

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56493; File No. SR-ISE-2007-83]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Eliminate Position and Exercise Limits for Options on the Russell 2000 Index, and to Specify that Certain Reduced-Value Options on Broad-Based Security Indexes Have No Position and Exercise Limits

September 21, 2007.

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 September 7, 2007, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by ISE. On September 17, 2007, ISE submitted Amendment No. 1 to the proposed rule change. The Exchange has filed the proposal as a “non-controversial” rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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 Exchange proposes to eliminate position and exercise limits for options on the Russell 2000 Index (“RUT”), and to specify that reduced-value options on broad-based security indexes for which full-value options have no position and exercise limits will similarly have no position and exercise limits. The text of the proposed rule change is available at ISE, the Commission’s Public Reference Room, and <http://www.ise.com>.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE 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. 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 Exchange proposes to amend ISE Rule 2004 to eliminate position and exercise limits for options on RUT, a broad-based securities index that is multiply listed and heavily traded.<sup>5</sup> The Exchange further proposes to amend ISE Rule 2004 to specify that reduced-value options on broad-based security indexes for which full-value options have no position and exercise limits will similarly have no position and exercise limits. Currently, options on the Full Size Nasdaq 100 Index Options (“NDX”) have no position and exercise limits. In this regard, the Exchange proposes to eliminate position and exercise limits for options on the Mini Nasdaq 100 Index (“MNX”).

##### Eliminate Position and Exercise Limits for RUT Options

The Exchange believes that the circumstances and considerations relied upon in approving the elimination of position and exercise limits for other heavily traded broad-based index options (e.g., options on NDX) equally apply to the current proposal relating to position and exercise limits for RUT options.<sup>6</sup>

In approving the elimination of position and exercise limits for NDX options, the Commission considered the capitalization of this index and the deep and liquid markets for the securities underlying the index significantly reduced concerns of market manipulation or disruption in the underlying markets. The Commission also noted the active trading volume for options on the index. ISE believes that RUT shares these factors in common with NDX. As of July 31, 2007, the approximate market capitalization of NDX was \$2.28 trillion, the average daily trading volume (“ADTV”) for the

components of NDX was 572 million, and the ADTV for options on NDX was 64,003 contracts per day. ISE believes that RUT has very comparable characteristics. The market capitalization for RUT is \$1.73 trillion dollars, the ADTV for the underlying securities is 535 million shares, and the ADTV for the option is 79,000 contracts.

In approving the elimination of position and exercise limits for NDX, the Commission also noted the financial requirements imposed by both the Exchange and the Commission serve to address any concerns that an Exchange member or its customer(s) may try to maintain an inordinately large unhedged position in options on NDX. These financial requirements also apply to RUT options. Under ISE rules, the Exchange also has the authority to impose additional margin upon accounts maintaining underhedged positions, and is further able to monitor accounts to determine when such action is warranted. As noted in the Exchange’s rules, the clearing firm carrying such an account would be subject to capital charges under Rule 15c3-1 under the Act<sup>7</sup> to the extent of any resulting margin deficiency.<sup>8</sup>

In approving the elimination of position and exercise limits for NDX, the Commission relied heavily on the Exchange’s ability to provide surveillance and reporting safeguards to detect and deter trading abuses arising from the elimination of position and exercise limits in options on the index. The Exchange represents that it monitors the trading in RUT options in the same manner as trading in NDX options and that the current ISE surveillance procedures are adequate to continue monitoring RUT options. In addition, the Exchange intends to impose a reporting requirement on ISE members who trade RUT options. This reporting requirement, which is currently imposed on members who trade NDX options, will require members who maintain in excess of 100,000 RUT option contracts on the same side of the market, for their own accounts or for the account of customers, to report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in a manner and form required by the Exchange. The Exchange may also specify other reporting requirements, as well as the limit at which the reporting requirement may be triggered.

The Exchange believes that eliminating position and exercise limits

<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).

<sup>5</sup> The current position and exercise limits, under ISE Rules 2004 and 2007, respectively, for RUT options are 50,000 contracts, with no more than 30,000 of such contracts in a series in the nearest expiration month.

<sup>6</sup> See Securities Exchange Act Release No. 52894 (December 5, 2005), 70 FR 73497 (December 12, 2005) (SR-ISE-2005-45) (“NDX Approval Order”).

<sup>7</sup> 17 CFR 240.15c3-1.

<sup>8</sup> See ISE Rule 2006(a)(14).

for RUT options is consistent with ISE rules relating to similar broad-based indexes and also allows ISE members and their customers greater hedging and investment opportunities.

#### Elimination of Position Limits for Reduced-Value Options on Broad-Based-Indexes for Which There Are Not Position and Exercise Limits for Full-Value Options

The Exchange lists and trades reduced-value options on broad-based indexes for which the Exchange also lists and trades full value options (e.g., MNX options). When the Exchange received approval to list and trade MNX options, the proscribed position and exercise limits were equivalent to the reduced-value contract factor (e.g., 10) multiplied by the applicable position and exercise limits for the full-value options on the same broad-based index.<sup>9</sup> For example, when the Exchange received approval to list and trade NDX and MNX options,<sup>10</sup> the position and exercise limits for MNX (1/10<sup>th</sup> NDX value) options were 750,000 contracts, which was equal to the applicable factor (10) multiplied by the position limit for NDX options (75,000 contracts). In the NDX/MNX Approval Order, the Exchange noted that NDX contracts would be aggregated with MNX contracts to determine compliance with applicable position and exercise limits. Since position and exercise limits were eliminated for NDX options,<sup>11</sup> the Exchange now proposes to eliminate position and exercise limits for MNX options. The Exchange further proposes to amend Rule 2004 to state that reduced-value options on broad-based security indexes for which full-value options have no position and exercise limits would similarly have no position and exercise limits.

