

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-CBOE-2004-45 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-CBOE-2004-45. 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 Room. Copies of the filing also will be available for inspection and copying at the principal office of the CBOE. 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-CBOE-2004-45 and should be submitted on or before March 25, 2005.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-CBOE-2004-45), as amended, is approved, and that Amendment Nos. 3 and 5 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Margaret H. McFarland,

Deputy Secretary.

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²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51267; File No. SR-ISE-2005-11]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Listing Standards for Options on Narrow-Based Indexes

February 25, 2005.

Introduction

On February 16, 2005, 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 (the "Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposed rule change on an accelerated basis.

I. Description of the Proposal

The Exchange proposes to amend Rule 2002(b), Designation of the Index, which applies to the listing of index options. Specifically, the Exchange proposes to increase certain concentration limit listing standards in Rule 2002(b). Currently, under ISE Rule 2002(b), which contains generic listing standards pursuant to Rule 19b-4(e) of the Act,³ the Exchange may trade options on a narrow-based index without filing a proposed rule change under Section 19(b)(2) of the Act if certain conditions are satisfied.⁴ Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,⁵ if the Commission has approved, pursuant to Section 19(b) of the Act,⁶ the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new

derivatives securities product, and the self-regulatory organization has a surveillance program for the product class.⁷

One of these conditions, set forth in ISE Rule 2002(b)(6), is that no single component security may represent more than 25% of the weight of the index, and that the five highest weighted component securities in the index may not, in the aggregate, account for more than 50% (60% for an index consisting of fewer than 25 component securities) of the weight of the index. The Exchange proposes to amend ISE Rule 2002(b)(6) to increase the 25% concentration limit for the highest weighted component stock to 30%, and to increase the concentration limit for the five mostly highly weighted stocks in an index consisting of fewer than 25 component securities from 60% to 65%.

II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change, is consistent with Section 6(b)(5) of the Act,⁹ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and, in general, protect investors and the public interest.

The Commission believes that this proposed rule change should provide additional flexibility to the Exchange in listing and trading narrow-based index options and reduce the instances in which the addition of a new series is restricted pursuant to ISE Rule 2002(b). The proposed rule change should also reduce instances where an index option listed on the Exchange is temporarily out of compliance with the concentration limits set forth under ISE Rule 2002(b) because of changes in the market value of the underlying index components. Lastly, the Commission believes that that the concentration limit listing standards should continue to serve the purpose for which they were originally intended of not permitting a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b4(e).

⁴ See Securities Exchange Act Release No. 47749 (April 25, 2003); 68 FR 23507 (May 2, 2003) (Order approving rules relating to trading options on indices, including ISE Rule 2002(b)—Generic Narrow-Based Index Option Listing Criteria).

⁵ 17 CFR 240.19b-4(c)(1).

⁶ 15 U.S.C. 78s(b).

⁷ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (the "19b-4(e) Order").

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

single security or small number of securities to dominate an index.

The Exchange has requested accelerated approval of the proposed rule change. The Commission notes that the proposed rule change is similar to rules previously approved for other derivative products.¹⁰ The Commission also notes that a similar proposal was previously approved by the Commission and was subject to the full comment period, with no comments received.¹¹

Accordingly, the Commission finds good cause, pursuant to Sections 6(b)(5) and 19(b)(2) of the Act,¹² for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

III. 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 No. SR-ISE-2005-11 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-ISE-2005-11. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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-ISE-2005-11 and should be submitted on or before March 25, 2005.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-ISE-2005-11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51268; File No. SR-NASD-2004-125]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Regarding Procedures for Denying Listing on Nasdaq

February 28, 2005.

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 18, 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. On February 9, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice, as amended, 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 amend various rules to enhance, clarify, and increase the transparency of the procedures associated with denying companies initial or continued listing on Nasdaq. Nasdaq will implement the proposed rule change immediately upon approval by the Commission.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in [brackets].⁴ IM-4120-2. Disclosure of Written Notice of Staff Determination

[Rule 4815(b) requires] *Rules 4803(a) and 4804(b) require* that an issuer make a public announcement through the news media disclosing the receipt of (i) *a notice that the issuer does not meet a listing standard set forth in the Rule 4000 Series, and (ii) a* [Written Notice of] Staff Determination [("Staff Determination")] to *limit or prohibit* continued listing of the issuer's securities under Rule [4815(a)] *4804(a)* as a result of the issuer's failure to comply with the continued listing requirements[, and the Rule(s) upon which the Staff Determination was based]. Such public announcement shall be made as promptly as possible, but not more than [seven calendar] *four business* days following the receipt of the *notification or the* Staff Determination, *as applicable*. If the public announcement is not made by the issuer within the time allotted, trading of its securities shall be halted, even if the issuer appeals the Staff Determination as set forth in Rule [4820] *4805*. If the issuer fails to make the public announcement by the time that the Listing Qualifications Panel issues its decision, that decision will also determine whether to delist the issuer's securities for failure to make the public announcement.

[Rule 4815(b) does] *Rules 4803(a) and 4804(b) do not* relieve an issuer of its *disclosure* obligation [to make a materiality assessment of the pending delisting action as it may relate to the disclosure requirements of] *under* the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the issuer consult with corporate/securities counsel in assessing

¹⁰ See Securities Exchange Act Release Nos. 44532 (July 10, 2001), 66 FR 37078 (July 16, 2001) (SR-Amex-2001-25); and 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002) (SR-NASD-2002-45).

¹¹ See Securities Exchange Act Release No. 50945 (December 29, 2004), 70 FR 1498 (January 7, 2005) (SR-Phlx-2004-66).

¹² 15 U.S.C. 78(b)(5) and 78s(b)(2).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original filing in its entirety.

⁴ The proposed rule change is marked to show changes from the rules as they appear in the electronic NASD Manual available at <http://www.nasdaq.com>.