

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 proposes to amend its membership dues and fees schedule (the "Schedule"), retroactive to January 1, 2001, to reinstate a monthly cap on transaction fees of \$.40 per 100 average monthly gross round lot shares. The text of the proposed rule change is below. Proposed new language is in italics.

#### Membership Dues and Fees

\* \* \* \* \*

#### F. Transaction and Order Processing Fees

##### 4. Transaction Fees

a.-g. No change to text.

h. Effective January 1, 2001, monthly maximums for fees:

- (1) Maximum monthly transaction fees for orders sent via MAX: \$7,000;
- (2) Maximum monthly transaction fee for transactions in NASDAQ/NMS Securities: \$110,000;
- (3) Maximum monthly transaction fee for transactions in Dual Trading System Securities: \$110,000;

(4) *Maximum monthly transaction fees shall not exceed the lesser of that specified in (1), (2) or (3) above, or \$.40 per 100 average monthly gross round lot shares.*

\* \* \* \* \*

### 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 Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

On December 18, 2000, the Exchange filed a proposed rule change to amend the Schedule in several ways.<sup>4</sup> Among other things, the proposal made changes to the CHX's transaction fee structure

by: (a) Setting a flat per share fee, instead of a graduated fee based on the number of shares traded, for agency transactions in certain securities that are executed through a floor broker; (b) raising the current caps on transaction fees paid by member firms; and (c) reorganizing the Schedule to include all of its transaction fees in the same place.

In the course of making these changes, the Exchange inadvertently omitted one of the monthly caps on transaction fees. The Exchange has instituted several fee caps, including dollar-valued caps on transactions sent through the CHX's MAX system and on transactions in both Nasdaq/NMS and Dual Trading System securities.<sup>5</sup> The cap to be reinstated through this proposal provides an additional ceiling on those fees by ensuring that a member's maximum monthly transaction fees will not exceed \$.40 per 100 average monthly gross round lot shares, if this calculation results in a lower fee payment.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>6</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>8</sup> because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

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

<sup>4</sup> See Securities Exchange Act Release No. 43778 (December 28, 2000), 66 FR 1164 (January 5, 2001) (SR-CHX-00-38).

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 proposal 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 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 Exchange. All submissions should refer to file number SR-CHX-01-04, and should be submitted by March 2, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43922; File No. SR-ISE-00-22]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Exchange LLC, Relating to Market Maker Financial Requirements

February 2, 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 28, 2000, the International Securities Exchange LLC ("Exchange" or "ISE") 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 the Exchange. The Commission is publishing this

<sup>9</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>2</sup> 17 CFR 240.19b-4.

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

ISE is proposing to amend Exchange Rule 809 regarding "Financial Requirements for Market Makers." Specifically, the proposal would amend and further define the calculations necessary to determine the minimum financial requirements for the Exchange's market makers, and specify certain reporting requirements when a market maker fails to maintain the minimum financial requirements. The text of the proposed rule change follows. New text is italicized and deleted text is bracketed.

#### Rule 809. Financial Requirements for Market Makers

(a) Primary Market Makers. Every Primary Market Maker shall maintain [a cash or liquid asset position equal to the greater of] *net liquidating equity of not less than \$3,250,000 plus \$25,000 excess equity for each underlying security upon which appointed options are open for trading in excess of the initial ten (10) underlying securities* [\$5,000,000 or an amount sufficient to assume a position of twenty (20) options contracts of each class in which such Primary Market Maker is appointed (as computed on the basis of that series within each such class having the highest current premium)].

(b) Competitive Market Makers. Every Competitive Market Maker shall maintain [a cash or liquid asset position equal to the greater of] *net liquidating equity of not less than \$1,000,000* [or an amount sufficient to assume a position of ten (10) options contracts in each class of options to which the Competitive Market Maker is appointed (as computed on the basis of that series within each such class having the highest current premium)].

(c) Each market maker that makes an arrangement to finance his transactions as a market maker must identify to the Exchange the source of the financing and its terms. The Exchange must be informed immediately of the intention of any party to terminate or change any such arrangement.

#### Supplemental Material to Rule 809

*.01 For purposes of Rule 809, the term "net liquidating equity" means the sum of positive cash balances and long securities positions less negative cash balances and short securities positions.*

*.02 Each day that a Member's net liquidating equity is less than 120% of*

*the minimum level required by Rule 809, the Member must notify the Exchange of its equity level on a daily basis from the date the net liquidating equity first comes below this level until and including three days following the date that the equity first comes above this level.*

*.03 If a Member's net liquidating equity falls below the minimum level required by this Rule, the Member must immediately notify the Exchange of the deficiency and must submit within five (5) business days a business plan for raising its equity to the appropriate level. The Exchange may determine to appoint an interim Primary Market Maker when, in its discretion, the Member's failure to maintain the minimum level required by this Rule limits its ability to comply with market making obligations under the Rules.*

### 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. 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

Exchange Rule 809 sets forth the minimum financial requirements for market makers. Currently, Exchange Rule 809 provides that every Primary Market Maker ("PMM") maintain a cash or liquid asset position equal to the greater of \$5,000,000 or an amount sufficient to assume a position of twenty (20) options contracts of each class in which the PMM is appointed. Exchange Rule 809 similarly provides that every Competitive Market Maker ("CMM") maintain a cash or liquid asset position equal to the greater of \$1,000,000 or an amount sufficient to assume a position of ten (10) options contracts in each class of options to which the CMM is appointed.

