

Hybrid 2.0 classes, and Non-Hybrid and Non-Hybrid 2.0 classes. The CBOE represents that this modification makes no substantive changes to the CBOE's existing rules relating to permissible bid/ask differentials during the opening rotation.¹⁷ New CBOE Rule 8.7(b)(4)(C)(i), which allows the bid/ask differential for in-the-money series trading on Hybrid and Hybrid 2.0 to be as wide as the quote width on the primary market or, for index options, as wide as the quote width calculated by the CBOE or its agent, is consistent with renumbered CBOE Rule 8.7(b)(iv)(A), as discussed above, and with current ISE Rule 803(b)(4)(i).¹⁸ New CBOE Rule 8.7(b)(4)(C)(ii), allowing the CBOE to establish quote width differentials other than the \$5 width provided in CBOE Rule 8.7(b)(4)(C) for Hybrid and Hybrid 2.0 classes, is consistent with current CBOE Rule 8.7(b)(iv) and with ISE Rule 803(b)(4).¹⁹ In addition, new CBOE Rule 8.7(b)(4)(C) makes clear that the \$5 bid/ask differential provided in that rule applies to both Hybrid and Hybrid 2.0 option classes. For these reasons, the Commission designates that the proposed rule change become operative as of the date of the filing of the proposal.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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. 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-CBOE-2006-12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-CBOE-2006-12. 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 Exchange. 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 No. SR-CBOE-2006-12 and should be submitted on or before March 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53223; File No. SR-ISE-2006-06]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Competitive Market Maker Inactivity Fees

February 3, 2006.

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 23, 2006, 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 ISE. On January 31, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. 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

The ISE is proposing to amend its Schedule of Fees to change its Competitive Market Maker ("CMM") Inactivity Fee. The text of the proposed rule change is available at the Exchange, at the Commission's Public Reference Room and at the Exchange's Web site: http://www.iseoptions.com/legal/proposed_rule_changes.asp.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the ISE corrected an error in Exhibit 5 of the original rule filing by eliminating certain inadvertent underlining. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change the Commission considers the period to commence on January 31, 2006, the date on which the ISE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

¹⁷ See also note 9, *supra*.

¹⁸ ISE Rule 803(b)(4)(i) provides that the bid/ask differential for in-the-money series may be as wide as the quotation on the primary market of the underlying security.

¹⁹ Current CBOE Rule 8.7(b)(iv), which applies to trading in open outcry, allows the CBOE to establish bid/ask differentials other than those provided in CBOE Rule 8.7(b)(iv) for one or more options series. Similarly, ISE Rule 803(b)(4) allows the ISE to establish bid/ask differentials other than those specified in ISE Rule 803(b)(4) for one or more options series.

²⁰ 17 CFR 200.30-3(a)(12).

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 proposal. 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

Currently, the ISE charges the owner⁶ of a CMM membership an Inactivity Fee of \$25,000 a month if the owner does not: (i) Itself operate the CMM membership, (ii) lease the CMM membership to another member which operates the CMM membership, or (iii) avail itself to one of the exemptions specifically authorized in the Notes to the CMM Inactivity Fee on the Schedule of Fees. The CMM Inactivity Fee was adopted by the Exchange⁷ at a time when there was significant demand for CMM memberships and some owners were holding onto inactive memberships. The purpose of the CMM Inactivity Fee was to encourage the timely operation of the memberships to promote greater trading activity on the Exchange.

The Exchange believes the circumstances that lead to the enactment of the CMM Inactivity Fee no longer exist to the same degree that they did in 2002. For one thing, the ISE has created additional CMM memberships to ease demand.⁸ The Exchange has also changed its minimum quoting requirements, allowing CMMs to quote

wide markets.⁹ Thus, a new owner of a CMM membership can avoid the CMM Inactivity Fee by continuing to "operate" it by quoting \$5-wide markets, enabling it to "ramp up" its quoting at a reasonable pace. Nevertheless, ISE believes that a CMM Inactivity Fee continues to serve a purpose by encouraging the operation of CMM memberships generally, and prefers to retain the fee. At the same time, the Exchange believes that the amount of the fee—\$25,000 a month per membership—is now too high in light of the changed circumstances, imposing an unreasonable burden on firms that hold multiple memberships. Therefore, the Exchange proposes to reduce the amount of the fee to \$5,000 a month per membership, with a cap of \$25,000 on a per-firm basis, *i.e.*, a firm that owns five or more inactive CMMs would pay a maximum CMM Inactivity Fee of \$25,000 per month.

