

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52084; File No. SR-ISE-2005-27]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Generic Listing Standards and Position Limits for Broad-Based Index Options

July 20, 2005.

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 May 19, 2005, the International Securities Exchange, Inc. (“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 ISE. On July 13, 2005, the ISE filed Amendment No. 1 to the proposed rule change.³ 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 ISE hereby proposes to amend its rules to adopt generic listing standards and position limits for broad-based index options. The text of the proposed rule change appears below. Additions are *italicized*.

Rule 2002. Designation of an Index

(a)–(c) No Change.

(d) *The Exchange may trade options on a broad-based index pursuant to Rule 19b-4(e) of the Securities Exchange Act of 1934, if each of the following conditions is satisfied:*

(1) *The index is broad-based, as defined in Rule 2001(j);*

(2) *Options on the index are designated as A.M.-settled;*

(3) *The index is capitalization-weighted, modified capitalization-weighted, price-weighted, or equal dollar-weighted;*

(4) *The index consists of 50 or more component securities;*

(5) *Component securities that account for at least ninety-five percent (95%) of the weight of the index have a market capitalization of at least \$75 million, except that component securities that account for at least sixty-five percent (65%) of the weight of the index have a market capitalization of at least \$100 million;*

(6) *Component securities that account for at least eighty percent (80%) of the weight of the index satisfy the requirements of Rule 502 applicable to individual underlying securities;*

(7) *Each component security that accounts for at least one percent (1%) of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six month period;*

(8) *No single component security accounts for more than ten percent (10%) of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than thirty-three percent (33%) of the weight of the index;*

(9) *All component securities are “reported securities,” as defined in Rule 11Aa3-1 under the Exchange Act;*

(10) *Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty percent (20%) of the weight of the index;*

(11) *The current index value is widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors during the time options on the index are traded on the Exchange;*

(12) *The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange’s current ISCA allocation and the number of new messages per second expected to be generated by options on such index;*

(13) *An equal dollar-weighted index is rebalanced at least once every calendar quarter;*

(14) *If an index is maintained by a broker-dealer, the index is calculated by a third-party who is not a broker-dealer, and the broker-dealer has erected an informational barrier around its personnel who have access to information concerning changes in, and adjustments to, the index;*

(15) *The Exchange has written surveillance procedures in place with respect to surveillance of trading of options on the index.*

(e) *The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (d) above:*

(1) *The requirements set forth in subparagraphs (d)(1)–(d)(3) and (d)(9)–(d)(15) must continue to be satisfied. The requirements set forth in subparagraphs (d)(5)–(d)(8) must be satisfied only as of the first day of January and July in each year;*

(2) *The total number of component securities in the index may not increase or decrease by more than ten percent (10%) from the number of component securities in the index at the time of its initial listing.*

In the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards set forth herein, the Exchange shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the SEC under Section 19(b)(2) of the Exchange Act.

Rule 2004. Position Limits for Broad-Based Index Options

(a) Rule 412 generally shall govern position limits for broad-based index options, as modified by this Rule 2004. There may be no position limit for certain Specified (as provided in Rule 2000) broad-based index options contracts. *Except as otherwise indicated below, the position limit for a broad-based index option shall be 25,000 contracts.* All other broad-based index options contracts shall be subject to a contract limitation fixed by the Exchange, which shall not be larger than the limits provided in the chart below.

Broad-based underlying index	Standard limit (on the same side of the market) (contracts)	Restrictions
S&P SmallCap 600 Index	100,000	No more than 60,000 near-term.
S&P MidCap 400 Index	45,000	No more than 25,000 near-term.
Reduced Value S&P 1000 Index	50,000	No more than 30,000 near-term.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the ISE made technical corrections to the filing and clarified certain issues raised by Commission Staff.

