

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59882; File No. SR-ISE-2009-21]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, LLC Relating To Changes to the Fee Schedule

May 7, 2009.

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 April 27, 2009, 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. 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 is proposing to amend its Schedule of Fees to eliminate customer fees in Premium Products that are multiply listed, retire a pilot program capping fees for use of the Exchange's Facilitation Mechanism and eliminate a volume-based fee rebate for Electronic Access Members. The text of the proposed rule change is available on the Exchange's Internet Web site at <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 eliminate customer fees in multiply listed Premium Products, retire a pilot program capping fees for use of the Exchange's Facilitation Mechanism and eliminate a volume-based fee rebate for Electronic Access Members. These changes will be operative on May 1, 2009.

First, ISE currently charges \$0.18 per contract for customer transactions in Premium Products. Generally, Premium Products are options on exchange-traded funds ("ETFs") and index options. For competitive reasons, the Exchange historically has waived most customer transaction fees and now proposes to do the same for all Premium Products that are multiply listed. The Exchange will continue to charge \$0.18 per contract for all index options that are listed only on ISE and for all of the Exchange's foreign currency options. ISE believes this fee change will align its pricing to better compete with other exchanges in these products. As a result of this change, the Exchange will no longer publish a list of Premium Products on its Schedule of Fees.<sup>3</sup>

Second, pursuant to a pilot program, ISE currently 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 fee on incremental volume above 7,500 contracts for Firm Proprietary orders, Non-ISE Market Maker orders, Customer orders in Premium Products, and Customer orders in Second Market options. The objective of this pilot program was to encourage members to use the Exchange's Facilitation Mechanism. The Exchange has determined to retire this pilot program.

Finally, on October 1, 2008, ISE adopted a sliding scale-based fee credit that rewards Electronic Access Members for the total amount of order flow sent to the Exchange.<sup>5</sup> The sliding scale

<sup>3</sup> The Commission notes that on May 5, 2009, ISE filed a separate proposed rule change (File No. SR-ISE-2009-26) to clarify the newly defined "Singly Listed Indexes" by listing on its fee schedule the applicable ticker symbol for each such index. In addition, that proposal reverts back to identifying by ticker symbols those products to which the Exchange's Payment for Order Flow fee does not apply and it proposes to adopt a fee for "Singly Listed ETFs" and identify those products by their ticker symbol.

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

<sup>5</sup> See Securities Exchange Act Release No. 58671 (September 29, 2008), 73 FR

applies to all customer and firm proprietary orders in all products and is calculated on a member firm basis, and applies to non-discounted volume only, that is, it does not apply to orders previously discounted by other pricing incentives established by the Exchange. The objective of this fee rebate program was to attract order flow to the Exchange. Upon a careful review, the ISE believes that eliminating fees for customer transactions in multiply listed Premium Products will better attract order flow to the Exchange.

(b) *Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the fee changes proposed by this filing will allow the Exchange to better compete with other exchanges and better attract order flow to ISE.

#### 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>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder. 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.

57722 (October 3, 2008).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 19b-4(f)(2). [sic]

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

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

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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-2009-21 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File No. SR-ISE-2009-21. 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 changes 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 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-2009-21 and should be submitted on or before June 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-59879; File No. SR-NASDAQ-2009-041]**

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center and NASDAQ Options Market**

May 6, 2009.

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 May 1, 2009, The NASDAQ Stock Market LLC ("NASDAQ" or the "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 by the Exchange. 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 modify pricing for NASDAQ members using the Nasdaq Market Center. This proposed rule change, which is effective upon filing, will become operative on May 1, 2009. The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com/>, at NASDAQ's principal office, 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, NASDAQ 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.

<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.

NASDAQ 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

NASDAQ is modifying the price of trading equities and options on NASDAQ in several ways. First, NASDAQ is increasing the rebate for providing liquidity in equities traded on NASDAQ for members that actively trade both equities and options on NASDAQ. Currently, NASDAQ offers rebates of \$0.0020 to \$0.00295 per share for all members that provide liquidity in equities traded on NASDAQ depending on the volume of liquidity provided in equities.

Effective May 1, 2009, a member firm that accesses liquidity of more than 200,000 contracts per day from The NASDAQ Options Market ("NOM") and provides average daily volume of liquidity exceeding 25 million shares per day in the NASDAQ equities market, will be credited a rebate of \$0.0029 for providing liquidity in securities listed on NASDAQ or the New York Stock Exchange ("NYSE") or on other exchanges. A member that provides 25 million shares of liquidity per day in equities and does not have the requisite options participation receives a rebate of \$0.0025 per share.

Second, also effective May 1, 2009, member firms will have the opportunity to earn a waiver of applicable fees charged for executing Mid-point Pegged orders (as defined in Nasdaq Rule 4751(f)(4)). Firms can earn this fee waiver by providing average daily volume of liquidity through the Nasdaq Market Center in all securities during the month of more than 125 million shares.

Third, NASDAQ is implementing pricing for the routing strategy set forth in Nasdaq Rule 4758(a)(1)(A)(i), as set forth in SR-NASDAQ-2009-036.<sup>3</sup> Specifically, NASDAQ modified Rule 4758, Order Routing, to provide market participants with the option of entering orders that do not check the Nasdaq Market Center book prior to routing. Market participants using that routing strategy for all securities will be assessed a fee of \$0.0005 per share executed for orders that execute on venues other than in the NYSE or NASDAQ OMX BX. For securities that utilize this strategy and that execute on

<sup>3</sup> Securities Exchange Act Release No. 59807 (Apr. 21, 2009); 74 FR 19251 (Apr. 28, 2009).