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because, the foregoing proposed rule change (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 until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ At any time within 60 days of the filing of this proposed rule change,¹⁴ 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BSE-2004-36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-BSE-2004-36. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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. Copies of such filing also will be available for inspection and copying at the principal office of BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2004-36 and should be submitted on or before October 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50433; File No. SR-ISE-2004-18]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 Thereto To Amend the Market Maker Information Barrier Requirements Under ISE Rule 810

September 23, 2004.

On May 26, 2004, the International Securities Exchange, Inc. ("ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant

⁷ 15 U.S.C. 78k(a).

⁸ See Chapter V, Section 18(e) of the BOX Rules (definition of Primary Improvement Order).

⁹ See CBOE Rule 43.12A (Crossing Trades).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on September 10, 2004, the date BSE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

¹⁵ 17 CFR 200.30-3(a)(12).

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 810 by replacing the term "Chinese Wall" with the term, "Information Barrier;" and eliminating the requirement that a market maker maintain an Information Barrier in the limited circumstances where the sole extent to which such market maker or affiliated broker-dealer handles listed options orders as agent on behalf of Public Customers³ or broker-dealers consists of handling such orders pursuant to an exchange sponsored Directed Order Program. The proposal would also exempt a market maker from the Information Barrier requirements of ISE Rule 810 to the extent that the market maker or affiliated broker-dealer engages solely in proprietary trading and does not, under any circumstances, maintain customer accounts or solicit orders or funds from or on behalf of Public Customers or broker-dealers. The ISE also proposed a non-substantive clarification and certain non-substantive technical changes to ISE Rule 810(a). The ISE amended the proposal on August 6, 2004⁴ and August 13, 2004.⁵ The proposed rule change, as amended, was published for comment in the **Federal Register** on August 20, 2004.⁶ 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 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the ISE's rules be designed 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. Specifically, the Commission believes that the ISE's proposal to provide two additional exceptions from the Information Barrier requirements of ISE Rule 810 is consistent with the Act.

One exception would eliminate the requirement that a market maker maintain an Information Barrier in the limited circumstances where a market maker or affiliated broker-dealer engages solely in proprietary trading.⁹ The Commission believes it is reasonable to remove this requirement, since the market maker, or its affiliated broker-dealer, is not engaged in activities that would inappropriately benefit other business activities within the firm. However, the Commission notes that if in the future these market makers, or their affiliated broker-dealers, engage in other business activities, such as investment banking or market making in the stocks underlying the options in which it makes markets, or maintain customer accounts, or solicit or accept Public Customer orders, the Commission expects that the ISE will require compliance with the Information Barrier requirements of ISE Rule 810.

The second exception from ISE Rule 810 would not require an Information Barrier between an ISE Member's ISE market making operations and options market making operations on other exchanges where that Member handles orders as agent only for the accounts of affiliated entities or solely in an eligible Directed Order Program. Eligible Directed Order Programs must contain rules designed to ensure that market makers do not gain an advantage in handling Directed Orders because the information they possess may be used inappropriately for the benefit of the market maker receiving the Directed Order. For example, a market maker that chooses to accept Directed Orders must accept all orders directed to it, may not accept orders directly, other than through an exchange system, and the market maker may not handle such orders on a disclosed or discretionary basis. Therefore, the Commission believes that it is reasonable to not require an Information Barrier in such cases, since the rules of such Directed Order Programs should provide safeguards that should limit the misuse of information with regard to the terms of orders that affiliates of ISE members are handling as agent.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-ISE-2004-18), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50434; File No. SR-NASD-2004-134]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Multiple Market Participant Identifiers

September 23, 2004.

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 September 1, 2004, 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. The proposed rule change has been filed by Nasdaq as a "non-controversial" rule change pursuant to Rule 19b-4(f)(6) under the Act.³ 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

Nasdaq proposes to continue two pilot programs that provide market participants who execute transactions in Nasdaq and exchange-listed securities through its systems the ability to display trading interests using up to 10 individual Market Participant Identifiers ("MPIDs"). The text of the proposed rule change is below. Proposed new

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ ISE Rule 100(a)(32) defines "Public Customer" as "a person that is not a broker-dealer in securities." ISE Rule 100(a)(33) defines "Public Customer Order" as "an order for the account of a Public Customer."

⁴ On August 6, 2004, the ISE filed a Form 19b-4, which replaced the original filing in its entirety ("Amendment No. 1").

⁵ On August 13, 2004, the ISE filed a Form 19b-4, which replaced the original filing and Amendment No. 1 in their entirety ("Amendment No. 2").

⁶ See Securities Exchange Act Release No. 50197 (August 13, 2004), 69 FR 51735.

⁷ In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ The Commission notes that this section of the proposal is similar to Pacific Exchange, Inc. Rule 7.26. See Securities Exchange Act Release No. 49264 (February 17, 2004), 69 FR 8510 (February 24, 2004)(SR-PCX-2003-49).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).