

This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

## II. Description of the Proposed Rule Change

FINRA is proposing to establish an exemption for certain Regulation NMS-compliant ISOs<sup>7</sup> from the Rule and the Interpretive Material (“IM”) that govern trading ahead of customer limit orders and customer market orders. Under the proposed rule, a member will be exempt from its obligations with respect to trading for its own account if an ISO is routed in compliance with Rule 600(b)(30)(ii) of Regulation NMS, and the customer limit order or market order is received after the member routed the ISO. The exemption will also apply if the member executes an ISO to facilitate a customer limit order or market order, and the customer has consented to not receiving the better prices obtained by the ISO.

In its filing with the Commission, FINRA stated that the proposed exemption is similar to an exemption adopted by the New York Stock Exchange LLC to its Rule 92 (Limitations on Members’ Trading Because of Customers’ Orders). The ISO exemption to Rule 92 was approved by the Commission on July 5, 2007.<sup>8</sup>

## III. Summary of Comments

The Commission received one comment letter in response to the proposed rule change.<sup>9</sup> The commenter stated that the implementation of IM–2110–2 will reduce liquidity and result in inferior executions for public investors who own non-penny stock OTC securities.<sup>10</sup> The commenter also objected to the change to the definition of the size of the order on which terms and conditions may be negotiated.<sup>11</sup>

the proposed rule text. Because the Amendment is technical in nature, it is not subject to notice and comment.

<sup>7</sup> Regulation NMS defines an ISO as a limit order for an NMS stock that meets the following requirements: (i) When routed to a trading center, the limit order is identified as an intermarket sweep order; and (ii) simultaneously with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders also must be marked as intermarket sweep orders. See 17 CFR 242.600(b)(30).

<sup>8</sup> See Securities Exchange Release No. 56017 (July 5, 2007), 72 FR 38110 (July 12, 2007) (SR–NYSE–2007–21).

<sup>9</sup> *Supra* note 4.

<sup>10</sup> *Id.* at 1–2.

<sup>11</sup> *Id.* at 2.

FINRA responded to the comment letter on March 26, 2008.<sup>12</sup> FINRA stated that the comment letter was not germane to the proposed rule change, as it did not pertain to the proposed ISO exemption.<sup>13</sup> According to FINRA, the comments related to a rule change, previously approved by the Commission,<sup>14</sup> which expanded IM–2110–2 to apply to OTC equity securities.<sup>15</sup>

## IV. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comment letter, and FINRA’s response to the comment letter, and 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 association<sup>16</sup> and, in particular, Section 15A(b)(6) of the Act,<sup>17</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that it is reasonable for FINRA to amend IM–2110–2 and Rule 2111 to exempt members when routing certain Regulation NMS-compliant ISOs. The proposed rule change should enable members to comply with the ISO routing requirements of Rule 611 of Regulation NMS without violating IM–2110–2 and Rule 2111 and, given the ISO routing exemption that currently exists under NYSE Rule 92, will subject ISO routing to consistent standards.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR–FINRA–2007–039), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E8–10594 Filed 5–12–08; 8:45 am]

**BILLING CODE 8010–01–P**

<sup>12</sup> *Supra* note 5.

<sup>13</sup> *Id.* at 1.

<sup>14</sup> See Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 99810 (March 5, 2007) (SR–NASDAQ–2005–146).

<sup>15</sup> FINRA letter at 2.

<sup>16</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).

<sup>17</sup> 15 U.S.C. 78o–3(b)(6).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57790; File No. SR–ISE–2008–33]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Block, Facilitation and Solicited Order Mechanisms

May 6, 2008.

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 April 30, 2008, 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 prepared substantially by ISE. ISE filed the proposed rule change as a “non-controversial” proposed 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 from interested persons.

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

ISE proposes to amend Supplementary Material .07 to ISE Rule 716 to make it consistent with the definition of a Block Trade under the Exchange’s Intermarket Option Linkage (“options linkage”) rules. The text of the proposed rule amendment is as follows, with deletions in [brackets] and additions *italicized*:

Rule 716. Block Trades

(a) through (e) no change.

Supplementary Material to Rule 716

.01 through .06 no change.

.07 Away Market Prices. Orders of 50 to 499 contracts and orders with a premium value below \$150,000 executed through the Block, [and] Facilitation and Solicited Order Mechanisms will not be executed at a price inferior to the national best bid or offer at the time of execution. Orders of 500 or more contracts with a premium value of at least \$150,000 executed through the Block, Facilitation and

<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).

Solicited Order Mechanisms will be executed without consideration of any prices that might be available on other exchanges trading the same options contract.

\* \* \* \* \*

## 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. 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's Block and Facilitation Mechanisms under ISE Rule 716 provide a way for members to execute block-sized orders, defined as orders of at least 50 contracts. The Solicited Order Mechanism also allows for the execution of block-sized solicited orders, but is limited to orders of at least 500 contracts. The Exchange's rule for the Block and Facilitation Mechanisms specify that orders under 500 contracts may not be executed at prices that would trade through the national best bid or offer ("NBBO") and that orders of 500 contracts or more may be executed in the Block, Facilitation and Solicited Order Mechanisms without consideration of any prices that might be available on other exchanges trading the same options contract.

