

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-01-05 and should be submitted by April 9, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44082; File No. SR-ISE-01-05]

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 Minimum Activity Fees

March 15, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 2, 2001, the International Securities Exchange LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change. The Exchange submitted Amendment No. 1 to its proposed rule change on March 13, 2001.³ The proposed rule change, as amended, is 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 Exchange is proposing to delay the effectiveness of its fee regarding inactive primary market maker ("PMM") memberships.

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 by 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

In November 2000, the Exchange adopted a change to its fee schedule that subjected PMMs to a \$100,000 monthly fee if the group of options ("bins") to which they are appointed has not been opened for trading. The purpose of this fee is to provide the Exchange with revenue that is foregone when a bin is inactive. In particular, the fee helps the Exchange recoup lost transaction and access charges. This inactive PMM fee became effective on January 1, 2001. At the time the fee was adopted, there were three PMM memberships that were inactive. Two of those memberships became active during January 2001, and accordingly were not subject to the \$100,000 fee.

With respect to the one remaining inactive PMM membership, the Exchange proposes to delay application of the \$100,000 fee until May 7, 2001 to give this membership additional time to begin trading. The two PMM memberships that began trading in January were owned or leased by ISE members that had been approved as market makers on the Exchange. Thus, the ability to initiate trading was completely within those members' control.

In contrast, the one PMM membership that remains inactive is owned by an entity that is not a registered broker-dealer and therefore, could not itself initiate trading activities on the ISE.

Moreover, this owner is affiliated with a member that is currently operating two PMM memberships and would therefore, be prohibited under ISE's concentration limits for operating a third membership. Accordingly, the PMM membership must be leased or sold to a registered broker-dealer member of the ISE that is an approved market maker before trading activities with respect to the membership can be initiated.

The Exchange proposes to extend the effective date of the \$100,000 inactive PMM fee to May 7, 2001 with respect to any PMM membership that is owned by a person or entity that is prohibited from conducting trading activities under ISE Rules and the membership has not been leased to a member that is approved as a market maker on the Exchange. The one currently inactive PMM membership is the only membership that would be affected by the delayed effective date. While the Exchange forgoes revenue with respect to this membership, the activation of the membership is not completely within the control of the owner, as a qualified buyer or lessee for the membership must be identified. The Exchange therefore believes that an owner in this circumstance should be given additional time to activate the membership as compared to an entity that chooses not to exercise its trading rights.⁴

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁵ that an exchange have rules that are 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 of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the basis for the rule change is Section 6(b)(4)⁶ of the Act that requires an exchange to have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

⁴ This rule change will affect only PMMs on the exchange, and all PMMs whose trading activity either was affected by this fee or will be subject to the delay in the application of the fee have representatives on the Board of Directors. All such directors supported the adoption of this proposed rule change.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(4).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange amended the proposal to submit the proposed rule change pursuant to Rule 19b-4(f)(1). See Letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Kathy England, Assistant Director, Division of Market Regulation, Commission, dated March 12, 2001.

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 constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, and therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁷ and paragraph (f)(1) of Rule 19b-4.⁸ 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of ISE. All submissions should

refer to File No. SR-ISE-01-05 and should be submitted by April 13, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44084; File No. SR-NYSE-01-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend NYSE Rule 60 Relating to the Dissemination of Depth Indications and Depth Conditions

March 16, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 15, 2001, the New York Stock Exchange, Inc. ("NYSE" 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 Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 proposes to amend NYSE Rule 60 "Dissemination of Quotations," to provide for the dissemination of a depth indication and a depth condition to reflect market interest in a security below the published bid and above the published offer. The Exchange has designated this proposal as non-controversial, rendering it effective upon filing with the Commission. The NYSE asks that the Commission waive the 30-day operative

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The NYSE has asked, and the Commission agreed, to waive the 5-day pre-filing notice requirement. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

waiting period pursuant to SEC Rule 19b-4(f)(6)(iii),⁶ so that the proposal may be implemented on March 19, 2001. The text of the proposed rule change is below. Proposed new language is in italics.

Rule 60 Dissemination of Quotations

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* * * Supplementary Material

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.30 (a) On a best efforts basis, the specialist may disseminate a depth indication and a depth condition in any security. Such depth indication and a depth condition may be disseminated for the purpose of indicating that there is additional market interest to buy below the current published bid, or additional market interest to sell above the current published offer, as described in paragraph (b) below. The depth indication shall be disseminated by means of an appropriate symbolic designation, appended to the current published bid and/or offer, as appropriate, but neither the depth indication nor the depth condition shall themselves be deemed to constitute a "firm quotation" for purposes of this Rule or Rule 11Ac1-1 of the Securities and Exchange Commission.

Phase 1

(b) The depth indication may be disseminated only when there is market interest, consisting of the specialist's proprietary interest as well as interest reflected by orders represented by the specialist as agent (including percentage orders), aggregating such minimum number of shares and range of prices below the published bid or above the published offers as the Exchange deems appropriate and communicates to its membership.

Phase 2

(b) In addition to the appropriate symbolic designation for the depth indication, the specialist may disseminate a depth condition, which shall specify the number of shares, consisting of the specialist's proprietary interest as well as interest reflected by orders represented by the specialist as agent (including percentage orders), that the specialist believes represents a reasonable reflection of the depth of the market at a particular price in a particular security, consistent with the usual trading characteristics of such security, or any unusual activity that may be present on any particular day.

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⁶ 17 CFR 240.19b-4(f)(6)(iii).

⁷ 15 U.S.C. 78s(b)(3)(A)(i).

⁸ 17 CFR 240.19b-4(f)(1).