

*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–CBOE–2006–99 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–CBOE–2006–99. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be

available for inspection and copying at the principal office of the Exchange. 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–CBOE–2006–99 and should be submitted on or before September 20, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>90</sup>

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E7–17165 Filed 8–29–07; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–56315; File No. SR–ISE–2007–58]**

**Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change Relating to ISEE Select Market Data Fees**

August 24, 2007.

On July 6, 2007, the International Securities Exchange, LLC (“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”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to amend its Schedule of Fees to adopt a

subscription fee for an enhanced sentiment market data offering. The proposed rule change was published for comment in the **Federal Register** on July 25, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

**I. Description of the Proposal**

The Exchange proposes to offer, to both member and non-member subscribers, a data feed that will provide a bulk delivery of ISEE Select™ (“ISEE Select”) values.<sup>4</sup> The existing ISEE Select browser application allows a subscriber to access ISEE Select values for up to five securities simultaneously; this proposal will allow subscribers to access numerous ISEE Select values simultaneously. The actual potential number of ISEE Select values accessible by this proposed data feed offering can range from one to more than 1,700.

The ISEE Select data feed will have a flat rate subscription fee based on a fixed number of end users that each subscriber allows to view the data, as follows: \$0.10 Per end user, per month, for a minimum of 10,000 end users; \$0.10 for each additional end user, per month, up to 74,999 end users, in increments of 5,000 end users; \$0.084 per end user, per month, for redistribution from 75,000 to 199,999 end users, in increments of 5,000 end users; and \$0.0825 per end user, per month, for redistribution to 200,000 or more end users, in minimum increments of 5,000 end users. An example of the monthly subscription fee for a subscriber with 100,000 end users is as follows:

Number of users per increment	Monthly fee per user	Monthly sub-total
10,000 .....	\$ .10	\$1,000
10,001–74,999 .....	.10	6,500
75,000–100,000 .....	.084	2,100
Monthly Total .....	.....	9,600
Average Fee per User .....	.....	.096

**II. Discussion**

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.<sup>5</sup> Specifically, the Commission finds that the proposal is

consistent with Section 6(b)(4) of the Act, 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. This proposed rule change will diversify ISEE Select offerings by allowing members and non-

members to subscribe to a data feed of ISEE Select values at a flat rate subscription fee for redistribution to their customers. Further, we note that the fees are identical for members and non-members. As with other ISEE Select

<sup>90</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> See Securities Exchange Act Release No. 56093 (July 18, 2007), 72 FR 40912.

<sup>4</sup> ISEE Select allows subscribers to identify bullish and bearish investor sentiment for nearly any issue traded on the Exchange by providing sentiment values for particular indices, industry sectors or individual stocks. These values are calculated three times per hour.

<sup>5</sup> 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).

products,<sup>6</sup> this offering is purely optional; it is not necessary to subscribe to this service to trade options on the ISE.

### III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-ISE-2007-58) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E7-17162 Filed 8-29-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56319; File No. SR-NASDAQ-2006-045]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 2, and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1 and 2, To Allow the Use of a Company's Web Site To Distribute an Annual Report and Meet Other Nasdaq Listing Requirements

August 24, 2007

#### I. Introduction

On October 31, 2006, the Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") 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 allow the use of a Nasdaq-listed company's Web site to distribute its annual report and meet other Nasdaq listing requirements. On April 25, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on June 12, 2007.<sup>4</sup> The Commission did not receive any comment letters on the proposal. On August 24, 2007, the Exchange filed Amendment No. 2 to the proposed rule

change.<sup>5</sup> This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2, provides notice of Amendment No. 2, and solicits comments from interested persons on Amendment No. 2.

#### II. Description of the Proposal

Nasdaq proposes to make changes to its rules to facilitate the use of technology to satisfy Nasdaq listing requirements and to make certain clarifying and technical corrections.

