

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at <http://www.ficc.com>. 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-FICC-2005-04 and should be submitted on or before February 25, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51103; File No. SR-ISE-2005-04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. Relating to Fee Changes

January 28, 2005.

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 7, 2005, 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. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders 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

The ISE is proposing to amend its Schedule of Fees to provide that the payment for order flow fee shall not apply to market makers when executing against Public Customer Orders entered into the Exchange's Price Improvement Mechanism ("PIM"). The text of the proposed rule change is available on the ISE's Web site (<http://www.iseoptions.com>), at the principal office of the ISE, 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, the ISE included statements concerning the purpose of and basis for its proposal and discussed any comments it had received regarding the proposal. 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

The ISE states that the purpose of this proposed rule change is to amend the ISE Schedule of Fees to provide that the payment for order flow fee shall not apply to market makers when executing against Public Customer Orders entered into the Exchange's PIM. According to the ISE, the Exchange's PIM, the rules for which were recently approved by the Commission,⁵ will permit an Electronic Access Member ("EAM") to seek price improvement for its Public Customer Orders in amounts smaller than the

standard nickel and dime trading increments. The PIM grants an EAM a preference at the best price for trading against at least a portion of its order, but allows other members to compete for that order by providing price improvement. The ISE states that, because market makers will be providing price improvement to Public Customer Orders when trading in the PIM, the Exchange will also not charge market makers a payment for order flow fee on these trades. Thus, the Exchange proposes to exempt PIM executions from the \$.55 per contract payment for order flow fee charged to market makers when executing against Public Customer Orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular, in that it is designed to provide for the 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 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 ISE neither solicited nor received written comments with respect to the proposed rule change.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁹ Accordingly, the proposal will take effect upon filing with the Commission. 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,

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR-ISE-2003-06).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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-ISE-2005-04 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-2005-04. 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 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-2005-04 and should be submitted on or before February 25, 2005.

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. 34-51092; File No. SR-NASD-2004-159]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Allow NASD To Review on a Pilot Basis Denial of Access Complaints Related to the Alternative Display Facility

January 28, 2005.

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 22, 2004, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. On January 11, 2005, NASD filed Amendment No. 1 to the proposed rule change.³ 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

NASD is proposing to establish on a pilot basis new NASD Rule 4400A, which would give NASD the authority to receive and review complaints against an NASD Market Participant⁴ alleging denial of direct or indirect access of the NASD Market Participant's quotations in the Alternative Display Facility ("ADF") that the NASD Market Participant is required to provide pursuant to NASD Rule 4300A. In addition, proposed NASD Rule 4400A

would set forth the procedures and review process for such complaints. Finally, the proposal would delegate authority to NASD's Market Regulation Committee to review denial of access determinations rendered in accordance with Rule 4400A. The text of the proposed rule change is available on NASD's Web site (<http://www.nasd.com>), at the principal offices of NASD, 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, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. NASD 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

Background

On July 24, 2002, the Commission approved SR-NASD 2002-97, which authorizes NASD to operate the ADF on a pilot basis for nine months.⁵ NASD subsequently filed for immediate effectiveness proposed rule changes to extend the pilot, the most recent until July 26, 2005.⁶ The ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval Order⁷ and in conjunction with Nasdaq's proposal to register as a national securities exchange.⁸

Under the pilot, the ADF provides NASD Market Participants the ability to post quotations in Nasdaq securities and provides all members that participate in the ADF the ability to view quotations and report transactions in Nasdaq securities to the exclusive Securities

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange clarified the scope of authority granted to the NASD and the Market Regulation Committee to review denials of access. Amendment No. 1 replaced the original filing in its entirety.

⁴ See NASD Rule 4300A(d)(4) defining "NASD Market Participant" as: (a) A NASD Registered Reporting ADF Market Maker (defined in NASD Rule 4200A(10)); (b) an alternative trading system or "ATS"; or (c) an NASD ADF Registered electronic communication network or "ECN."

⁵ See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

⁶ See Securities Exchange Act Release Nos. 47663 (April 10, 2003), 68 FR 19043 (April 17, 2003) (SR-NASD-2003-67); 49131 (January 27, 2004), 69 FR 5229 (February 3, 2004) (SR-NASD-2004-12); 50601 (October 28, 2004), 69 FR 64611 (November 5, 2004) (SR-NASD-2004-160).

⁷ Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (SR-NASD-99-53).

⁸ Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10-131).