

Commission has not yet taken action with respect to the Permanent Rule Change. Accordingly, the Exchange proposes to extend the pilot until January 31, 2007, so that the system change will remain in effect while the Commission continues to evaluate the Permanent Rule Change.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>9</sup> that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Extension of the pilot program will allow the Exchange to remain competitive with the Boston Options Exchange ("BOX"), which operates a directed order program that discloses the identity of an entering firm to the BOX directed market maker.<sup>10</sup>

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

ISE 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

The Exchange neither received nor solicited written comments on the proposal.

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

Because the foregoing proposed rule change effects a change in an existing order entry or trading system that (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 have the effect of limiting the access to or availability of the system, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(5) thereunder.<sup>12</sup>

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2006-57 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-2006-57. 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 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-2006-57 and should be submitted on or before October 27, 2006.

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

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54540; File No. SR-ISE-2006-58]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exercise Deadline for Quarterly Options Series

September 29, 2006.

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 September 26, 2006, the International Securities Exchange, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission has designated this proposed rule change as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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

The ISE proposes to amend ISE rule 1100(c) "Exercise of Options Contracts." The text of the proposed rule change is set forth below. Proposed new language is *italicized*.

\* \* \* \* \*

### Rule 1100. Exercise of Options Contracts

(a)-(b) No Change.

(c) Exercise cut-off time. Option holders have until 5:30 p.m. Eastern Time on the business day immediately prior to the expiration date *or, in the case of Quarterly Options Series, on the expiration date*, to make a final decision

<sup>8</sup> The ISE anticipated that extension of the pilot might be necessary and included this in the filing for the initial pilot. See *supra* note 5.

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

<sup>10</sup> See Securities Exchange Act Release No. 53015 (Dec. 22, 2005), 70 FR 77207 (Dec. 29, 2005).

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

<sup>12</sup> 17 CFR 240.19b-4(f)(5).

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

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

to exercise or not exercise an expiring option. For customer accounts, Members may not accept exercise instructions after 5:30 p.m. Eastern Time but have until 6:30 p.m. Eastern Time to submit a Contrary Exercise Advice. For non-customer accounts, Members may not accept exercise instructions after 5:30 p.m. Eastern Time but have until 6:30 p.m. Eastern Time to submit a Contrary Exercise Advice if such Member employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. Consistent with Supplemental Material .03, Members are required to submit a Contrary Exercise Advice by 5:30 p.m. for non-customer accounts if such Members do not employ an electronic submission procedure with time stamp for the submission of exercise instructions by option holders.

(d)–(j) No Change.

\* \* \* \* \*

## 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 Exchange 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 ISE proposes to amend its rule regarding exercise cut-off time to revise its application to Quarterly Options Series. Currently, under ISE Rule 1100(c), option holders have until 5:30 p.m. Eastern Time on the business day immediately prior to the expiration date to make a final decision to exercise or not exercise an expiring option. The rule in its current form would require the holder of a quarterly option to decide whether to exercise or not exercise an expiring option on the business day immediately prior to the expiration date. However, since Quarterly Options Series continue to trade on the expiration date, an option holder would have to make the decision whether to exercise an expiring option without the knowledge of what the

closing price of the underlying security would be on expiration. Accordingly, the Exchange proposes to amend Rule 1100(c) so that a holder of an expiring quarterly option has until 5:30 p.m. on the expiration date to decide whether to exercise or not exercise an expiring quarterly option.

#### 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 Section 6(b)(5) of the Act<sup>6</sup> specifically, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

#### 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

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b–4 thereunder.<sup>8</sup> 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) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–

4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become effective prior to the 30th day after filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiving the operative delay will allow the Exchange to permit exercise of a Quarterly Options Series at any time until the close of business on its expiration date starting with the third quarter 2006 expirations on Friday, September 29, 2006, and consequently will benefit investors. Therefore the Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative immediately.<sup>10</sup>

At any time within sixty (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 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](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2006-58 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-2006-58. 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

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

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b–4(f)(6).

<sup>9</sup> Rule 19b–4(f)(6)(iii) requires the Exchange to give written notice to the Commission of its intent to file the proposed rule change five business days prior to filing. The Exchange provided the Commission with such notice on September 6, 2006.

<sup>10</sup> For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 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-2006-58 and should be submitted on or before October 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54537; File No. SR-NASD-2006-091]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Amendment No. 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto to Align NASD Rules With Regulation NMS

September 28, 2006.

#### I. Introduction

On July 28, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to align its rules,

including those governing the Alternative Display Facility ("ADF"), with Regulation NMS under the Act ("Regulation NMS").<sup>3</sup> On August 4, 2006, NASD filed Amendment No. 1 to the proposed rule change. Also on August 4, 2006, NASD withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 14, 2006.<sup>4</sup> The Commission received no comments on the proposal.