Broad-based underlying index	Standard limit (on the same side of the market) (contracts)	Restrictions
Micro S&P 1000 Index	500,000	No more than 300,000 near-term.
Nasdaq 100 Index	75,000	None.
Mini Nasdaq 100 Index	750,000	None.
Russell 3000 Index	50,000	No more than 30,000 near-term.
Mini Russell 3000 Index	500,000	No more than 300,000 near-term.
Russell 3000 Value Index	50,000	No more than 30,000 near-term.
Mini Russell 3000 Value Index	500,000	No more than 300,000 near-term.
Russell 3000 Growth Index	50,000	No more than 30,000 near-term.
Mini Russell 3000 Growth Index	500,000	No more than 300,000 near-term.
Russell 2500 Index	50,000	No more than 30,000 near-term.
Mini Russell 2500 Index	500,000	No more than 300,000 near-term.
Russell 2500 Value Index	50,000	No more than 30,000 near-term.
Mini Russell 2500 Value Index	500,000	No more than 300,000 near-term.
Russell 2500 Growth Index	50,000	No more than 30,000 near-term.
Mini Russell 2500 Growth Index	500,000	No more than 300,000 near-term.
Russell 2000 Index	50,000	No more than 30,000 near-term.
Mini Russell 2000 Index	500,000	No more than 300,000 near-term.
Russell 2000 Value Index	50,000	No more than 30,000 near-term.
Mini Russell 2000 Value Index	500,000	No more than 300,000 near-term.
Russell 2000 Growth Index	50,000	No more than 30,000 near-term.
Mini Russell 2000 Growth Index	500,000	No more than 300,000 near-term.
Russell 1000 Index	50,000	No more than 30,000 near-term.
Mini Russell 1000 Index	500,000	No more than 300,000 near-term.
Russell 1000 Value Index	50,000	No more than 30,000 near-term.
Mini Russell 1000 Value Index	500,000	No more than 300,000 near-term.
Russell 1000 Growth Index	50,000	No more than 30,000 near-term.
Mini Russell 1000 Growth Index	500,000	No more than 300,000 near-term.
Russell Top 200 Index	50,000	No more than 30,000 near-term.
Mini Russell Top 200 Index	500,000	No more than 300,000 near-term.
Russell Top 200 Value Index	50,000	No more than 30,000 near-term.
Mini Russell Top 200 Value Index	500,000	No more than 300,000 near-term.
Russell Top 200 Growth Index	50,000	No more than 30,000 near-term.
Mini Russell Top 200 Growth Index	500,000	No more than 300,000 near-term.
Russell MidCap Index	50,000	No more than 30,000 near-term.
Mini Russell MidCap Index	500,000	No more than 300,000 near-term.
Russell MidCap Value Index	50,000	No more than 30,000 near-term.
Mini Russell MidCap Value Index	500,000	No more than 300,000 near-term.
Russell MidCap Growth Index	50,000	No more than 30,000 near-term.
Mini Russell MidCap Growth Index	500,000	No more than 300,000 near-term.
Russell Small Cap Completeness Index	50,000	No more than 30,000 near-term.
Mini Russell Small Cap Completeness Index	500,000	No more than 300,000 near-term.
Russell Small Cap Completeness Value Index	50,000	No more than 30,000 near-term.
Mini Russell Small Cap Completeness Value Index	500,000	No more than 300,000 near-term.
Russell Small Cap Completeness Growth Index	50,000	No more than 30,000 near-term.
Mini Russell Small Cap Completeness Growth Index	500,000	No more than 300,000 near-term.
Mini NYSE U.S. 100 Index	50,000	No more than 30,000 near-term.
Micro NYSE U.S. 100 Index	500,000	No more than 300,000 near-term.
Mini NYSE International 100 Index	50,000	No more than 30,000 near-term.
Micro NYSE International 100 Index	500,000	No more than 300,000 near-term.
Mini NYSE World Leaders Index	50,000	No more than 30,000 near-term.
Micro NYSE World Leaders Index	500,000	No more than 300,000 near-term.

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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 ISE 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 Exchange proposes to amend its rules to adopt generic listing standards and position limits for broad-based index options. In particular, the Exchange proposes to adopt (i) ISE Rule 2002(d), which contains generic initial listing standards for broad-based index

options, (ii) ISE Rule 2002(e), which contains generic maintenance standards for broad-based index options listed pursuant to proposed ISE Rule 2002(d), and (iii) an amendment to ISE Rule 2004(a), to provide position limits for broad-based index options listed pursuant to proposed ISE Rule 2002(d). This rule change would enable the Exchange to list broad-based index options pursuant to Rule 19b-4(e)⁴ of

⁴ 17 CFR 240.19b-4(e). Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule

the Act if each of the conditions set forth in ISE Rule 2002(d) are satisfied. The proposed rule change would further provide ongoing maintenance standards and position limits for broad-based index options listed pursuant to proposed ISE Rule 2002(d). Such options would, in all other respects, be traded pursuant to the Exchange's trading rules and procedures applicable to index options and be covered under the Exchange's surveillance program for index options. The Exchange notes that it and other options exchanges currently have rules that aim "generic" listing standards pursuant to Rule 19b-4(e) and position limits for narrow-based index options.⁵ The Exchange also notes that CBOE currently has rules that contain generic listing standards and position limits for micro narrow-based index options.⁶ The standards contained in these proposed generic listing standards and position limits for broad-based index options are based on the standards contained in the generic listing standards and position limits for narrow-based index options and micro narrow-based index options that were previously approved by the Commission but have been adapted to reflect the characteristics of broad-based index options.

