

purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an exemption under section 6(c) from section 15(f)(1)(A). Applicants submit that the reconstitution of the Board as contemplated by the Proxy Statement would serve no public interest and, in fact, would not be in the best interests of the shareholders of the Company. Applicants state that the resignation of the Interested Director would deprive the Company of a director who has important experience with the Company and its service providers and also has important macro-economic insights and perspective. Applicants also state that the addition of the two new Disinterested Directors would entail the additional expenses of directors' fees and potentially increased insurance and fidelity bond premiums, and the real, if intangible, costs of integrating two new board members into the decisional and operational affairs of the Company.

5. Applicants state that although directors who are affiliated persons of broker-dealers may be viewed as interested persons of NACM, these directors, and the broker-dealers with which they are affiliated are not affiliated persons of any party to the Transaction. Applicants assert that the requested exemption is consistent with the protection of investors. Applicants state that the Company will continue to treat the Interested Directors as interested persons of the Company and NACM for all purposes other than section 15(f)(1)(A) of the Act so long as the directors are "interested persons" as defined in section 2(a)(19) of the Act and are not exempted from that definition by any applicable rules or orders of the SEC.

6. Applicants also submit that the requested exemption is consistent with the purposes fairly intended by the policies and provisions of the Act. Applicants assert that the legislative history of section 15(f) indicates that Congress intended the SEC to deal flexibly with situations where the imposition of the 75 percent requirement might pose an unnecessary obstacle or burden on an investment company. Applicants also state that section 15(f)(1)(A) was designed primarily to address the types of biases and conflicts of interest that might exist where an investment company's board of directors is influenced by a substantial number of interested directors to approve a transaction because the interested directors have an economic interest in the adviser. Applicants assert that these circumstances do not exist in the present case.

### Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to following condition:

If, within three years of the completion of the Transaction, it becomes necessary to replace any director of the Company, that director will be replaced by a director who is not an "interested person" of NACM within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time, after giving effect to the order granted pursuant to the application, are not interested persons of NACM for purposes of section 15(f) of the Act. This condition will not: (a) preclude replacement with or addition of a director who is an interested person of NACM solely by reason of being an affiliated person of a broker or dealer, provided that such broker or dealer is not an affiliated person of NACM, or (b) require replacement of a director if a change in the director's circumstances causes him to become an interested person of NACM solely by reason of becoming an affiliated person of a broker or dealer, provided that such broker or dealer is not an affiliated person of NACM.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43803; File No. SR-ISE-00-20]

### Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to Limitations on Orders

January 4, 2001.

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 20, 2000, the 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.<sup>3</sup>

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

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

<sup>3</sup> The ISE filed its proposed rule change on November 20, 2000. On December 18, 2000, the ISE filed Amendment No. 1 that entirely replaced the original rule filing.

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 to amend Rule 717 to adopt a rule prohibiting the entry of more than one order for the same beneficial account within a fifteen second period and to allow Electronic Access Members ("EAMs") to enter orders on behalf of another member other than an order for an ISE market maker account. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 717. Limitations on Orders

\* \* \* \* \*

(g) Orders for the Account of Another Member.

Absent an exemption from an Exchange official designated by the Board, Electronic Access Members shall not cause the entry of orders for [another Member] *the account of an ISE market maker that is exempt from the provisions of Regulation T of the Board of Governors of the Federal Reserve System pursuant to Section 7(c)(2) of the Exchange Act.*

*(h) Multiple Orders for Same Beneficial Account.*

*Members shall not cause the entry of more than one order every fifteen (15) seconds for the account of the same beneficial owner in options on the same underlying security; provided, however that this shall not apply to multiple orders in different series of options on the same underlying security if such orders are part of a spread.*

\* \* \* \* \*

### 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

Exchange market makers must be firm at their quotations for all orders, although they can set different sizes for

customer and broker-dealer orders. When the sizes of a particular quote is exhausted, the Exchange's trading system automatically moves the quote to an inferior price according to parameters preset by the market maker. However, the system moves only the quotation in the options series in which there was a trade, leaving the market maker exposed to the risk that multiple orders may be executed nearly simultaneously in many series of the same option. This situation increases in ISE market maker's "delta risk" (the amount of underlying stock that would be necessary to hedge the options position), due to exposure across multiple series. This could result in ISE market makers providing more liquidity than may be available in the underlying stock.

The proposed rule change states that members shall not cause the entry of more than one order every fifteen seconds for the account of the same beneficial owner in options on the same underlying security. The Exchange represents that the proposed rule change is designed to reduce ISE market maker risk exposure by limiting the ability of a person to rapidly send in orders in the same series or multiple series of the same underlying security. The Exchange believes that fifteen seconds is sufficient to allow market makers to move quotations following an execution, while at the same time not unduly long as to place a burden on investors seeking execution on the Exchange.

The Exchange also proposes to amend paragraph (g) of ISE Rule 717, which currently prohibits an EAM from entering an order for any other member of the Exchange. The amendment will limit the scope of ISE Rule 717(g) to only prohibit EAMs from entering orders for ISE market maker accounts. The Exchange believes that this reflects the original intent of ISE Rule 717(g), which was to prevent market makers from entering orders through other members, thus disguising their trading in an attempt to avoid the requirements in ISE Rule 805 that they do a specified percentage of their volume in their assigned options classes. The proposed rule change recognizes that there are legitimate reasons why a member may enter orders on the Exchange through an EAM. These reasons vary. For example, some EAMs desire a temporary means of routing orders to the ISE until they are connected directly to the Exchange. In addition, a few members have clearing relationships with EAMs and therefore route orders through them. The ISE represents that in its experience to date, there is no regulatory reason why this type of order routing should be limited.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will 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 did not solicit or receive written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

## 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, NW., Washington, DC 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE-00-20 and should be submitted by February 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43815; File No. SR-NASD-00-81]

### Self Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Computer to Computer Interface Fees For non-NASD Members

January 8, 2001.

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 26, 2000, the National Association of Securities Dealers, Inc. ("NASD") through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.<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

Nasdaq is proposing to amend NASD Rule 7010 to change the manner in which fees are assessed on non-NASD

<sup>6</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> On December 26, 2000, Nasdaq filed Amendment No. 1 with the Commission. Amendment No. 1 noted that Nasdaq's Board of Directors approved the proposed rule change at its meeting on October 4, 2000, and the NASD Board of Governors reviewed the proposal at its meeting on October 5, 2000.

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

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