

the date of filing. However, Rule 19b-4(f)(6)(iii) 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 the proposed amendments should allow the Exchange to settle disciplinary matters more efficiently, without affecting the rights of respondents in any significant manner. In addition, the Exchange's non-substantive changes should help make Amex rules clearer and easier for readers to understand. The Commission believes that for these reasons, waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>9</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.

#### 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-Amex-2007-111 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-Amex-2007-111. 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

<sup>9</sup> For 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).

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 Amex. 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-Amex-2007-111 and should be submitted on or before November 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56721; File No. SR-ISE-2007-91]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Relating to API Fees

October 30, 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 October 1, 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 the Exchange. On October 29, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A),<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 modified by Amendment No. 1, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE proposes to amend its Schedule of Fees regarding the Exchange's API or login fees. The text of the proposed rule change is available at the Exchange, 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 proposal. 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

ISE charges its market makers a fee for each login that a member utilizes for quoting or order entry, with a lesser charge for logins used for the limited purpose of "listening" to system broadcasts.<sup>6</sup> ISE currently has the following categories of authorized logins: (1) Quoting, order entry and listening (allowing the user to enter quotes, orders, and perform all other miscellaneous functions, such as setting

<sup>3</sup> Amendment No. 1 made clarifying changes to the original filing and attached a revised Exhibit 5, to reflect intervening changes to the Exchange's Schedule of Fees that were made between the filing of the original proposed rule change and the submission of Amendment No. 1.

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

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

<sup>6</sup> See Securities Exchange Act Release No. 53522 (March 20, 2006), 71 FR 14975 (March 24, 2006) (SR-ISE-2006-09).

<sup>10</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.

parameters, pulling quotes and performing linkage functions (e.g., sending and receiving P and P/A orders, laying off orders, etc.); (2) order entry and listening (allowing the user to enter orders and perform all other miscellaneous functions, such as setting parameters, pulling quotes and performing linkage functions (but not quote)); and (3) listening (allowing the user only to query the system and to respond to other broadcasts).<sup>7</sup>

An ISE market maker currently receives an allocation of 1,000,000 quotes per day per user. If a firm submits more quotes than those allocated, i.e., 1,000,000 quotes per day per user as measured on an average in a single month, the firm is charged for additional users depending upon the number of quotes submitted. Each month, the total number of quotes submitted by a market maker firm across all bins (i.e., group of options to which the market maker is appointed), is divided by the number of trading days, resulting in the average quotes per day. This number is then divided by 1,000,000 and rounded up to the nearest whole number, resulting in an implied number of users based on quotes. Members are invoiced on a monthly basis for the greater of a) the greatest number of users authorized to login into the system, or b) the number of implied users based on quotes.

The Exchange also previously adopted an additional category, a "High Throughput User," that permits a market maker to quote up to 2,000,000 quotes per day in a month.<sup>8</sup> A High Throughput User is able to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters, pulling quotes and performing linkage functions (e.g., sending and receiving P and P/A orders, laying-off orders, etc.).<sup>9</sup>

ISE currently charges market makers \$950 per month for each quoting session for up to 1,000,000 quotes per day, on average for a month. Market makers are charged an additional user fee of \$950 for each incremental usage of up to 1,000,000 quotes per day per user. For High Throughput Users, ISE charges a fee of \$1,900 per month. High Throughput User market makers are charged an additional user fee of \$1,900 for each incremental usage of up to 2,000,000 quotes per day per user.

The Exchange now proposes to increase the allocation of quotes per day

per user from 1,000,000 to 1,300,000 for non-High Throughput Users and from 2,000,000 to 2,600,000 for High Throughput Users. As a result, under this proposed rule change, market makers will continue to be charged \$950 per month for each quoting session for up to 1,300,000 quotes per day, with an additional user fee of \$950 for each incremental usage of up to 1,300,000 quotes per day per user. For High Throughput Users, the fee will continue to be \$1,900 per month for each quoting session for up to 2,600,000 quotes per day, with an additional user fee of \$1,900 for each incremental usage of up to 2,600,000 quotes per day per user. Finally, ISE represents that the proposed increase in the allocation of quotes per day per user will not have an adverse effect on capacity on the Exchange.

## 2. Statutory Basis

The basis under section 6(b) of the Act<sup>10</sup> for this proposed rule change is the requirement under section 6(b)(4)<sup>11</sup> 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 has had numerous conversations with its market makers and believes that, in light of the increased number of quotes as a result of the penny pilot, an increase in the allocation of quotes per day per user is necessary and warranted.

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

ISE 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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>13</sup> since it establishes or changes a due, fee or other charge

imposed by the Exchange. 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 the furtherance of the purposes of the Act.<sup>14</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-2007-91 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-2007-91. 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

<sup>14</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 29, 2007, the date on which ISE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>7</sup> *Id.*

<sup>8</sup> See Securities Exchange Act Release No. 55941 (June 21, 2007), 72 FR 35535 (June 28, 2007) (SR-ISE-2007-36).

<sup>9</sup> *Id.*

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

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

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 No. SR-ISE-2007-91 and should be submitted on or before November 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-21662 Filed 11-2-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56711; File No. SR-NYSE-2007-83]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Relating to NYSE Rule 104.10 (“Dealings by Specialists”)

October 26, 2007.

