

The proposed change is consistent with Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to DTC because it will allow for more efficient allocation of DTC's resources. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible inasmuch as the DTax service merely facilitates tax reporting of non-DTC eligible securities and does not affect the clearance and settlement of securities in DTC's custody or control.

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

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(4)<sup>7</sup> thereunder because the proposed rule effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty 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.<sup>8</sup>

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2005-20 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-DTC-2005-20. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at <https://login.dtcc.com/dtcorg/>. 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-DTC-2005-20 and should be submitted on or before January 17, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**  
Secretary.

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<sup>9</sup> 17 CFR 200.30-3(a)(12).

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52983; File No. SR-ISE-2005-047]

#### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Adopt a Flat Execution Fee For Public Customer Orders in "Premium Products" and Firm Proprietary Orders, and To Incorporate the Current Facilitation Mechanism Fee Into the Flat Execution Fee For Firm Proprietary Orders

December 20, 2005.

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 December 1, 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. On December 7, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The ISE filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> 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 proposes to amend its Schedule of Fees to (i) adopt a flat execution fee for Public Customer Orders<sup>6</sup> in "Premium Products" (as defined in the Schedule of Fees) and firm proprietary orders; and (ii)

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, ISE explained further its basis for the proposed flat execution fee and its reason for eliminating the Facilitation Mechanism fee. Amendment No. 1 also corrected several minor errors. 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 December 7, 2005, the date on which the ISE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> A Public Customer Order is defined in ISE Rule 100(a)(33) as an order for the account of a Public Customer. A Public Customer is defined in ISE Rule 100(a)(32) as a person that is not a broker or dealer in securities.

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(4).

<sup>8</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on the date on which the last amendment to the proposed rule change was filed with the Commission. 15 U.S.C. 78s(b)(3)(C).

incorporate the current Facilitation Mechanism fee into the flat execution fee for firm proprietary orders. The text of the proposed rule change is available at the Exchange and at the Commission's Public Reference Room, and at the Exchange's Web site ([http://www.iseoptions.com/legal/proposed\\_rule\\_changes.asp](http://www.iseoptions.com/legal/proposed_rule_changes.asp)).

## 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

The Exchange's Schedule of Fees currently contains a formula that determines the amount of the execution fee to be charged to all order types, *i.e.*, Public Customer (for certain index-based products), firm proprietary and market maker, based on the Exchange's average daily volume during the previous month. Under the current formula, the execution fee can range anywhere between \$0.12 per contract to \$0.21 per contract, depending on the Exchange's average daily volume during the previous month. The Exchange proposes to change this structure so that Public Customer Orders in "Premium Products"<sup>7</sup> and firm proprietary orders pay a flat execution fee of \$0.15 per contract.<sup>8</sup> Public Customer Orders in products other than Premium Products will continue to be subject to a flat execution fee of \$0.05, although that fee is currently waived until June 30, 2006. ISE market makers will continue to be charged the variable fee under the current formula. A \$0.03 per contract comparison fee shall continue to apply to all these order types, unless

<sup>7</sup> The ISE proposes to define the term "Premium Products" in the Schedule of Fees as options on DIA, IBB, IEF, IJH, IJR, IWM, IWN, IWO, NYC, NY, OEF, OIH, SHY, SMH, SPY, TLT, XLB, XLE, XLF, XLI, XLU, BYT, HXS, HVY, IXK, IXX, IXZ, JLO, MID, MNX, MSH, NDX, OOG, RMN, RND, RUF, RUI, RUT, SIN, and SML.

<sup>8</sup> These fees will be charged only to Exchange members.

specifically waived in the Schedule of Fees.

Additionally, the Exchange proposes to delete the separate Facilitation Mechanism fee line item. Previously, there was a separate line item in the Schedule of Fees for orders executed in that mechanism: Orders executed in the Facilitation Mechanism were charged the lower of the standard execution fee or \$0.15 per contract. Historically, fees charged for trades executed in the Facilitation Mechanism were carved out on the Schedule of Fees as a separate line item because, as a matter of inducement for members to transact in the Facilitation Mechanism, these fees were lower than the standard execution fees. Over time, as the standard execution fees decreased, as a result of increased volume, the two fees became identical. Accordingly, the Exchange now proposes to eliminate the separate line item for orders executed in the Facilitation Mechanism because it is no longer necessary when there is a flat \$0.15 fee for firm proprietary order and public customer orders in Premium Products.

