

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59136; File No. SR-ISE-2008-95]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Close of Trading on the ISE Stock Exchange

December 22, 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 December 17, 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 and II below, which items have been prepared by the Exchange. The Exchange has filed the proposal 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 the proposal 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

The Exchange submits this rule filing to extend the close of trading for equity securities from 5 p.m. Eastern Time ("ET") to 8 p.m. ET. The text of the proposed rule change is available on the Exchange's Web site <http://www.ise.com>, at the principal office of the Exchange, and at 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 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

##### 1. Purpose

The Exchange proposes to extend the close of trading for equity securities from 5 p.m. ET to 8 p.m. ET. Currently, the Exchange has a Post-Market Session, which begins at the conclusion of the Regular-Market Session and closes at 5 p.m. ET. The Exchange is now proposing to amend Rule 2102 to conclude the Post-Market Session at 8 p.m. ET.

Trading during expanded hours involves potential risks, including the possibility of lower liquidity, higher volatility, changing prices, unlinked markets with the possibility of trade-throughs, and wider spreads. Moreover, trades executed during these sessions may receive executions at inferior prices when compared to the high/low of the day. The Supplementary Material to Rule 2102 presently requires Equity EAMs that submit orders during the Post-Market Session on behalf of non-members to disclose the risks of participating in such session to their customers. This customer disclosure requirement, along with all other equity rules and trading surveillance that currently apply during the Post-Market Session will continue to apply to the extended time-period of 5 p.m. ET to 8 p.m. ET.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act's<sup>6</sup> requirements that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change will allow the Exchange to provide a competitive marketplace for Equity EAMs to trade securities until 8 p.m. ET.

#### 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

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 if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

ISE has asked the Commission to waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because such waiver should benefit investors by allowing ISE, without undue delay, to expand its hours of trading, which should add competition in the trading of equity securities and new derivative securities products. In addition, proposed ISE Rule 2102 is closely modeled after similar rules of other national securities exchanges<sup>9</sup> and does not raise any novel or significant issues. Therefore, the Commission designates the proposed rule change as operative upon filing.<sup>10</sup>

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,

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that ISE has satisfied the five-day pre-filing notice requirement.

<sup>9</sup> See NYSE Arca Equities Rule 7.34 (NYSE Arca's extended hours for the trading of equities last until 8 p.m. ET) and Nasdaq Rule 4120(b)(4) (Nasdaq's post-market session for equities lasts until 8 p.m. ET).

<sup>10</sup> For purposes only of waiving the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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-2008-95 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-2008-95. 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 Commissions 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 the 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-2008-95 and should be submitted by January 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59153; File No. SR-Nasdaq-2008-098]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Regarding Routing to an Affiliated Exchange

December 23, 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 December 15, 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 and II below, which Items have been prepared substantially by Nasdaq. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

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

Nasdaq is proposing a rule change to amend: (i) Nasdaq Rule 4751 to modify the restriction on routing of Directed Orders to a facility of an exchange that is an affiliate of Nasdaq and (ii) Nasdaq Rule 4758 to provide for the establishment of procedures designed to manage the flow of confidential information between Nasdaq and its facilities (including its routing facility Nasdaq Execution Services, LLC) and other entities.

The text of the proposed rule change is available from Nasdaq's Web site at <http://nasdaq.cchwallstreet.com>, at Nasdaq's principal office, and at the Commission's Public Reference Room.

Proposed new language is in italics.<sup>3</sup>

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<sup>11</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.cchwallstreet.com>.

## Nasdaq Rules

### Equity Rules

#### 4751. Definitions

(a)-(e) No change.

(f) The term "Order Type" shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)-(8) No change.

(9) "Directed Orders" are orders that are directed to an exchange other than Nasdaq as directed by the entering party without checking the Nasdaq book. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. This option may only be used for orders with time-in-force parameters of IOC. Directed Orders may be designated as inter-market sweep orders by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act). A broker-dealer that designates an order as an intermarket sweep order has the responsibility of complying with Rules 610 and 611 of Regulation NMS.

Directed Orders may not be directed to a facility of an exchange that is an affiliate of Nasdaq *except for Directed Orders directed to the NASDAQ OMX BX Equities Market.*

(g)-(i) No change.

#### 4758. Order Routing

(a) No change.

(b) Routing Broker

(1)-(7) No change.

*(8) Nasdaq Execution Services LLC shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Stock Market LLC and its facilities (including Nasdaq Execution Services LLC as its routing facility) and any other entity.*

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

In its filing with the Commission, Nasdaq 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 III below, and is set forth in Sections A, B, and C below.