In addition, because position and exercise limits for reduced-value options are aggregated with full-value options for purposes of determining compliance with position and exercise limits, the Exchange proposes amending Rule 2006(a)(13) to reflect that such aggregation would apply when calculating reporting requirements (e.g., 10 MNX options equal 1 NDX full-value contract). Further, the Exchange proposes to delete certain rule text in Rule 2006(a)(5) relating to MNX options because, pursuant to this proposed rule change, there is no longer a need for an

exemption from position limits for MNX options.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>13</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Further, the Exchange notes that this proposed rule change is similar to proposals filed by the American Stock Exchange LLC ("Amex") and the Chicago Board Options Exchange, Incorporated ("CBOE") that were recently approved by the Commission.<sup>14</sup>

#### 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 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 does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to section

19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>17</sup> However, Rule 19b-4(f)(6)(iii)<sup>18</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow ISE members and their customers greater hedging and investment opportunities in RUT options without further delay. The Commission notes that it recently approved substantially similar proposals filed by CBOE and Amex.<sup>19</sup> The Commission believes that ISE's proposal to eliminate position and exercise limits for RUT options raises no new issues. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>20</sup>

At any time within 60 days of the filing of such 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>21</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.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested the Commission to waive this five-day pre-filing notice requirement. The Commission hereby grants this request.

<sup>18</sup> *Id.*

<sup>19</sup> See *supra* note 14.

<sup>20</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on September 17, 2007, the date on which the Exchange submitted Amendment No. 1.

<sup>9</sup> See Securities Exchange Act Release No. 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005) (SR-ISE-2005-01) ("NDX/MNX Approval Order").

<sup>10</sup> *Id.*

<sup>11</sup> See NDX Approval Order, *supra* note 6.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See Securities Exchange Act Release Nos. 56351 (September 4, 2007), 72 FR 51875 (September 11, 2007) (SR-Amex-2007-81); and 56350 (September 4, 2007), 72 FR 51878 (September 11, 2007) (SR-CBOE-2007-79).

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-2007-83 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-ISE-2007-83. 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 the filing also will be available for inspection and copying at the principal office of 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-2007-83 and should be submitted on or before October 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56496; File No. SR-ISE-2007-85]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PrecISE Fees

September 21, 2007.

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 September 17, 2007, the International Securities Exchange, LLC ("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 substantially prepared by ISE. ISE filed the proposal pursuant to section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, as establishing or changing a due, fee, or other charges applicable to a member, which renders the proposed rule change 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

ISE is proposing to amend its Schedule of Fees to establish fees to: (i) Raise its PrecISE through VPN fees; and (ii) adopt a PrecISE Sponsored Customer fee. The text of the proposed rule change is available at ISE, <http://www.iseoptions.com>, and 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 Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

<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)(ii).

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

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this proposed rule change is to amend the Exchange's Schedule of Fees to: (i) Raise its PrecISE through VPN fees; and (ii) adopt a PrecISE Sponsored Customer fee.

"PrecISE" is ISE's internally-developed proprietary order-routing terminal used by Electronic Access Members ("EAMs") to send order flow to the Exchange. The Exchange currently permits EAMs to access the Exchange through a VPN connection from their PrecISE terminals for which the Exchange currently charges \$250 per month per terminal.<sup>5</sup> VPN is an internet-based "virtual private network" that allows secure access to the ISE through the internet. PrecISE through VPN provides PrecISE functionality without requiring dedicated network lines and is a cost-efficient means of access for small and mid-sized broker-dealers. The Exchange notes that EAMs may also use PrecISE through VPN as a back-up or disaster recovery connection to the Exchange. The Exchange now proposes to increase its PrecISE through VPN fee from \$250 per month per terminal to \$300 per month per terminal to offset the Exchange's costs for maintaining these connections.<sup>6</sup>

The Exchange also proposes to adopt a PrecISE Sponsored Customer fee of \$300 per month per terminal. The Exchange currently operates a program that permits sponsored customers of Members to access the Exchange directly via a PrecISE trade terminal, provided certain conditions are met.<sup>7</sup> The proposed Sponsored Customer fee shall only apply to sponsored customers that are not affiliates of the ISE member who sponsors its access. For example, an ISE member that sponsors five of its customers, all of whom are not affiliated with it, will be charged \$1,500 per month for the five sponsored terminals through which the Member's customers

<sup>5</sup> See Securities Exchange Act Release No. 54121 (July 10, 2006), 71 FR 40566 (July 17, 2006) (SR-ISE-2006-31).

<sup>6</sup> The Exchange notes that this proposed fee increase will bring the PrecISE through VPN fees in line with the fee the Exchange currently charges EAMs for a network connection. See Securities Exchange Act Release No. 55960 (June 26, 2007), 72 FR 36531 (July 3, 2007) (SR-ISE-2007-42) (notice of filing and immediate effectiveness of proposed rule change adopting a per user per month fee for the Exchange's PrecISE Trade® terminal).

<sup>7</sup> See Securities Exchange Act Release No. 55586 (April 5, 2007), 72 FR 18701 (April 13, 2007) (SR-ISE-2007-19) (notice of filing and immediate effectiveness of proposed rule change relating to access to the Exchange by Sponsored Customers).

<sup>22</sup> 17 CFR 200.30-3(a)(12).