On September 27, 2006, NASD filed Amendment No. 3 to the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as amended by Amendment No. 2, grants accelerated approval to Amendment No. 3 to the proposed rule change, and solicits comments from interested persons on Amendment No. 3.

#### II. Description

NASD proposes to amend its rules to comply with Rules 610 and 611 of Regulation NMS ("Access Rule" and "Order Protection Rule," respectively).<sup>6</sup> Additionally, NASD proposes to revise its Certification Record, which each ADF Trading Center is required to complete prior to being permitted to post quotations through the ADF, and

thereafter, to recertify on an annual basis. NASD also proposes to amend its rules that govern quoting, trade reporting, and clearing through the ADF to extend this functionality to all NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS.<sup>7</sup> Finally, NASD proposes to reorganize the ADF trade reporting rules and make certain technical changes to enhance the clarity of the ADF rules.

NASD stated in Amendment No. 3 that the changes to the Certification Record and certification procedures will become effective upon approval of the proposal by the Commission. All other rule changes in the proposal will become effective on the Regulation NMS Trading Phase Date—February 5, 2007.

#### Automated Quotations

NASD proposes to amend its Rule 4300A(e) to require that an ADF Trading Center submit only automated quotations, as defined in Rule 600(b)(3) of Regulation NMS,<sup>8</sup> to the ADF, and to specifically state that manual quotations, as defined in Rule 600(b)(37) of Regulation NMS,<sup>9</sup> shall not be submitted to the ADF. Pursuant to proposed NASD Rule 4300A(a)(4), each ADF Trading Center must demonstrate to NASD that it has sufficient technology to automatically update its quotations and immediately respond to orders for execution directly against the individual ADF Trading Center's best bid or offer (*i.e.*, sufficient technology to display automated quotations). In addition, NASD Rule 4300A(e) would require each ADF Trading Center to adopt policies and procedures to ensure that only automated quotations are submitted to the ADF, and each ADF Trading Center would be required to monitor its systems on a real-time basis to assess whether they are functioning properly.

NASD also proposes to amend the system outage procedures in its Rule 4300A. A system outage would now be defined in NASD Rule 4300A(e)(2) as an inability to post automated quotations or an inability to respond to orders immediately and automatically.<sup>10</sup> Pursuant to proposed NASD Rule 4619A, if an ADF Trading Center were unable to submit automated quotations or were unable to respond immediately and automatically to orders, it would

<sup>7</sup> 17 CFR 242.600(b)(47).

<sup>8</sup> 17 CFR 242.600(b)(3).

<sup>9</sup> 17 CFR 242.600(b)(37).

<sup>10</sup> NASD also proposes to delete existing NASD IM-4613A that bans the automated update of certain quotations through the ADF. NASD originally adopted this IM to address capacity and operation concerns, but it no longer believes such a prohibition is necessary.

<sup>11</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> 17 CFR 242.600 *et seq.* See also Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Adopting Release").

<sup>4</sup> See Securities Exchange Act Release No. 54277 (August 4, 2006), 71 FR 46527 ("notice").

<sup>5</sup> In Amendment No. 3, NASD: (1) Added language to NASD Rule 4611A(a) stating that the priority for determining the bid and offer to be designated the protected quotation on the ADF would be price, size, and time and clarified in its Form 19b-4 submission that the protected quotation would be associated with a single market participant identifier ("MPID"); (2) modified Item 4 of the proposed Certification Record to make clear that an ADF Trading Center must respond to orders immediately and automatically and must respond to intermarket sweep orders ("ISOs") consistent with Regulation NMS; (3) modified Item 10 of the proposed Certification Record to make clear that an ADF Trading Center must post its relevant connectivity and access technical specifications on its Web site; (4) added new Item 13 to the proposed Certification Record regarding the self-help exception to Rule 611 of Regulation NMS; (5) clarified the definition of "system outage" in proposed NASD Rule 4300A(e)(2); (6) revised proposed NASD Rule 4619A to track more closely proposed NASD Rule 4300A(e)(2); (7) indicated that the Certification Record and certification procedures will be effective upon approval of the proposal; (8) stated that NASD would make its approved connectivity provider list available prior to October 16, 2006; (9) clarified that current ADF Trading Centers would be required to publish appropriate technical specifications, consistent with the proposed Certification Record, no later than October 16, 2006; (10) stated that NASD would provide a link to each such ADF Trading Center's specifications on its Web site; and (11) made minor technical changes to the proposal.

<sup>6</sup> 17 CFR 242.610 and 242.611.