

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50060; File No. SR-ISE-2004-26)

July 22, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. to Extend Until June 5, 2005, a Pilot Program under Which it Lists Options on Selected Stocks Trading Below \$20 at One-Point Intervals

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 July 16, 2004, 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 and II below, which Items have been prepared by the ISE. 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 extend until June 5, 2005, a pilot program under which it lists options on selected stocks trading below \$20 at \$1 strike price intervals (“\$1 Strike Pilot Program”). The text of the proposed rule change is available at the Office of the Secretary, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

On June 16, 2003, the Commission approved the ISE's \$1 Strike Pilot Program, which allows the ISE to list series with \$1 strike price intervals on equity options classes that overlie up to five individual stocks, provided that the strike prices are \$20 or less, but not less than \$3, and subject to the terms of the \$1 Strike Pilot Program.³ Although the ISE may select only up to five individual stocks to be included in the \$1 Strike Pilot Program, the ISE also is permitted to list options on other individual stocks at \$1 strike price intervals if other options exchanges list those series pursuant to their respective rules. The ISE selected the following five options classes to participate in the \$1 Strike Pilot Program: AMR Corp. [AMR], Calpine Corp. [CPN], EMC Corp. [EMC], El Paso Corp. [EP], and Sun Microsystems Inc. [SUNW]. The \$1 Strike Pilot Program expires on August 5, 2004.⁴

The Pilot Program Approval Order and the Pilot Extension Notice required the ISE to provide the Commission with certain information and data covering the entire time the \$1 Strike Pilot Program was in effect in the event that the ISE proposed to, among other things, extend the

³ See Securities Exchange Act Release No. 48033 (June 16, 2003), 68 FR 37036 (June 20, 2003) (order approving File No. SR-ISE-2003-17) ("Pilot Program Approval Order"). See also Securities Exchange Act Release No. 49827 (June 8, 2004), 69 FR 33966 (June 17, 2004) (notice of filing and immediate effectiveness of File No. SR-ISE-2004-21) (extending the \$1 Strike Pilot Program until August 5, 2004) ("Pilot Extension Notice").

\$1 Strike Pilot Program. Accordingly, the ISE has prepared and submitted a report (“Pilot Program Report”) that provides data and written analysis relating to the five options classes the ISE selected to participate in the \$1 Strike Pilot Program.

According to the ISE, the Pilot Program Report data shows, generally, that there is meaningful trading volume and open interest in the \$1 strikes, as compared to the non-\$1 strikes in the same class. For example, the ISE notes that an analysis of the trading in AMR options for the November 2003 series compared with the April 2004 series indicates that there is a growing interest by investors in the \$1 Strike Pilot Program. In AMR, for the November 2003 series, the collective open interest and trading volume among all \$1 strikes (\$6, \$9, \$11, \$14, \$16 and \$17), was 60,026 contracts and 8,872 contracts, respectively, compared to the collective open interest and trading volume among all non-\$1 strikes (\$2.50, \$5, \$7.50, \$10, \$12.50 and \$15), of 193,625 contracts and 31,468 contracts, respectively. For the April 2004 series, the collective open interest and trading volume among all \$1 strikes (\$6, \$7, \$8, \$9, \$11, \$12, \$13, \$14, \$16, \$17, \$18, and \$19) was 44,422 contracts and 47,327 contracts, respectively, compared to the collective open interest and trading volume among all non-\$1 strikes (\$5, \$10, \$15, \$20, \$22.50 and \$25) of 49,276 contracts and 9,900 contracts, respectively.

The ISE believes that a similar analysis of the trading in CPN options for the October 2003 series compared with the March 2004 series further lends support for extending the \$1 Strike Pilot Program. For example, in CPN, for the October 2003 series, the collective open interest and trading volume among all \$1 strikes (\$4, \$6, \$9 and \$11) was 23,004 contracts and 3,407 contracts, respectively, compared to the collective open interest and trading volume among

⁴ See Pilot Extension Notice, supra note 3.

all non-\$1 strikes (\$2.50, \$5, \$7.50, \$10 and \$12.50) of 84,537 contracts and 13,738 contracts, respectively. For the March 2004 series, the collective open interest and trading volume among all \$1 strikes (\$3, \$4, \$6, \$7, \$8 and \$9) was 55,884 contracts and 16,329 contracts, respectively, compared to the collective open interest and trading volume among all non-\$1 strikes (\$5 and \$10) of 16,441 contracts and 13,848 contracts, respectively. According to the ISE, an analysis of the trading in the options for EMC, EP and SUNW revealed similar findings.