Under the options linkage rules, Block Trades, which may be executed at prices that are inferior to the NBBO,<sup>5</sup> are defined as orders of at least 500 contracts and a premium value of at least \$150,000.<sup>6</sup> Accordingly, the Exchange proposes to amend Supplementary Material .07 to ISE Rule 716 so that it is consistent with the definition of a Block Trade under the options linkage rules by adding a minimum premium requirement of \$150,000 for orders that may be traded at prices inferior to the NBBO.<sup>7</sup>

<sup>5</sup> ISE Rule 1902(d)(2) provides that the Exchange will not consider there to have been a trade-through if a member executes a block Trade at a price inferior to the NBBO if such member satisfies all aggrieved parties following the execution of the Block Trade.

<sup>6</sup> ISE Rule 1900(2).

<sup>7</sup> The Solicited Order Mechanism will continue to be limited to orders of at least 500 contracts.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the requirement of Section 6(b)(5) of the Act<sup>9</sup> that an exchange have rules that are 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will assure that the execution of orders through the Block, Facilitation and Solicited Order Mechanism is consistent with the requirements of the options linkage rules.

### 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6) under the Act normally may not become operative prior to 30

Reference to the Solicited Order Mechanism is being added to the first sentence of Supplementary Material .07 because such orders could have a premium value that is less than \$150,000.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii)<sup>13</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 the proposed rule change seeks to conform the definition of Block Trades to the Exchange's existing options linkage rules.<sup>14</sup> The Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.

At any time within 60 days of the filing of the 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 No. SR-ISE-2008-33 on the subject line.

### 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-2008-33. This file number should be included on the subject line if e-mail is used. To help the

<sup>12</sup> In addition, Rule 19b-4(f)(6)(iii) under the Act requires a self-regulatory organization to give the Commission written notice of its intent to file 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. ISE has complied with this requirement.

<sup>13</sup> *Id.*

<sup>14</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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, 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 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-2008-33 and should be submitted on or before June 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E8-10619 Filed 5-12-08; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57795; File No. SR-NASDAQ-2008-037]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify Nasdaq's Continued Listing Requirements To Replace Round Lot Shareholders

May 7, 2008.

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 April 25, 2008, The NASDAQ Stock Market LLC ("Exchange" or "Nasdaq") 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 Nasdaq. 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

Nasdaq proposes to change the shareholder requirements for continued listing. Nasdaq will implement the proposed rule immediately upon approval.

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.<sup>3</sup>

#### 4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)-(31) No change.

(32) "*Public holders*" of a security include both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an executive officer, director, or the beneficial holder of more than 10% of the total shares outstanding. ["Reported Security" means an equity security for which quotations are entered into the Consolidate Quotations Service.]

(33) "Round lot holder" means a holder of a normal unit of trading. *The number of beneficial holders will be considered in addition to holders of record.*

(34)-(37) No change.

(38) "*Total holders*" of a security include both beneficial holders and holders of record.

(39) "Transaction costs" means costs incurred in connection with a limited partnership rollup transaction, including printing and mailing the proxy, prospectus or other documents; legal fees not related to the solicitation of votes or tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and all other fees related to the preparatory work of the transaction, but not including costs that would have otherwise been incurred by the subject limited partnerships in the ordinary course of business or solicitation expenses.

[(39)] (40) "Underwriting Activity Report" is a report provided by the Corporate Financing Department of NASD Regulation, Inc. in connection with a distribution of securities subject

to SEC Rule 101 pursuant to NASD Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614, 4619, and 4623.

(b)-(c) No change.

\* \* \* \* \*

#### 4310. Listing Requirements for Domestic and Canadian Securities

To qualify for listing in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a), (b), and (c) hereof. Issuers that meet these requirements, but that are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

(a)-(b) No change.

(c) In addition to the requirements contained in paragraph (a) and (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for listing on Nasdaq:

(1)-(5) No change.

(6) (A) In the case of common stock, for initial [and continued] listing[,] there shall be at least 300 round lot holders of the security *and for continued listing there shall be at least 300 public holders of the security.*

(B) In the case of preferred stock and secondary classes of common stock, for initial [and continued] listing[,] there shall be at least 100 round lot holders of the security *and for continued listing there shall be at least 100 public holders of the security*, provided in each case that the issuer's common stock or common stock equivalent equity security must be listed on Nasdaq or be a covered security. In the event the issuer's common stock or common stock equivalent security either is not listed on Nasdaq or is not a covered security, the preferred stock and/or secondary class of common stock may be listed on Nasdaq so long as the security satisfies the listing criteria for common stock.

(C) No change.

(7)-(30) No change.

(d) No change.

#### 4320. Listing Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for listing on Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b), and (e) of this Rule. Issuers that meet these requirements, but that are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

(a)-(d) No change.

<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> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaq.complinet.com>.