

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58139; File No. SR-ISE-2008-54]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 2 Thereto Relating to Changes to the Fee Schedule

July 10, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 2008, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 prepared by the self-regulatory organization. On July 9, 2008, the ISE filed Amendment No. 1 to the proposed rule change. On July 9, 2008, the ISE withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change. 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 ISE is proposing to amend its Schedule of Fees to extend two fee waivers and to remove reference to two expiring fee pilots. The amendment also simplifies the fee schedule by imbedding the "comparison" fee into the "execution" fee. 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, the self-regulatory organization 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 self-regulatory organization 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

*Purpose*—The purpose of this proposed rule change is to extend the pilot fee waivers for Premium Products and Second Market options, adopt a new pilot fee waiver related to FX options, and remove reference to expiring pilot fee discounts. The Exchange also proposes to simplify the way in which certain current fees are stated in the fee schedule. These changes will be operative on July 1, 2008.

##### 1. Pilot Extensions

First, ISE currently waives most customer transaction fees, with such waiver scheduled to expire on June 30, 2008.<sup>3</sup> In order to remain competitive in the market place, we propose to extend this waiver through June 30, 2009.

Second, pursuant to a pilot program, ISE offers a fee discount for certain orders of 7,500 contracts or more that are executed in the Exchange's Facilitation Mechanism.<sup>4</sup> Specifically, ISE waives (1) the execution and comparison fee on incremental volume above 7,500 contracts for Firm Proprietary orders, Non-ISE Market Maker orders, and Customer orders in Premium Products, and (2) the execution fee on incremental volume above 7,500 contracts for Customer orders in Second Market options.<sup>5</sup> The number of contracts at or under the threshold are charged as per the Exchange's Schedule of Fees. ISE believes that extending a fee cap for large-sized orders executed in its Facilitation Mechanism will help strengthen its competitive position and encourage members to use the Exchange's Facilitation Mechanism.

The current pilot program is set to expire on June 30, 2008. The Exchange proposes to extend the fee cap for another year, until June 30, 2009.

With regards to the two fee pilots that are being extended, the Exchange notes that it is making no substantive changes to the way the two fee pilots currently operate, other than to extend the date of operation through June 30, 2009.

##### 2. New Pilot Fee Waiver for FX Options

The Exchange proposes to adopt a fee cap for large-size foreign currency

("FX") options orders. Specifically, the Exchange proposes, for a one-year pilot expiring on June 30, 2009, to waive the transaction fee on incremental volume above 5,000 for single-sized FX options orders of at least 5,000 contracts. The number of contracts at or under the threshold are charged the constituent's prescribed execution fee. This waiver is for both Public Customer orders and Firm Proprietary orders. The ISE believes that that this fee cap for large-sized orders in FX options will encourage members to execute large-sized orders on the Exchange.

##### 3. Pilot Expirations

The Exchange also proposes to amend its Schedule of Fees to remove from that schedule references to two pilot programs that will terminate on June 30, 2008 and that the Exchange is not extending. Pursuant to those pilots, the Exchange (1) capped and waived fees when a firm reached certain volume thresholds in options on the NASDAQ-100 Index Tracking Stock® ("QQQQ®") and the iShares Russell 2000® Index Fund ("IWM"), and (2) capped and waived fees for members that achieved certain threshold levels in the Exchange's Facilitation Mechanism. In light of the Exchange's increase market share in QQQQ and IWM and the level of trading in its Facilitation Mechanism, achieved in large part due to these fee pilot programs, ISE does not believe there is a need to continue to provide a fee discount as an incentive to members.

##### 4. Consolidation of Execution and Comparison Fees

Currently on the fee schedule, the Exchange separately itemizes execution fees and a comparison fee. The Exchange proposes to eliminate the comparison fee as a separate line item and instead imbed the fee into the execution fee. Historically, the Exchange has waived comparison fees in parallel with execution fees. Therefore, this change will not change the actual amount being charged to any members, but will simplify the fee schedule so that total transaction costs are more easily understood.

*Statutory Basis*—The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) 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 believes the fee changes proposed by this filing are reasonable in that, with regards to the fee waivers, the proposed rule change waives most fees for customer transactions and for certain

<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. 56055 (June 12, 2007), 72 FR 39648 (June 19, 2007) (SR-ISE-2007-52).

<sup>4</sup> See Securities Exchange Act Release No. 57129 (January 10, 2008), 73 FR 2963 (January 16, 2008) (SR-ISE-2008-1).

<sup>5</sup> The Exchange notes that there is no comparison fee for orders in Second Market options.

trades in FX Options; with regards to the fee pilot terminations, the Exchange believes there is no longer a need to provide an incentive to trade in those products or in the Exchange's Facilitation Mechanism; with regards to the fee consolidation, the proposed rule change will simplify the fee schedule. The Exchange notes that the fee changes are also equitably allocated in that they equally apply to all members of the Exchange.

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

The proposed rule change 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**

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act<sup>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> thereunder because it establishes or changes a due, fee, or other charge imposed on members by ISE. 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>8</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:

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 19b-4(f)(2).

<sup>8</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 July 9, 2008, the date on which the ISE submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

#### *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-2008-54 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-ISE-2008-54. 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 publicly available. All submissions should refer to File Number SR-ISE-2008-54 and should be submitted on or before August 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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<sup>9</sup> 17 CFR 200.30-3(a)(12).

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58145; File No. SR-NASDAQ-2008-016]

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish Fees for Nasdaq Market Pathfinders Service**

July 11, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 27, 2008, The NASDAQ Stock Market LLC ("Nasdaq" 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 prepared substantially 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 is filing with the Commission a proposed rule change to establish fees to make Nasdaq Market Pathfinders service available via either a Web-based data product or via a data feed that will provide aggregated market activity of certain market participants referred to as "Pathfinders."

The text of the proposed rule change is below. All text is new.

#### **7044. Nasdaq Market Pathfinders Service**

(a) The Nasdaq Market Pathfinders Service will allow participating subscribers to view a real time data product that tracks the aggregated market activity of certain market participants who are aggressively buying and/or selling.

(b) Standard Charge.

(1) 30-Day Free-Trial Offer. Nasdaq shall offer all new and potential new Nasdaq Market Pathfinders subscribers a 30-day waiver of the user fees for the service. This waiver may be provided only once to a specific new subscriber or potential subscriber.

(2) The following charges shall apply to Nasdaq Market Pathfinders subscribers and to new subscribers after the conclusion of the 30-day waiver period:

(A) Professional subscriber access to view and print the Web reports shall be available for a fee of \$50/month;

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

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