While the trading volume and open interest in the \$1 strikes is not always as high as it is in the non-\$1 strikes, the ISE believes that this can at least partially be attributed to the industry convention of \$2.50 strikes in low priced stocks, and that, over time, this convention will break down and result in a more even distribution in volume and open interest in \$1 strikes. The ISE believes that this information and data demonstrate that the five classes it selected to participate were appropriate for the \$1 Strike Pilot Program. The ISE notes that the underlying stocks are highly capitalized with low stock prices and generally are in different industries, yet the \$1 strike data appears relatively consistent across all five stocks. Moreover, the ISE did not experience any capacity issues related to the \$1 Strike Pilot Program, nor does it believe there has been any negative impact on the capacity of the Options Price Reporting Authority (“OPRA”) as a result of the \$1 Strike Pilot Program. According to the ISE, the \$1 Strike Pilot Program was, in general, well received by the ISE’s members, and the ISE did not receive any complaints from its members or investors regarding the listing of \$1 strikes.

The ISE believes that this information and data shows that there is sufficient investor interest and demand to justify extending the \$1 Strike Pilot Program until June 5, 2005. The ISE continues to believe that the \$1 Strike Pilot Program has provided investors with greater trading

opportunities and flexibility. The ISE further believes the \$1 Strike Pilot Program has provided investors with the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. The ISE has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals.

2. Statutory Basis

The ISE believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the ISE believes the proposed rule change is consistent with requirements under Section 6(b)(5) of the Act⁶ that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The ISE believes that extension of the \$1 Strike Pilot Program until June 5, 2005, will result in a continuing benefit to investors by allowing them to more closely tailor their investment decisions, and will allow the ISE to further study investor interest in \$1 strike price intervals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will impose any burden on competition 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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from its members or other interested persons.

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

The ISE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸ Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. As required under Rule 19b-4(f)(6)(iii), the ISE provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE has requested that the Commission waive the 30-day operative delay to prevent a lapse in the operation of the \$1 Strike Pilot Program, which expires on August 5, 2004.

The Commission believes that waiving the 30-day operative delay is consistent with the

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

protection of investors and the public interest because it will permit the \$1 Strikes Pilot Program to continue without interruption through June 5, 2005.⁹ For this reason, the Commission designates that the proposal become operative immediately.¹⁰

At any time within 60 days of the filing of such 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

⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ If the ISE proposes to (1) extend the \$1 Strike Pilot Program beyond June 5, 2005; (2) expand the number of options eligible for inclusion in the \$1 Strike Pilot Program; or (3) seek permanent approval of the \$1 Strike Pilot Program, it must submit a pilot program report to the Commission along with the filing of such proposal. The pilot program report must cover the entire time the \$1 Strike Pilot Program was in effect and must include: (1) data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the \$1 Strike Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the \$1 Strike Pilot Program; (3) an assessment of the appropriateness of \$1 strike price intervals for the options the ISE selected for the \$1 Strike Pilot Program; (4) an assessment of the impact of the \$1 Strike Pilot Program on the capacity of the ISE's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the \$1 Strike Pilot Program and how the ISE addressed them; (6) any complaints that the ISE received during the operation of the \$1 Strike Pilot Program and how the ISE addressed them; and (7) any additional information that would help to assess the operation of the \$1 Strike Pilot Program. The Commission expects the ISE to submit a proposed rule change at least 60 days before the expiration of the \$1 Strike Pilot Program in the event the ISE wishes to extend, expand, or seek permanent approval of the \$1 Strike Pilot Program. The Commission notes that the submission of a satisfactory pilot program report along with a proposed rule change to extend, expand, or

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-ISE-2004-26 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-2004-26. 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

permanently approve the \$1 Strike Pilot Program is a condition precedent to the future operation of the ISE's \$1 Strike Pilot Program.

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, 450 Fifth Street, NW, Washington, DC 20549. 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-2004-26 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).