As a matter of "housekeeping," in addition to using "Premium Products" as a defined word throughout the Schedule of Fees, the Exchange proposes to identify each product that appears on the Schedule of Fees by its ticker symbol alone rather than by its name and ticker symbol.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(4) of the Act,<sup>9</sup> which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the proposed fees are reasonable because they closely correlate to the variable execution fees charged to market maker and firm proprietary orders over the course of the last 12 months. For example, for nine months during 2005, the variable execution fees charged to market maker and firm proprietary orders were \$0.15 per contract, and for 3 months during 2005, these same fees were \$0.14 per contract. The Exchange further believes that the proposed fee changes will enable the ISE to continue offering competitively priced products and services.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

### 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,<sup>10</sup> and paragraph (f)(2) of Rule 19b-4 thereunder<sup>11</sup> 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.<sup>12</sup>

## 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-2005-047 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-047. This file number should be included on the subject line if e-mail is used. To help the

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> See footnote 3, *supra*.

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 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-2005-047 and should be submitted on or before January 17, 2006.

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

**Jonathan G. Katz,**  
Secretary.

[FR Doc. E5-7844 Filed 12-23-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52980; File No. SR-NASD-2005-134]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Status of Registered Persons and Sole Proprietors Serving in the Armed Forces of the United States

December 19, 2005.

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 November 15, 2005, 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. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> 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 the Substance of the Proposed Rule Change

NASD is proposing to amend NASD IM-1000-2 to (1) clarify that the scope of the relief provided in the IM extends to any registered person of a firm who volunteers for or is called into active military duty, not just registered representatives; (2) codify the staff's existing interpretation with respect to the receipt of transaction-related compensation by registered persons who volunteer for or are called into active military duty; (3) clarify that the relief provided to a registered person of a firm who volunteers for or is called into active military duty is available to the person during the period that such person remains registered with the firm, regardless of whether the person returns to employment at a different firm upon completion of his or her active military duty; and (4) clarify that the "inactive" status designation is available to registered persons and sole proprietors who volunteer for or are called into active duty in the Armed Forces of the United States and is available to them only while they remain on active military duty.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in [brackets].

\* \* \* \* \*

#### B. SCHEDULE A TO NASD BY-LAWS

\* \* \* \* \*

IM-1000-2. Status of [Sole Proprietors and Registered Representatives] *Persons Serving in the Armed Forces of the United States*

(a) *Inactive Status of Currently Registered Persons*

(1) A [ny] [R]registered [Representative] *person* of a member who volunteers for or is called into active duty in the Armed Forces of the United States shall be placed, after

proper notification to [the Executive Office] *NASD*, upon inactive status and need not be re-registered by such member upon his or her return to active employment with the member. *Such a person will remain eligible to receive transaction-related compensation, including continuing commissions, because he or she remains registered with a member of NASD. The employing member also may allow such a person to enter into an arrangement with another registered person of the member to take over and service the person's accounts and to share transaction-related compensation based upon the business generated by such accounts. However, since such persons are inactive, they may not perform any of the duties performed by a registered person.*

[Any member (Sole Proprietor) who temporarily closes his or her business by reason of volunteering or being called into the Armed Forces of the United States, shall be placed, after proper notification to the Executive Office, on inactive status until his or her return to active participation in the investment banking and securities business.]

(2) A [R]registered [Representative] *person* who is placed on inactive status [as set forth above] *pursuant to this paragraph (a)* shall not be included within the definition of "Personnel" for purposes of the dues or assessments as provided in Article VI of the *NASD By-Laws*.

[Any member placed on inactive status as set forth above shall not be required to pay dues or assessments during the pendency of such inactive status and shall not be required to pay an admission fee upon return to active participation in the investment banking and securities business.]

(3) A [R]registered [Representative] *person* who is placed on inactive status [as set forth above] *pursuant to this paragraph (a)* shall not be required to complete either of the Regulatory or Firm Elements of the continuing education requirements set forth in Rule 1120 during the pendency of such inactive status.

(4) *The relief provided in subparagraphs (a)(1), (a)(2), and (a)(3) shall be available to a registered person who is placed on inactive status pursuant to this paragraph (a) during the period that such a person remains registered with the member with which he or she was registered at the beginning of active duty in the Armed Forces of the United States, regardless of whether the person returns to active employment with another member upon completion*

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>15</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).