

non-pattern and pattern day traders. As noted above for pattern day traders, this privilege must be withdrawn if the day trading buying power is exceeded.

## 2. Statutory Basis

The proposed day trading rules are intended to control the amount of day trading customers can undertake and thereby prevent excessive use of credit on an intra-day basis. As such, the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest. Furthermore, the proposed day trading rules are consistent with Section 7(a) of Act<sup>10</sup> and the rules and regulations of the Board of Governors of the Federal Reserve System, in that control of excessive credit for purchasing or carrying securities is the fundamental purpose.

### *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 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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the 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, as amended, 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 4 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 CBOE. All submissions should refer to File No. SR-CBOE-2002-70 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**J. Lynn Taylor,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47035; File No. SR-ISE-2002-28]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC to Increase the Number of Authorized Shares of Class B Common Stock, Series B-2 From 100 to 130**

December 19, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 21, 2002, the International Securities Exchange, Inc. ("ISE" or "Exchange") 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 the Exchange. 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 proposes to increase the number of authorized shares of Class B Common Stock, Series B-2 from 100 to 130. This increase would result in the creation of 30 additional Competitive Market Maker ("CMM") Memberships. The text of the proposed rule change is available at the ISE and at the Commission.

### **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 purpose of the proposed rule change is to increase the number of authorized shares of Class B Common Stock, Series B-2 from 100 to 130. This increase would result in the creation of 30 additional CMM Memberships.<sup>3</sup> CMMs are market makers that compete with a Primary Market Maker ("PMM") and other CMMs to provide liquidity on the Exchange. The Exchange has allocated its listed options into 10 groups or "Bins," and currently assigns one PMM and 10 CMMs to each Bin. Under this proposal, the Exchange would add three additional CMMs to each Bin.

The Board of Directors (the "Board") has established an Ad Hoc Committee on the Sale of CMM Trading Rights (the "Committee") to sell the additional Memberships, identifying both the purchasers of these Memberships and the price at which these Memberships would be sold. The Board's intent is that the new Memberships be sold to broker-

<sup>9</sup> 15 U.S.C. 78(f)(b)(5).

<sup>10</sup> 15 U.S.C. 78g(a).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> ISE Rule 100(19) defines "Membership" as the "trading privileges associated with a share of Class B Common Stock."

dealers that both would provide market making expertise and liquidity to the Exchange and that have significant customer order flow to send to the Exchange. There are no restrictions or limitations on the price at which the Memberships can be sold. The Exchange would distribute all proceeds received from these sales to holders of Class A Common Stock by way of a dividend.

The ISE believes that the sale of 30 additional CMM Memberships would increase the depth and liquidity of the Exchange's market. It also would provide more broker-dealers with an opportunity to participate on the Exchange. The Exchange has carefully evaluated its system capacity and believes that it has more than sufficient capacity to be able to handle the increased number of CMM Members without any adverse effects. Finally, the Exchange would require that a purchaser of one of these new Memberships that is not already a CMM to meet all Exchange requirements currently applicable to CMM Members.<sup>4</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, 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.

### *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 Exchange 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.

<sup>4</sup> The ISE believes that this proposed rule change is similar to a filing by the American Stock Exchange LLC to increase the number of its memberships. See Securities Exchange Act Release No. 45130 (December 5, 2001), 66 FR 64324 (December 12, 2001).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

## 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 Exchange 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, as amended, 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-2002-28 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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<sup>7</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47060; File No. SR-NASD-2002-112]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. to Amend NASD Rule 3070 to Require Members to File Copies of Criminal and Civil Complaints and Arbitration Claims With NASD**

December 20, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 15, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On December 9, 2002, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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**

NASD is proposing to amend Rule 3070 of its rules to require members promptly to file copies with NASD of certain criminal and civil complaints and arbitration claims against a member or a person associated with a member. Below is the text of the proposed rule change as amended. Proposed new language is in italics; proposed deletions are in brackets.

3070. Reporting Requirement

(a) through (c) No change.

(d) Nothing contained in [paragraphs (a), (b) and (c) of] this Rule shall eliminate, reduce, or otherwise abrogate the responsibilities of a member or person associated with a member to promptly file with full disclosure, required amendments to Form BD, Forms U-4 and U-5, or other required filings, and to respond to [the Association] *NASD* with respect to any customer complaint, examination, or inquiry.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Patrice Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated December 6, 2002, and enclosures ("Amendment No. 1"). Amendment No. 1 replaced the original rule filing in its entirety.