The Exchange proposes to eliminate the option position component in calculating the minimum equity. With respect to CMMs, the Exchange believes that the option position component in the current rule places an unnecessary

burden on its members to make the variable calculation on a daily basis. The flat \$1 million requirements far exceeds the minimum equity requirements for market makers on the other four options exchanges, and it is unlikely that the option position component would exceed \$1 million. With respect to PMMs, the proposed amendment would require PMMs to maintain \$3.25 million plus \$25,000 for each issue over 10. When the Exchange phases-in trading in 600 options with approximately 60 options trading in each of its 10 groups or "bins," this requirement would equal \$4.5 million for PMMs trading in one bin, and \$6.0 million for a PMM trading in two bins.<sup>3</sup>

The Exchange also proposes to update its rule to replace the phrase "cash or liquid asset position" with "net liquidating equity," and to define the later term. This will conform our rule to the Chicago Board Options Exchange's ("CBOE") rule.<sup>4</sup> The proposed definition of net liquidating equity, which is the sum of positive cash balances and long securities positions less negative cash balances and short securities positions, is the same as the CBOE definition of the term in CBOE Rule 12.3(f)(1)(F).

The Exchange further proposes to adopt notification requirements. Market makers would be required to notify the Exchange if their equity fails to exceed the minimum requirement by at least 20 percent. This will allow the Exchange to monitor carefully any firm that might be experiencing financial difficulties and to take actions to minimize any potential risk to the Exchange or investors. A market maker that falls below the equity requirement must immediately notify the Exchange of the deficiency and submit a plan for raising its equity to the appropriate level.

Finally, in the case of a PMM with deficient equity, the Exchange may determine to appoint an interim PMM. The Exchange will do so when, in its discretion, the Member's failure to maintain the minimum level limits its ability to comply with market making obligations.

##### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)<sup>5</sup> that an exchange

<sup>3</sup> Pursuant to Exchange Rule 317(a), a member cannot be approved to trade in more than two bins as a PMM.

<sup>4</sup> See CBOE Rule 8.86, which states that "[e]ach DPM shall maintain (i) net liquidating equity in its DPM account of not less than \$100,000, and in conformity with such guidelines as the MTS Committee may establish from time to time."

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

have rules that are designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

The proposed rule change does not impose any burden on competition 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

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 self-regulatory organization 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 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 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 above-

referenced self-regulatory organization. All submissions should refer to File No. SR-ISE-00-22 and should be submitted by March 2, 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. 34-43928; File No. SR-NASD-00-77]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Registration Requirements for Limited Principals-Financial and Operations and Limited Principals-Introducing Broker/Dealer Financial and Operations

February 5, 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 20, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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

NASD Regulation proposes to amend three rules: NASD Rule 1022(b) (Limited Principal-Financial and Operations ("FINOP")), NASD Rule 1022(c) (Limited Principal-Introducing Broker/Dealer Financial and Operations ("Introducing FINOP")), and NASD Rule 9610 (Procedures for Exemptions). The proposed amendments to NASD Rules 1022(b) and 1022(c) would (1) clarify the applicability of NASD Rules 1022(b) and 1022(c) to members by making citations in these rules consistent with Exchange Rule 14c3-1 (the "Net Capital Rule")<sup>3</sup>; (2) eliminate

the ability of a member that is subject to the Net Capital Rule to request an exemption from the requirement under NASD Rule 1022(b) to have a FINOP; and (3) exclude from the requirements of NASD Rules 1022(b) and 1022(c) those firms are exempt from or otherwise not subject to the Net Capital Rule. The proposed amendments to NASD Rule 9610(a) would eliminate NASD Rule 1022 from the list of rules from which a member may seek exemptive relief. The proposed amendments to NASD Rule 9610(a) also would make a technical change to clarify that the Rule 9600 Series merely sets forth procedures for seeking exemptive relief, and that the type of relief that may be requested, and the authority to grant such relief, is found in the rules listed in NASD Rule 9610(a).

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### 1020. Registration of Principals

\* \* \* \* \*

#### 1022. Categories of Principal Registration

- (a) No change
- (b) Limited Principal-Financial and Operations

(1) Every member of the Association, [unless exempted by subparagraph (4),] *that is operating pursuant to the provisions of SEC Rule 15c3-1 (a)(1)(ii), (a)(2)(i) or (a)(8)*, shall designate as Limited Principal-Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who performs the duties described in subparagraph [(b)](2) hereof. Each person associated with a member who performs such duties shall be required to register as a Limited Principal-Financial and Operations with the Association and shall pass an appropriate Qualification Examination before such registration may become effective.

- (2) and (3) No change.

[(4) Pursuant to the Rule 9600 Series, the Association may exempt a member or an applicant for membership in the Association from the requirement to have a Limited Principal-Financial and Operations if:]

[(A) it has been expressly exempted by the Commission from SEC Rule 15c3-1(b)(1)(iii);]

[(B) it is subject to the provisions of SEC Rule 15c3-1(a)(2) or to Section 402.2(c) of the rules of the Treasury Department.]

<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> 17 CFR 240.15c3-1.