

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 parts 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 rule filing is to repeal the ISE's "15-second speed bump." This rule prohibits EAMs from sending in more than one order every 15 seconds for the same beneficial owner in options on the same underlying security. The ISE adopted this speed bump in 2000 to protect ISE market makers from exposure across multiple series of options if they receive orders in many series at the same time.³ However, since adopting this rule, more sophisticated risk management tools have been developed, permitting market makers to limit risk on a market-wide basis. Accordingly, this rule is no longer necessary. Also, eliminating this restriction on trading will provide EAMs and their customers with enhanced access to the ISE.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)⁴ 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.

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

The 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.

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 self-regulatory organization 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 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-2002-27 and should be submitted by January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46976; File No. SR-ISE-2002-26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Payment-for-Order-Flow and Marketing Fees

December 9, 2002.

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 November 20, 2002, the International Securities Exchange, Inc. ("ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the ISE has prepared. 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: (1) To reduce its payment-for-order-flow fee from \$.65 a contract to \$.55 a contract; (2) to lower the cap on each payment-for-order-flow fund from \$650,000 to \$550,000; and (3) to extend the waiver of the marketing fee from December 31, 2002 to June 30, 2003. 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 had received. 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 those statements.

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

The ISE operates a payment for order flow program as approved by the Commission.³ This program is currently

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

³ See Securities Exchange Act Release No. 44017 (February 28, 2001), 66 FR 13820 (March 7, 2001).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 17 CFR 200.30-3(a)(12).

funded through a \$.65 fee paid by ISE market makers for each customer contract they execute. The ISE is proposing to reduce its payment-for-order-flow fee from \$.65 a contract to \$.55 a contract. The ISE also has established a ceiling of \$650,000 in each of the 10 payment-for-order-flow funds it maintains.⁴ The ISE is proposing to lower the cap on each payment-for-order-flow fund from \$650,000 to \$550,000.

The ISE has also established a \$.10 marketing fee, paid by market makers on customer contracts, that funds general ISE marketing efforts to increase order flow from Electronic Access members.⁵ The ISE has waived that fee for the second half of this year.⁶ The ISE is proposing to extend the waiver of the marketing fee from December 31, 2002 to June 30, 2003.

The ISE states that it regularly monitors the levels of these fees and ceilings to help ensure that the payment-for-order-flow and marketing efforts are sufficiently funded and that the fees it imposes on its market makers are no higher than necessary. With respect to payment-for-order-flow, the ISE states that it historically has collected more money than its Primary Market Makers have paid out. The ISE believes that it can adequately maintain this program with the reduced fee and ceiling. With respect to the marketing fee, the ISE currently has sufficient retained funds from the time the fee was in effect to pay for anticipated marketing efforts for the beginning part of next year. Thus, the ISE is proposing to extend this fee waiver through June 2003.

The basis for this proposed rule change is the requirement of section 6(b)(4) under the Act⁷ that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

⁴ See Securities Exchange Act Release Nos. 45128 (December 4, 2001), 66 FR 64325 (December 12, 2001) and 45772 (April 17, 2002), 67 FR 20563 (April 25, 2002). The ISE has divided the options it trades into 10 groups, with one Primary Market Maker assigned to each group. The ISE maintains a payment-for-order-flow fund for each group, consisting of the fees collected from market makers trading options in that group. The Primary Market Maker for the group is responsible for arranging and making all payments to Electronic Access Members for order flow sent to the ISE in options in that group.

⁵ See Securities Exchange Act Release No. 44102 (March 26, 2001), 66 FR 17590 (April 2, 2001).

⁶ See Securities Exchange Act Release No. 46189 (July 11, 2002), 67 FR 47587 (July 19, 2002).

⁷ 15 U.S.C. 78f(b)(4).

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

The ISE 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 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 members or other interested parties.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(2) thereunder⁹ because it changes an ISE fee. At any time within 60 days of the filing of such 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. 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 office of the ISE. All submissions should refer to SR-ISE-2002-26 and should be submitted by January 6, 2003.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 19b-4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46948; File No. SR-NASD 2002-157]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding ACT Risk Management

December 4, 2002.

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 October 31, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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.

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

Nasdaq is filing a proposed rule change to NASD Rule 6150 regarding the risk management function provided by Nasdaq's Automated Confirmation Transaction Service ("ACT"). Upon approval of the proposed rule change, Nasdaq will permit members to voluntarily utilize the ACT risk management function, provided that they utilize another risk management tool of equal quality and that they and the correspondent firms for whom they clear trades continue to report clearing-eligible trades to ACT in compliance with applicable ACT rules. The text of the proposed rule change is available at Nasdaq and at the Commission.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.