

requiring Stock Exchange members and member organizations effecting transactions in Shares of such ETF to deliver a Product Description to purchasers of Shares.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-17060 Filed 10-13-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of October 16, 2006:

An Open Meeting will be held on Wednesday, October 18, 2006 at 10 a.m. in Room L-002, the Auditorium.

The subject matter of the Open Meeting scheduled for Wednesday, October 18, 2006, will be:

The Commission will consider whether to adopt amendments to the best-price rule for issuer and third-party tender offers under the Securities Exchange Act of 1934. The amendments would clarify that the best-price rule applies only with respect to the consideration offered and paid for securities tendered in a tender offer and should not apply to consideration offered and paid according to employment compensation, severance or other employee benefit arrangements entered into with security holders of the issuer or subject company.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: October 11, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06-8718 Filed 10-12-06; 10:55 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54580; File No. SR-ISE-2006-40]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Establishment of the Second Market

October 6, 2006.

I. Introduction

On July 5, 2006, the International Securities Exchange, LLC (f/k/a the International Securities Exchange, Inc.) ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to establish a "Second Market" for the listing and trading of low-volume option classes. On August 16, 2006, ISE filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on August 29, 2006.⁴ The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The ISE proposes to adopt rules for the listing and trading of low-volume option classes that qualify for listing under existing Exchange standards in a "Second Market." Historically, the Exchange has elected to refrain from trading many option classes that qualify for trading on the ISE, but are characterized by low average daily trading volumes ("ADVs") on the other option exchanges.

A. Listing in the Second Market

Under the proposal, the Exchange would be able to list in the Second Market equity option classes (excluding options on exchange traded funds) that trade on other option exchange(s) that are characterized by an ADV below 500 contracts over the previous six-month period. The proposed rules would allow the Exchange to list equity option classes with an ADV of over 1,500 contracts only in the existing market (the "First Market"), and would trade such classes pursuant to existing ISE

rules. The Exchange would be able to list option classes with an ADV between 500 and 1,500 contracts initially in either market. Starting one year after the Exchange initiates trading in the Second Market, the Exchange would review the market in which option classes are listed every three months, and option classes would be moved from the First to the Second Market when their ADV in the prior six-month period falls below 300 contracts, and moved from the Second to the First Market when their ADV in the prior six-month period exceeds 750 contracts.

B. Participation as Market Makers in the Second Market

Under the proposal, all members approved to operate ISE market maker memberships would be eligible to be Competitive Market Makers in the Second Market ("SMCMMs"). In addition, members that are only approved as Electronic Access Members ("EAMs") may also register as SMCMMs.⁵ Only Primary Market Makers in the First Market may be Primary Market Makers in the Second Market ("SMPMMs").

As in the First Market, a primary market maker would be appointed for each class traded in the Second Market. SMPMMs would be subject to all the same obligations in their appointed options as Primary Market Makers in the First Market, including, among other things, entering continuous quotations in each series of every option class to which they are appointed and satisfying requirements related to the Plan for Creating and Operating an Intermarket Option Linkage. Similar to Primary Market Makers in the First Market, SMPMMs would be permitted to execute no more than 10% of their volume in Second Market option classes to which they are not assigned.

For purposes of existing Exchange rules relating to market maker obligations, SMCMMs will be considered "appointed" to all option classes listed in the Second Market and will be able to choose whether to make markets in any option class listed in the Second Market on a daily basis. Unlike Competitive Market Makers in the First Market, SMCMMs would not be required to enter continuous quotations in a minimum number or percentage of assigned option classes. An SMCMM will be required to continuously quote

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 54340 (August 21, 2006), 71 FR 51240.

⁵ Under the proposed rules, members that are only EAMs that want to become SMCMMs would be required to complete the same market maker application and meet the same standards that are applied to Competitive Market Makers under the Exchange's existing rules. Members that are only EAMs are not eligible to be SMPMMs.

all of the series of any options class in which it chooses to make a market. If an SMCMM chooses to make markets in one or more options classes in the Second Market, it must participate in the opening rotation and make markets and enter into any resulting transactions on a continuous basis in all series of the options class until the close of trading that day. SMCMMs may not initiate quoting in an options class intraday. In addition, an SMCMM would undertake all the obligations that a Competitive Market Maker in the First Market assumes in appointed option classes for any option class(es) in which the SMCMM elects to make a market on a given day. SMCMMs will be permitted to execute no more than 25% of their volume in Second Market option classes in which they are not contemporaneously making markets.

C. Proposed Fees in the Second Market

The Exchange proposes several changes to its fee schedule to accommodate introduction of the Second Market as follows: (1) Members would be charged an execution fee of \$.05 per contract for public customer orders; (2) a \$.10 per contract surcharge would be applied to transactions executed by market makers that do not own or lease an ISE market maker membership (*i.e.*, EAMs that make markets in the Second Market); (3) market makers would be excluded from the \$.065 per contract payment for order flow fee for Second Market options; (4) all market makers in the Second Market would be charged a \$2,000 per month access fee (there would be no additional access fee for EAMs to send orders to the Second Market); and (5) firms that are only market makers in the Second Market (*i.e.*, EAMs that make markets in the Second Market) would be charged the same \$5,000 annual regulatory fee paid by Competitive Market Makers in the First Market.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, in particular, the requirements of Section 6 of the Act.⁷ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which

requires, among other things, that the rules of a national securities exchange be 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.

The Commission believes that the ISE proposed market maker obligations for SMPMMs and SMCMMs are consistent with the Act. Market Makers are accorded certain benefits under the securities laws and ISE rules. The Commission believes the obligations of Market Makers in the Second Market justify these benefits.

The Commission also believes that the proposal is consistent with Section 6(b)(4) of the Act,⁹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Exchange currently assesses no execution fee for public customer order, but proposes to assess a \$.05 per contract execution fee for public customer orders executed in the Second Market. The Commission believes that this assessment is reasonable. The proposed rule change also appears to be reasonably designed to avoid duplicative charges to market makers already assessed certain fees, such as transaction and regulatory fees. The surcharge for Second Market transactions and the market maker regulatory fee will apply only to SMCMMs that are not also Market Makers in the First Market.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-ISE-2006-40), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris,
Secretary.

[FR Doc. E6-17083 Filed 10-13-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54583; File No. SR-NASDAQ-2006-021]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto to Modify Certain of Nasdaq's Corporate Governance Standards, Including the Definition of Independent Director

October 6, 2006.

On July 28, 2006, The NASDAQ Stock Market LLC ("Nasdaq" or "the Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Nasdaq Rules 4200(a)(15), IM-4200, and 4350, which pertain to Nasdaq's corporate governance standards for listed companies. On August 7, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 28, 2006.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁴ and, in particular, Section 6(b)(5) of the Act.⁵ The Commission believes that the proposed rule change would provide clarity and guidance to listed companies, particularly with respect to the determination of whether a director is independent. In particular, the proposed rule change would preclude a finding of independence if a director accepts any compensation from the company or its affiliates in excess of \$60,000 during the prescribed time period.⁶ This proposed change would

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54333 (August 18, 2006), 71 FR 50955 ("Notice").

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ Under current Nasdaq Rule 4200(a)(15)(B), a director of a listed company would not be considered independent if the director or a family member of the director has accepted more than \$60,000 in payments from the company or its parent or subsidiary during the time period set forth in the rule. The proposed rule change would amend the rule to refer to compensation in excess of

⁶ In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).