

the Division of Enforcement of an initial decision of an administrative law judge. Armstrong was formerly controller of National Medical Care, Inc. ("NMC"), a subsidiary of W.R. Grace & Co. ("Grace"). The law judge found that Armstrong participated in a scheme to manipulate Grace's reported earnings to achieve predetermined targets. The alleged scheme involved improperly recording excess earnings as reserves and later using the excess reserves to bolster earnings, thereby achieving the impression that Grace had steady, consistent growth in income over a period of several years.

The law judge found that Armstrong willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5 and that he was a cause of Grace's violation of those provisions. The law judge also concluded that, as a result of the scheme to manipulate Grace's earnings, Grace's periodic reports during the relevant period included financial statements that were not in accordance with Generally Accepted Accounting Principles ("GAAP") and that were materially misleading in violation of the periodic reporting requirements contained in Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1, and 13a-13. The law judge found that Armstrong was a cause of these violations. The law judge further found that Armstrong violated the recordkeeping requirements of Exchange Act Section 13(b)(5) and Exchange Act Rule 13b2-1, and was a cause of Grace's violation of these provisions and of Exchange Act Section 13(b)(2). The law judge imposed a cease-and-desist order against Armstrong.

The law judge dismissed the charges brought pursuant to Commission Rule of Practice 102(e). The law judge held that Armstrong had not been appearing or practicing before the Commission, and dismissed the Rule 102(e)(1)(iii) charges on this basis.

Armstrong appeals the law judge's conclusion that he violated and caused Grace's violations of the federal securities laws and the Commission's rules. He also maintains that there is no basis in the public interest for the imposition of a cease-and-desist order. The Division appeals the law judge's dismissal of the Rule 102(e) charges. The Division seeks to deny permanently to Armstrong the privilege of appearing or practicing before the Commission.

Among the issues likely to be considered are:

- (1) Whether respondent committed the alleged violations; and
- (2) If so, whether sanctions should be imposed in the public interest.

The subject matter of the closed meeting scheduled for Tuesday, March 29, 2005, will be:

Post-argument discussion.

The subject matter of the closed meeting scheduled for Thursday, March 31, 2005, will be:

- Formal orders of investigations;
- Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: March 22, 2005.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51397; File No. SR-ISE-2005-13]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

March 18, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 7, 2005, the International Securities Exchange, Inc. (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 amend its Schedule of Fees to establish fees for transactions in options on the Nasdaq-100[®] Stock Index. The text of the proposed rule change is available on the ISE's Web site [http://www.iseoptions.com/legal/proposed_rule_changes.aspx], at the ISE's Office of the Secretary, and at the Commission's Public Reference Room.

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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 Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the Nasdaq-100 Stock Index, both full value ("NDX") and 1/10 value ("MNX").⁶ Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on NDX and MNX.⁷ The amount of the execution fee and comparison fee shall be the same for all order types on the Exchange—that is, orders for Public Customers, Market Makers, and Firm Proprietary—and shall be equal to the execution fee and comparison fee currently charged by the Exchange for Market Maker and Firm Proprietary transactions in equity options.⁸ The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

The Exchange has entered into a license agreement with The Nasdaq Stock Market, Inc. in connection with the listing and trading of index options on the Nasdaq-100 Stock Index. As with licensed equity options, the Exchange is adopting a per contract fee for trading in these options to defray the licensing

⁶ See Securities Exchange Act Release No. 51121 (Feb. 1, 2005), 70 FR 6476 (Feb. 7, 2005) (File No. SR-ISE-2005-01) (order approving the trading of options on full and reduced values of the Nasdaq-100 Stock Index).

⁷ The Exchange represents that these fees will be charged only to Exchange members.

⁸ The execution fee is currently between \$.21 and \$.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently \$.03 per contract side.

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)(6).

⁵ The Exchange asked the Commission to waive the 30-day operative delay. See 17 CFR 240.19b-4(f)(6)(iii) (Rule 19b-4(f)(6)(iii)).

costs.⁹ The Exchange believes that charging the participants that trade these instruments is the most equitable means of recovering the costs of the license. However, because of competitive pressures in the industry, the Exchange proposes to exclude Public Customer Orders¹⁰ from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (e.g., Market Maker and Firm Proprietary orders) and shall apply to Linkage Orders¹¹ under a pilot program that is set to expire on July 31, 2005.

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act,¹² which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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 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

Because the foregoing 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) does not become operative for 30 days from the date on which it was

⁹ The Commission notes, however, that the proposed surcharge fee of \$0.15 per contract for NDX and MDX is higher than the current surcharge fee level of \$0.10 per contract on other products listed in the ISE's Schedule of Fees.

¹⁰ Public Customer Order is defined in Exchange Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(32) as a person that is not a broker or dealer in securities.

¹¹ See ISE Rule 1900(10) (defining Linkage Orders). The surcharge fee will apply to the following Linkage Orders: Principal Acting as Agent ("P/A") Orders and Principal Orders.

¹² 15 U.S.C. 78f(b)(4).

filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6) does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b-4(f)(6)(iii). Since the proposed rule change does not raise any novel issues and the Exchange customarily charges fees for options traded on the Exchange, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁶ In designating the proposal immediately operative, the Commission does not believe that the proposed rule change raises any new issues of regulatory concern. Accordingly, the Commission has waived the 30-day operative delay requirement for this proposed rule change, and has determined to designate the proposed rule change operative as of March 7, 2005, the date of filing of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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.¹⁷

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:

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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-2005-13 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-2005-13. 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-2005-13 and should be submitted by April 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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¹⁸ 17 CFR 200.30-3(a)(12).