Also, as a matter of "housekeeping," the Exchange proposes to delete certain language in the Notes to the CMM Inactivity Fee relating to assessing the fee to the lessee if the CMM membership was subject to a lease that was approved prior to the effective date of the fee. All such leases have terminated, so there is no longer a need to retain that exception.

2. Statutory Basis

The Exchange states that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)¹⁰ 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 will 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 neither solicited nor received comments on the proposed rule change. The ISE 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹¹ and paragraph (f)(2) of Rule 19b-4 thereunder¹² because it establishes or changes a due, fee, or other charge. 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. 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-2006-06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2006-06. 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

⁶ The Note to the CMM Inactivity Fee on the Schedule of Fees provides that the fee applies to the owner of the CMM membership, unless the inactive CMM membership is subject to a lease that was approved by the Exchange prior to the effective date of the fee, in which case the fee would apply to the lessee.

⁷ See Securities Exchange Act Release No. 46272 (July 26, 2002), 67 FR 50497 (August 2, 2002) (SR-ISE-2002-11).

⁸ See Securities Exchange Act Release Nos. 47289 (January 30, 2003), 68 FR 5947 (February 3, 2003) (SR-ISE-2002-28) (approving a proposed rule change to increase CMM memberships from 100 to 130); 49195 (February 5, 2004), 69 FR 7061 (February 12, 2004) (SR-ISE-2003-38) (approving a proposed rule change to increase CMM memberships from 130 to 160).

⁹ See Securities Exchange Act Release No. 50015 (July 14, 2004), 69 FR 43872 (July 22, 2004) (SR-ISE-2003-22).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

Room. Copies of such filing also will be available for inspection and copying at 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-2006-06 and should be submitted on or before March 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Nancy M. Morris,
Secretary.

[FR Doc. E6-1838 Filed 2-9-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53233; File No. SR-NASD-2006-019]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Uniform Order Warning and Rejection Parameters for the Nasdaq Market Center

February 6, 2006

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 February 3, 2006, 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 and II below, which Items have been substantially prepared by Nasdaq. Nasdaq filed the proposed rule change as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act,³ which rendered the proposal effective upon filing with the Commission. 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

Nasdaq proposes to establish uniform order warning and rejection parameters for the Nasdaq Market Center. Nasdaq

would like to implement the proposed rule change on February 6, 2006. The text of the proposed rule change is available on the NASD's Web site, <http://www.nasd.com>, at the NASD's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing the establishment of uniform warning and rejection parameters for orders that, at the time of entry, cross the best bid/offer in the Nasdaq Market Center. Under the proposal, the Nasdaq Market Center would provide a warning message⁴ to market participants that enter an order that is 10% or more away from the Nasdaq inside, while orders that at the time of entry are 20% or more away from the inside would be rejected by the system. For orders priced less than \$1.00, Nasdaq is proposing to implement specific penny-based warning and rejection parameters of \$0.10 and \$0.20 respectively. Market orders would not be subject to any price validation, and these warning and rejection parameters would apply regardless of the method used by the participant to enter the quote/order into the Nasdaq Market Center (e.g., FIX, QIX, CTCT or the New Nasdaq Workstation). These warning/rejection parameters are summarized below:

Price	Warning (percentage/ amount)	Reject (percentage/ amount)
Less than \$1	\$0.10	\$0.20
\$1-\$999,999	10%	20%

The warning and rejection parameters proposed here will be in effect from 8

a.m. through 4 p.m. eastern time and key off the best bid/offer prices within the Nasdaq Market Center at the time of order-entry. Orders entered for participation in Nasdaq's opening and closing cross processes will not be subject to the proposed warning and rejection parameters.

Nasdaq is establishing these parameters in an attempt to mitigate the negative market-wide impacts resulting from the entry of mis-priced orders, especially in cases of large system malfunctions resulting in the submission of numerous mis-priced orders into the public market in a very short time span. Nasdaq believes that its proposal continues to allow vigorous price discovery near the inside market while protecting the integrity of the market from distortions created by the submission of abnormally priced orders.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,⁵ in general, and Section 15A(b)(6)⁶ of the Act, in particular, in that it is 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 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

Nasdaq 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

Nasdaq has neither solicited nor received written comments on the proposed rule change.

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

Because the 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) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ This warning message may be overridden by the entering party, in which case the order will be allowed entry into the system and processed in the normal course.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).