

among its members and other persons using its facilities.

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

The Exchange believes that the proposed rule change, as amended, does 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 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**

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(2)<sup>17</sup> thereunder. At any time within 60 days of the filing of such amended 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>18</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 No. SR-ISE-2006-61 on the subject line.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 19b-4(f)(2).

<sup>18</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 October 17, 2006, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2006-61. 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-2006-61 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Nancy M. Morris,**

*Secretary.*

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<sup>19</sup> 17 CFR 200.30-3(a)(12).

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54704; File No. SR-ISE-2006-44]

#### **Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving a Proposed Rule Change To Amend the Schedule of Fees To Expand the Broker Marketing Alliance To Include Non-Broker-Dealers With Regard to the Enhanced Sentiment Market Data Offering**

November 3, 2006.

On July 25, 2006, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, 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> to amend its Schedule of Fees regarding its enhanced sentiment market data offering to expand the Broker Marketing Alliance by eliminating its limitation to only broker-dealers. The proposed rule change was published for comment in the **Federal Register** on October 3, 2006.<sup>3</sup> The Commission received no comments on the proposal.

The Exchange offers an enhanced sentiment market data product that allows an end user to identify investor sentiment for individual securities or select industry sectors based on a calculation methodology that utilizes proprietary Exchange opening long option customer trade data.<sup>4</sup> Previously, the Commission approved a fee structure for this product.<sup>5</sup> The amount that a subscriber is charged depends upon whether the subscription is obtained directly from the Exchange or indirectly through a U.S. broker-dealer participating with the ISE in a Broker Marketing Alliance. A Broker Marketing Alliance is an arrangement between ISE and a participating broker-dealer that allows a participating U.S. broker-dealer to be compensated for enlisting subscribers to the enhanced sentiment market data product. There are four subscription levels of fees based on the

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

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

<sup>3</sup> See Securities Exchange Act Release No. 54508 (September 26, 2006), 71 FR 58459 ("Notice").

<sup>4</sup> The enhanced sentiment market data is based on the ISE Sentiment Index or ISEE. The ISEE, which is created by the ISE, provides an intra-day picture of how investors view stock prices by assessing customers' option trading activity. See Securities Exchange Act Release Nos. 53756 (May 3, 2006), 71 FR 27529 (May 11, 2006) (SR-ISE-2005-56) (order approving the prior fee structure for the product) ("Prior Order"); and 53532 (March 21, 2006), 71 FR 15501 (March 28, 2006) (SR-ISE-2005-56).

<sup>5</sup> See Prior Order, *supra* at n.4.

number of customer queries. Broker-dealer clients pay lower fees at the four levels than subscribers directly to the Exchange, and broker-dealers receive a rebate of the subscription fees collected. Specifically, the Fee Schedule provides that participating broker-dealers receive: (1) A rebate of 35% of the subscription fee collected from subscribers; and (2) an additional bonus rebate based on (a) the achievement of certain subscription levels; and (b) the size of their firm, as measured by the number of the firm's customers.

With the instant proposed rule change, the Exchange seeks to expand the Broker Marketing Alliance by eliminating its limitation to only broker-dealers.<sup>6</sup> Under the proposal, the lower level subscription fees billed to broker-dealer clients will now be expanded to apply to subscribers of non-broker-dealers. These non-broker-dealers will also be allowed to receive the same rebates and bonus rebates as described above and previously approved for broker-dealers participating in the Broker Marketing Alliance.<sup>7</sup>

In support of its proposal, the Exchange states that, since the introduction of this market data offering, it has received interest from many non-broker-dealers, including firms that provide investors with market commentary, investment tools and educational materials, seeking to sell subscriptions and participate in a revenue sharing arrangement similar to the Broker Marketing Alliance. The Exchange believes that allowing non-broker dealers to market its enhanced sentiment market data offering will increase the number of product subscribers.

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with 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. We note that the fee structure for subscribers of non-broker-dealers is identical to the fee structure previously

approved for subscribers of participating U.S. broker-dealers in the Broker Marketing Alliance and, as noted above, the rebates and revenue sharing arrangements are the same. Further, as noted in the Prior Order, enhanced sentiment market data is a purely optional product, and it is not necessary to subscribe to this service to trade options on the ISE.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change be and hereby is approved.

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

**Nancy M. Morris,**

*Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54702; File No. SR-NASD-2006-121]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASD Rule 11890(b)(2) To Allow NASD To Designate Officers To Take Action Under the Rule With Respect to Clearly Erroneous Transactions

November 3, 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 October 30, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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 Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 11890 (Clearly Erroneous Transactions) to allow any NASD officer designated by an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department to, on his or her own motion, review any transaction in a Nasdaq-listed security or an OTC equity security, as defined in NASD Rule 6610, arising out of or reported through any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries. The text of the proposed rule change is available on NASD's Web site (<http://www.nasd.com>), at the NASD's Office of the Secretary, 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. The text of these statements may be examined at the places specified in Item IV below. 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

Currently, NASD Rule 11890(b)(2) provides that, in the event of (1) a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and approved by the Commission, or (2) extraordinary market conditions in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department may, on his or her own motion, review any transaction in a Nasdaq-listed security or an OTC equity security, as defined in NASD Rule 6610, arising out of or reported through any such quotation,

<sup>6</sup> In the ISE's Schedule of Fees, it will now be referred to as a "Subscription through Marketing Alliance."

<sup>7</sup> See Prior Order, *supra* at n.4.

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

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

<sup>10</sup> 15 U.S.C. 78s(b)(2).

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

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