

notice is hereby given that on January 12, 2001, the International Securities Exchange LLC ("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 Exchange is proposing to establish a marketing fee to fund its payment-for-order-flow program. The fee will be \$.75 per contract on all Primary Market Maker ("PMM") and Competitive Market Maker ("CMM") executions against customer orders.

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 Exchange 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 provide a source of funding for the Exchange's payment-for-order-flow program, recently approved by the Commission.³ The fee will be \$.75 per contract on all PMM and CMM executions against customer orders.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4)⁴ 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 believes that the proposed rule change does not 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

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to Section 19(b)(3)(A)⁵ of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder.⁶ At any time within 60 days of the filing of the 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 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 submissions, 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-01-01, and should be submitted by March 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43920; File No. SR-ISE-01-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC, Relating to Market Maker Block Transactions

February 2, 2001.

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 January 12, 2001, the International Securities Exchange LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, and 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 Exchange is proposing to amend its Rules 716(c) and 805(a) to permit market makers to enter block-size orders into the Block Order Mechanism. The text of the proposed rule change is set forth below. Additions are italicized and deletions are bracketed.

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Rule 716. Block Trades

* * * * *

(c) Block Order Mechanism. The Block Order Mechanism is a process by which [an Electronic Access Member] *a Member* can obtain liquidity for the execution of block-size orders.

* * * * *

Rule 805. Market Maker Orders

(a) Options Classes to Which Appointed. Market makers may not place principal orders to buy or sell options in the options classes to which

³ See Securities Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001).

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

they are appointed under Rule 802, other than immediate-or-cancel orders and block-size orders executed through the Block Order Mechanism pursuant to Rule 715(c). Competitive Market Makers shall comply with the provisions of Rule 804(e)(2)(ii) upon the entry of such orders if they were not previously quoting in the series.

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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 Exchange 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's Block Order Mechanism permits Electronic Access Members to solicit trading interest for orders of 50 contracts or more. Because market makers do not handle agency orders, the Exchange did not anticipate that they would need a block mechanism. Thus, the Exchange initially limited the Block Order Mechanism to Electronic Access Members. Experience indicates that market makers would find the Block Order Mechanism useful to hedge or liquidate positions resulting from their market making activities on the Exchange.

The ISE provides automatic executions for orders placed by market makers on the Exchange. The ISE trading system enables ISE market makers to individually enter quotations with an associated size representing the number of contracts for which each market maker is firm for Public Customer orders. The trading system also permits ISE market makers to specify how much of this size is available for automatic execution by non-customer orders and other ISE market makers. Because ISE market makers may be reluctant to be exposed to automatic executions from other market makers, the size available for market makers may be substantially lower than that available for Public Customers. Indeed, no other options

exchange provides market makers the opportunity to receive automatic execution of their orders; and conversely, no other options exchange requires that its market makers be exposed to automatic executions by other market makers.

The ISE believes that permitting market makers to utilize the Block Order Mechanism will give the trading crowd an opportunity to determine whether they are willing to provide more liquidity to large market maker orders than would be available if the market maker entered a large-size order for automatic execution against existing quotes. Market makers on the floors of the other options exchanges currently are able to trade with each other in this manner.

The Exchange thus proposes to amend Rule 716(c) (Block Order Mechanism) and Rule 805(a) (Market Maker Orders) to extend the Block Order Mechanism to ISE market makers. The Block Order Mechanism permits a participant to solicit trading interest from crowd participants via a text message in a manner that replicates requests for markets in a floor-based trading crowd. Crowd participants receive the message indicating interest to trade in large-size and are given 30 seconds to respond. It is necessary for the Exchange to set a response period only because the communications are made electronically rather than face-to-face as on a floor. In the case of a floor-based crowd, there will be some amount of time between the announcement of the trading interest by the floor broker and the response by the market makers, but there is no need to define a time limit because the market makers are able to communicate directly.

The ISE states that when requests for markets are made on a trading floor, they are not considered the same as bids or offers that are required to be displayed in the exchange's disseminated quotation by Rule 11Ac1-1 under the Act,³ as they require an immediate response which may or may not be accepted. On a floor, if the response from the crowd is not sufficient, the broker walks away and the interest is withdrawn. Similarly, when interest is communicated electronically through the ISE's Block Order Mechanism, there is no obligation to execute during the response period, and the indication may be withdrawn anytime during the 30 seconds. If the response from the crowd is not sufficient at the end of the response

period, the interest is automatically withdrawn from the system.

It is only after the 30 seconds that an interest entered into the Block Order Mechanism will be executed in whole or in part according to the algorithm contained in 716(c). Again, if no execution takes place, the interest is automatically canceled from the system. In other words, there is no standing limit order in the trading system and there is no ability for any person to execute against the interest during the exposure period.⁴

Permitting ISE market makers to enter trading interest into the Block Order Mechanism is no different from allowing market makers on the floor of the other options exchanges to announce trading interest to the crowd. In fact, an ISE market maker can use a floor broker to assess the liquidity in trading crowds on the other options exchange, but currently has no mechanism to accomplish the same objective on the ISE. This situation places the ISE at a competitive disadvantage, as this trading interest is executed on other exchanges purely because participants communicate directly rather than electronically.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁵ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. In particular, to the extent that ISE market makers can seek liquidity for large size orders on other options exchanges but currently are unable to do so on the ISE, the proposed rule change will remove a substantial impediment to and perfect the mechanism for a free and open market on the ISE.

⁴ The Exchange states that while a recent amendment to Exchange Act Rule 11Ac1-1, making it applicable to the trading of options, is not yet effective, use of the Block Order Mechanism will be consistent with the requirements of the Rule. See Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000). The Exchange states in particular that the Block Order Mechanism does not come within the definition of an "electronic communications network" contained in paragraph (a)(8) of Rule 11Ac1-1, and thus indications of interest entered into the Block Order Mechanism would not be subject to the requirements of paragraph (c)(5) of the Rule.

⁵ 15 U.S.C. 78f(b)(5).

³ See 17 CFR 240.11ac1-1(b).

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

This proposed rule change will remove a burden on competition in that it provides a mechanism for ISE market makers to announce indications of interest where currently they only have such capability on other options exchanges. Restricting ISE market makers' ability to seek liquidity for large-size trading interest when they are able to do so on other options exchanges is a substantial burden on competition as it reduces the likelihood that such orders will be executed on the Exchange. It is not necessary or appropriate in furtherance of the purposes of the Act to competitively disadvantage the ISE on the basis that its members communicate electronically rather than in person.

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

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 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 the filing will also be available for inspection and copying at the principal offices of the ISE. All submissions should refer to File No. SR-ISE-01-03 and should be submitted by March 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-3267 Filed 2-7-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43914; File No. SR-NASD-00-78]

Self Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending the Nasdaq By-Laws

January 31, 2001.

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 January 22, 2001, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend its By-Laws regarding the balancing requirements on the Nasdaq Board of Directors ("the Board") and the composition and operation of certain Nasdaq committees. Nasdaq also seeks to make certain changes to conform to the General Corporation Law of the State of Delaware ("Delaware law"). Proposed new language is in *italics*; proposed deletions are in *brackets*.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

By-Laws of the NASDAQ Stock Market, Inc.

Article I

Definitions

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(j) "Industry Director" or "Industry member" means a Director (excluding [the President or the Chief Executive Officer] *any two officers of Nasdaq, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")*) or Nasdaq Listing and Hearing Review Council or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, Nasdaq, or Amex (and any predecessor) or has had any such relationship or provided any such services at any time within the prior three years;

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(p) "[National] Nominating Committee" means the [National] Nominating Committee appointed