On September 14, 2007, the New York Stock Exchange LLC (“NYSE” 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 (i) extend the duration of its pilot program applicable to “Conditional Transactions” as defined in NYSE Rule 104.10 (“Dealings by Specialists”) to March 31, 2008<sup>3</sup>; (ii) remove the “active securities”<sup>4</sup> limitation on Conditional

Transactions that establish or increase a specialist’s position and reach across the market to transact with the NYSE’s published quote; and (iii) make certain conforming changes to NYSE Rule 104.10(5). The proposed rule change was published for comment in the **Federal Register** on September 25, 2007.<sup>5</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### I. Description of the Proposal

NYSE Rule 104 governs specialist dealings and includes, among other things, restrictions upon specialists’ ability to trade as dealer in the stocks in which he or she is registered. Under NYSE Rule 104(a), specialists are not permitted to effect transactions on the Exchange for their proprietary accounts in any security in which the specialist is registered, “unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market \* \* \*.” This restriction is known as the “negative obligation.” In particular, NYSE Rules 104.10(5) and (6) expand upon the negative obligation with respect to specific types of proprietary transactions.

In December 2006, as part of extensive amendments to its specialist stabilization rules, the Exchange implemented a pilot program allowing specialists to execute transactions in active securities that establish or increase a position and reach across the market to trade as the contra-side to the Exchange published bid or offer (Conditional Transactions) without restriction as to price or Floor Official approval, provided that the specialist appropriately re-enters on the opposite side of the market in a size commensurate with the specialist’s Conditional Transaction.<sup>6</sup> NYSE issued guidelines called “Price Participation Points” (“PPPs”) that identify the price at or before which a specialist is expected to re-enter the market after effecting one or more Conditional Transactions. PPPs are minimum guidelines only and compliance with them does not guarantee that a specialist is meeting its obligations. Under the pilot program, certain Conditional

Transactions require the specialist to immediately re-enter, or re-enter as the specialist’s next available quoting or trading action, regardless of the PPP.<sup>7</sup> For example, immediate re-entry may be required based on the price and/or volume of the specialist’s Conditional Transaction(s) in reference to the market in the security at the time of such trading. The fact that there may have been one or more independent trades following the specialist’s Conditional Transaction does not, by itself, eliminate the need for immediate re-entry when otherwise appropriate. In addition, immediate re-entry is required after a Conditional Transaction: (a) Of 10,000 shares or more or a quantity of stock with a market value of \$200,000 or more; and (b) which exceeds 50% of the published bid or offer size (as relevant).<sup>8</sup>

Specialists currently are not permitted to establish or increase a position in “inactive securities”<sup>9</sup> by reaching across the market to purchase the offer at a price that is above the last sale price on the Exchange or sell to the bid at a price that below the last sale price on the Exchange, unless such specialist trade is reasonably necessary to render the specialist’s position adequate to the immediate and reasonably anticipated needs of the market and approved by a Floor Official. Further, for inactive securities, specialists currently are not permitted to purchase more than 50% of the stock offered at a price that is equal to the last sale price when the last sale price was higher than the last differently priced regular way sale, unless such trade is approved by a Floor Official. Specialists must re-enter the market when reasonably necessary after effecting such trades.<sup>10</sup>

The Exchange is now proposing to extend its pilot program applicable to Conditional Transactions to March 31, 2008 and remove the “active securities” restriction included in the pilot, enabling specialists to execute Conditional Transactions in all securities traded on the NYSE.<sup>11</sup> The Exchange will continue to apply its PPP guidelines, and specialists will continue to be required to meet the re-entry obligations of NYSE Rule 104.10(6). In

<sup>15</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> A “Conditional Transaction” is defined as a specialist transaction in an active security that establishes or increases a position and reaches across the market to trade as the contra-side to the Exchange published bid or offer. See NYSE Rule 104.10(6)(ii) (which is renumbered pursuant to this proposal as NYSE Rule 106.10(6)(i)).

<sup>4</sup> Original NYSE Rule 104.10(6)(i) defines “active securities” as: (a) Securities comprising the S&P 500 Index; (b) securities traded on the Exchange during the first five trading days following their initial public offering; and (c) securities that have been designated as “active” by a Floor Official pursuant to the parameters set forth in the rule. In general, a governing Floor Official may designate a security as “active” by determining, among other things, that the security in question has exhibited substantially greater than normal trading volume and is likely to continue to sustain such higher volume during the remainder of the trading session.

<sup>5</sup> See Securities Exchange Act Release No. 56455 (September 18, 2007), 72 FR 54499 (“Notice”).

<sup>6</sup> See Securities Exchange Act Release No. 54860 (December 1, 2006), 71 FR 71221 (December 8, 2006) (SR-NYSE-2006-76). The operation of the pilot was subsequently extended two times, first until September 30, 2007 and then until the earlier of (i) December 31, 2007 or (ii) the approval by the Commission of this proposed rule change. See Securities Exchange Act Release Nos. 55995 (June 29, 2007), 72 FR 37288 (July 9, 2007) (SR-NYSE-2007-58); and 56554 (September 27, 2007), 72 FR 56419 (October 3, 2007) (SR-NYSE-2007-84).

<sup>7</sup> See NYSE Rule 106.10(6)(iv) (which is renumbered pursuant to the proposal as NYSE Rule 106.10(6)(iii)).

<sup>8</sup> See NYSE Rule 106.10(6)(iv)(c)(I) and (II) (which are renumbered pursuant to the proposal as NYSE Rule 106.10(6)(iii)(c)(I) and (II)).

<sup>9</sup> “Inactive securities” are securities that do not fall within NYSE’s definition of active securities. See *supra* note 4.

<sup>10</sup> See NYSE Rule 106.10(5)(b)(I).

<sup>11</sup> During the pilot, the restrictions currently in effect for inactive securities pursuant to NYSE Rule 106.10(5)(b) will be suspended.