##### *Annual Reports*

Pursuant to Nasdaq Rule 4350(b)(1)(A), each Nasdaq issuer is currently required to distribute to shareholders a copy of an annual report containing audited financial statements.<sup>6</sup> Nasdaq proposes to modify its rules to permit a company to distribute its annual report by posting it on a Web site and issuing a press release stating that the annual report has been filed with the Commission (or other appropriate regulatory authority), that such annual report is available on the company's publicly available Web site, and that shareholders can receive a hard copy free of charge upon request.<sup>7</sup> The proposal requires that the hard copy be provided within a reasonable time period following the request. Nasdaq notes that this proposal is most meaningful to foreign private issuers because they are exempt from the Commission's proxy solicitation rules under Rule 3a12-3(b) of the Act.<sup>8</sup>

In the initial version of the rule change, Nasdaq proposed that the annual report requirement is applicable only to issuers of common stock and voting preferred stock (and their equivalents).<sup>9</sup> In Amendment No. 2, Nasdaq decided to retain the current formulation of Rule 4350(b)(1)(A), so it will apply to all Nasdaq issuers and not just issuers of common stock and voting preferred stock (and their equivalents).<sup>10</sup> The proposed rule change also provides that the annual

report requirement can be satisfied by making available to shareholders the company's annual filing with the Commission, including but not limited to Forms 10-K, 20-F, 40-F, or N-CSR.<sup>11</sup> Further, Nasdaq proposes to remove a provision related to the timing for delivery of the annual report, because the Exchange notes that the Commission's proxy rules already require that such information be provided before the annual meeting.<sup>12</sup> Nasdaq is also removing the rule provision that the annual report be filed with Nasdaq at the same time that it is made available to shareholders. According to the Exchange, it does not require a copy of the company's annual report with audited financial statements to be filed with it because it has access to company filings through the Commission's EDGAR database. Nasdaq obtains access to these filings through an online vendor subscription service. The vendor receives all electronically-filed documents within seconds of their submission to the EDGAR system and provides Nasdaq staff immediate access to these filings through the Internet.<sup>13</sup>

In addition, Nasdaq proposes to make a technical correction to Rule 4350(b)(1)(B), relating to the disclosure required when the audit opinion of a company's annual financial statements contains a "going concern qualification." The proposed change removes the term "going concern qualification," which is undefined in the accounting literature, and replaces it with language from Statement on Auditing Standard Number 59, which relates to the auditor's consideration of an entity's ability to continue as a going concern.

##### *Disclosure of Non-Conforming Governance Practices*

Nasdaq requires that foreign private issuers disclose all non-conforming governance practices in their Form F-1,

<sup>5</sup> See Amendment No. 2 dated August 24, 2007 ("Amendment No. 2").

<sup>6</sup> A foreign private issuer can follow its home country practice regarding distribution of annual reports instead of Nasdaq's rule, if it follows the procedures set forth in Rule 4350(a) regarding disclosure of this non-conforming practice.

<sup>7</sup> This proposal is similar to a recent change by the New York Stock Exchange LLC to Section 203.01 of its Listed Company Manual. See Securities Exchange Act Release No. 54344 (August 21, 2006), 71 FR 51260 (August 29, 2006) (approving SR-NYSE-2005-68).

<sup>8</sup> 17 CFR 240.3a12-3(b).

<sup>9</sup> Common stock equivalents include, but are not limited to: Ordinary shares, shares or certificates of beneficial interest of Trust, American depository receipts and American depository shares.

<sup>10</sup> See Amendment No. 2, *supra* note 5.

<sup>11</sup> In Amendment No. 2, Nasdaq modified the proposed rule language to make it clear that the aforementioned forms are not an exhaustive list. For example, the rule can be satisfied by making available other forms, such as the 10-KSB. See Amendment No. 2, *supra* note 5.

<sup>12</sup> Pursuant to Rule 14a-3(b), 17 CFR 240.14a-3(b), the proxy statement for a company's annual meeting at which directors are to be elected must be accompanied or preceded by an annual report. State law requirements also govern the amount of notice that must be provided for a meeting. See, e.g., Section 222(b) of the Delaware General Corporation Law, which requires notice of a meeting not less than 10 nor more than 60 days prior to the meeting.

<sup>13</sup> See e-mail from Arnold Golub, Associate General Counsel, Nasdaq, to Sharon Lawson, Senior Special Counsel, Division, Commission, on August 23, 2007.

<sup>6</sup> See, e.g., Securities Exchange Act Release No. 54704 (November 3, 2006), 71 FR 65859 (November 9, 2006) (SR-ISE-2006-44).

<sup>7</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> See Amendment No. 1 dated April 25, 2007.

<sup>4</sup> See Securities Exchange Act Release No. 55854 (June 4, 2007), 72 FR 32384.