

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43704; File No. SR-ISE-00-12]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange LLC, Relating to Fee Changes

December 11, 2000.

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 November 15, 2000, 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 Exchange. On December 7, 2000, ISE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 Exchange is proposing changes to its fees regarding: (i) Customer transactions; (ii) multiple "Click" order entry terminals; (iii) "enhanced cabinets"; and (iv) continuing registration and transfer fees for associated persons. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

#### 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 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 purpose of the proposed rule change is to effect the following changes to the ISE's fees:

*Customer Transaction Fees:* The ISE currently waives customer transaction fees. This waiver will expire on November 26, 2000. The Exchange proposes extending this waiver for an additional six months.

*Click Terminals:* The Exchange imposes fees on "Click" order entry devices (used by Electronic Access Members) of: (i) \$500 per terminal for up to five terminals; and \$250 for additional terminals; and (ii) \$250 per application program interface ("API") associated with a terminal for up to five APIs and \$100 for additional APIs. To encourage members to send order flow to the Exchange, the ISE proposes to eliminate Click and API fees for a member's third and subsequent terminal if the member has an average daily volume ("ADV") on the Exchange of 500 customer or firm proprietary contracts per "free" terminal.<sup>4</sup>

*Enhanced Cabinets:* Certain market makers have requested that the Exchange provide them with an "enhanced cabinet" on their premises, containing three, rather than the standard two, gateways to the Exchange. The Exchange proposes an increase of \$250 to the standard fee to reflect the incremental cost of the third gateway.

*Associated Persons:* The ISE is the only options exchange that does not at least partially offset its regulatory costs by levying an annual "central registration depository" fee for members' associated persons and for processing the transfer of such persons. The proposed rule change would impose the following fees: \$30 annual fee and \$25 transfer fee.

##### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>5</sup> that the rules of an exchange provide for the equitable allocation of reasonable dues, fees and

other charges among its members and other persons using its facilities.

#### 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)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(2) thereunder,<sup>7</sup> because the proposed rule change establishes or changes a due, fee or other charge. 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.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All

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

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

<sup>3</sup> In Amendment No. 1, the Exchange amended the proposed rule change to delete a fee related to inactive memberships, as well as delete a minimum monthly bin fee. These fees are addressed in a separate filing, SR-ISE-00-26. See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 6, 2000 ("Amendment No. 1").

<sup>4</sup> Assume a member has 10 Click terminals. With ADV of 4,000 contracts per month (500 contracts per terminal on the eight potentially "free" terminals), it would pay Click and API fees for the first two terminals, with the fees for the other eight terminals waived. With ADV of 3,500 contracts, the members would qualify for an exemption on all but one of the eight terminals.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

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

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

submissions should refer to the File No. SR-ISE-00-12 and should be submitted by January 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-32116 Filed 12-15-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43701; File No. SR-NASD-00-64]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Allow In-Firm Delivery of the Regulatory Element of the Continuing Education Requirements

December 11, 2000.

#### I. Introduction

On October 25, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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> a proposed rule change that would permit the in-firm delivery of the Regulatory Element of the Continuing Education Requirements. Notice of the proposed rule change appeared in the **Federal Register** on November 6, 2000.<sup>3</sup> The Commission received one comment on the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

NASD Regulation proposes to amend NASD Rule 1120(a) to permit the in-firm delivery of the Regulatory Element of the Continuing Education Requirements. Currently, this computer-based training program can be administered to registered persons only at the location of an outside vendor.

The Regulatory Element is a 3½ hour computer-based training program. NASD Rule 1120(a) requires that each

registered person, who is not exempt from the Rule, complete the Regulatory Element on the occurrence of his or her second registration anniversary and every three years thereafter. On each occasion, the training must be completed within 120 days after the registered person's anniversary date. A registered person who has not completed the Regulatory Element within the prescribed time period is deemed to be inactive until the Regulatory Element has been fulfilled, and may not conduct, or be compensated for, activities requiring a securities registration.

The Securities Industry/Regulatory Council on Continuing Education ("Council") is responsible for the oversight of the continuing education program for the securities industry. The Council's duties include recommending and helping to develop specific content and questions for the Regulatory Element, and minimum core curricula for the Firm Element. The Council is comprised of representatives from a broad cross section of broker/dealers, and six self-regulatory organizations, including the NASD. The Council, working with representatives from the North American Securities Administrators Association has developed a model under which broker/dealers may deliver the Regulatory Element computer-based training on firm premises. The model requires that the broker/dealer meet certain conditions for in-firm delivery relating to computer hardware and to the security of the training delivery environment. The proposed amendments to Rule 1120(a) encapsulate the delivery requirements as specified by the Council. Firms of any size may take advantage of the in-firm delivery procedures.

#### III. Summary of Comments

The ICI expressed its support for the proposal, stating that the proposed changes may facilitate the ability of ICI's members to comply with the Regulatory Element requirements.<sup>5</sup> Additionally, the ICI believes the proposed amendment will reduce the time and any related travel costs that registered representatives spend to take the Regulatory Element.<sup>6</sup> Finally, the ICI believes that the conditions proposed in the amendment regarding in-firm delivery adequately balance the interest of NASD Regulation in protecting the integrity of the Regulatory Element with the interest of member firms in not being unduly burdened when exercising

this option.<sup>7</sup> For these reasons, the ICI expressed its support of the proposed amendments to NASD Rule 1120.

#### IV. Discussion

The Commission has reviewed carefully the proposed rule change, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder.<sup>8</sup> Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6)<sup>9</sup> of the Act.

Section 15A(b)(6)<sup>10</sup> requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest. The Commission believes that the proposal should facilitate compliance with the Regulatory Element of the Continuing Education Requirements by making the program easily accessible to registered persons via in-firm delivery, as opposed to requiring that it be administered at the location of an outside vendor, and by allowing firms of any size to partake of the in-firm delivery procedures. The Commission is satisfied that the proposal provides reasonable safeguards to uphold the integrity of the program, as well as delineating proper conditions for in-firm delivery relating to computer hardware, consistent with the requirements specified by the Council. Finally, the Commission believes the proposal establishes reasonable requirements with regard to the security of the training delivery environment, as specified by the Council.

#### V. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 15A(b)(6),<sup>11</sup> in particular.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the

<sup>8</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> See Securities Exchange Act Release No. 43492 (October 27, 2000), 65 FR 66576.

<sup>4</sup> See November 22, 2000 letter from Tamara K. Reed, Associate Counsel, Investment Company Institute ("ICI") to Jonathan G. Katz, Secretary, SEC ("ICI Letter").

<sup>5</sup> See ICI Letter at p. 1.

<sup>6</sup> *Id.*

<sup>7</sup> See ICI Letter at p. 2.

<sup>8</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> *Id.*

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

<sup>12</sup> 15 U.S.C. 78s(b)(2).