

The Office of the Secretary at (202) 551-5400.

Dated: October 8, 2009.

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60791; File No. SR-ISE-2009-74]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt an Intermarket Sweep Order Credit

October 5, 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 October 1, 2009, 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 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

The ISE proposes to adopt an Intermarket Sweep Order credit. 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 Exchange 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 purpose of this proposed rule change is to adopt an Intermarket Sweep Order credit. On August 31, 2009, the Exchange implemented the new Options Order Protection and Locked/Crossed Market Plan (“Distributive Linkage”) and the use of Intermarket Sweep Orders (“ISOs”). Consistent with Distributive Linkage and pursuant to ISE rules, the Exchange’s Primary Market Makers (“PMMs”) have an obligation to address customer orders when there is a better market displayed on another exchange. ISE’s PMMs meet this obligation via the use of ISOs. In meeting their obligations, PMMs may incur fees when they send ISOs, especially when sending ISOs to exchanges that charge “taker” fees. To minimize their financial burden and help offset such fees, ISE proposes to compensate the PMM by rebating to the PMM \$0.20 per contract on all ISO orders sent to an away market, regardless of the fee charged by the exchange where the ISO order sent away was executed. The proposed fee credit applies to PMMs for classes in which it serves as a PMM.

ISE proposes to implement this fee change on October 1, 2009.

##### 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the “Exchange 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. In particular, the proposed fee change will offset fees incurred by PMMs when they send ISOs to away markets.

#### 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 proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

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 Number SR-ISE-2009-74 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 Number SR-ISE-2009-74. 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

<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)(ii).

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

Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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 available publicly. All submissions should refer to File No. SR-ISE-2009-74 and should be submitted on or before November 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-24500 Filed 10-9-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60794; File No. SR-NASDAQ-2009-084]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Potential Payment Amounts Available Under Nasdaq Rule 4626

October 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 September 25, 2009, The NASDAQ Stock Market LLC (the "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 prepared by the Exchange. The Exchange has designated the proposed rule change as effecting a change described under Rule 19b-4(f)(6) under the Act,<sup>3</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 is filing with the Commission a proposed rule change to modify potential payment amounts available under Nasdaq Rule 4626.

Nasdaq will implement the proposed rule change effective November 1, 2009. The text of the proposed rule change is below. Proposed new language is in *italics* and proposed deletions are in brackets.

\* \* \* \* \*

#### 4626. Limitation of Liability

(a) No Change.

(b) Nasdaq, subject to the express limits set forth below, may compensate users of the Nasdaq Market Center for losses directly resulting from the systems' actual failure to correctly process an order, Quote/Order, message, or other data, provided the Nasdaq Market Center has acknowledged receipt of the order, Quote/Order, message, or data.

[(1) For one or more claims made by a single market participant related to the use of the Nasdaq Market Center on a single trading day, Nasdaq's liability shall not exceed the larger of \$100,000, or the amount of any recovery obtained by Nasdaq under any applicable insurance policy.]

[(2) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center on a single trading day, Nasdaq's liability shall not exceed the larger of \$250,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.]

[(3)] (1) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center during a single calendar month, Nasdaq's liability shall not exceed the larger of \$500,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.

[(4)] (2) In the event all of the claims arising out of the use of the Nasdaq Market Center cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided for in this Rule, then the maximum amount will be proportionally allocated among all such claims arising [on a single trading day, or] during a single calendar month [, as applicable].

[(5)] (3) All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than [the opening of trading] 12 p.m. ET on the next business day following the day on which the use of the Nasdaq Market Center gave rise to such claims. Nothing in this rule shall obligate Nasdaq to seek recovery under any applicable insurance policy.

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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, 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 Exchange 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

Currently, Nasdaq provides a limited exception to its general limitation of liability rules that allows for the payment of claims to users for order processing failures in the Nasdaq Market Center. Nasdaq proposes to modify its process for allocating such payments and extend the time period for users to submit such claims. Under the proposal, Nasdaq will eliminate the \$100,000 and \$250,000 daily caps on liability and consider all such claims on a monthly basis subject to the already existing \$500,000 monthly liability cap. If the total amount of all claims from all users in a calendar month exceeds the \$500,000 monthly liability cap, the \$500,000 maximum monthly dollar amount will be proportionally allocated among all such claims as set forth in the current rule.

Nasdaq is also proposing to extend, until 12 noon ET on the next business day following the day on which the use of the Nasdaq Market Center gives rise to a claim, the time period during which claims seeking compensation must be submitted.

As Nasdaq analyzes total eligible liability claims on a per-month look-back basis, the proposal, in effect, would allow Nasdaq an increased capability to compensate a market participant(s) up to the monthly cap of \$500,000 even though the losses occurred on a single day or were across multiple days for a single participant. The expansion of time to make such compensation claims likewise increases the ability of market participants to submit claims in a timely manner. Finally, Nasdaq notes that other market centers have rules in place to provide

<sup>5</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> 17 CFR 240.19b-4(f)(6).