Generic Initial Listing Standards for Broad-Based Index Options

In order to list broad-based index options pursuant to the generic Rule 19b-4(e) listing standards, the underlying index must satisfy all of the conditions contained in proposed ISE Rule 2002(d). If the underlying index does not satisfy all of the conditions, the Exchange would be required to file a proposed rule change with the Commission on Form 19b-4 pursuant to Section 19(b)(2) of the Act⁷ and obtain Commission approval in order to list options on that index. Following are the

change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class. When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the exchange begins trading the new derivative securities products. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

⁵ See ISE Rules 2002(b), 2002(c) and 2005; Chicago Board Options Exchange ("CBOE") Rules 24.2(b), 24.2(c) and 24.4A; American Stock Exchange Rules 901C *Commentary*.02 and 904C(c); Pacific Stock Exchange Rules 5.13 and 5.16; and Philadelphia Stock Exchange Rules 1009A(b), 1009A(c) and 1001A(b).

⁶ See CBOE Rules 24.2(d), 24.2(e) and 24.4B.

⁷ 15 U.S.C. 78s(b)(2).

conditions contained in proposed ISE Rule 2002(d).

- Under proposed ISE Rule 2002(d)(1), the index must be "broad-based," as defined in ISE Rule 2001(j). Rule 2001(j) defines the term "broad-based" as an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

- Under proposed ISE Rule 2002(d)(2),⁸ options on the index must be designated as A.M.-settled.

- Under proposed ISE Rule 2002(d)(3),⁹ the index must be capitalization-weighted, modified capitalization-weighted, price-weighted, or equal dollar-weighted.

- Under proposed ISE Rule 2002(d)(4),¹⁰ the index must consist of 50 or more component securities. The Exchange believes that a 50 component minimum is reasonable for broad-based indexes, and, when applied in conjunction with the other listing requirements, will result in indexes that are sufficiently broad-based in scope and not readily subject to manipulation. The Exchange notes that there are currently a number of broad-based indexes that consist of fewer than 50 components, such as, the Dow Jones Industrial Average Index (30 components) and the Amex Major Market Index (20 components). The Exchange further notes that, while broad-based index options generally have more components than narrow-based index options, the generic listing standards for narrow-based index options are more liberal, requiring an index to consist of only 10 or more component securities.

- Under proposed ISE Rule 2002(d)(5),¹¹ component securities comprising at least 95 percent of the index, by weight, must have a minimum market capitalization of \$75 million. In addition, component securities comprising at least 65 percent of the index, by weight, must have a minimum market capitalization of \$100 million.

- Under proposed ISE Rule 2002(d)(6),¹² component securities that account for at least eighty percent (80%) of the weight of the index must satisfy the requirements of ISE Rule 502. That is, those securities must be "options eligible," meaning they must have, for

example, at least a 7 million share float, 2000 holders, total annual trading volume of 2,400,000 shares, a minimum price of \$3 per share, and the issuer must be in compliance with its obligations under the Act. The Exchange believes that an 80% weighting is reasonable for broad-based indexes, and, when applied in conjunction with the other listing requirements, will result in indexes that contain components that are sufficiently liquid and not readily subject to manipulation. The Exchange notes that broad-based indexes may consist of thousands of components (for example, the Russell 3000 Index), and the components comprising the bottom 10% to 20% of the weight of the index generally are the smallest capitalized stocks and tend not to meet the requirements of ISE Rule 502. The Exchange further notes that the generic listing standards pursuant to Rule 19b-4(e) for narrow-based index options are less liberal, requiring a 90% weighting.

- Under proposed ISE Rule 2002(d)(7),¹³ each component security that accounts for at least one percent (1%) of the weight of the index must have an average daily trading volume, or ADTV, of at least 90,000 shares over the prior six month period. The Exchange believes that 90,000 ADTV is reasonable for broad-based indexes, and, when applied in conjunction with the other listing requirements, will result in indexes in which the more-heavily weighted components are sufficiently liquid and not readily subject to manipulation.

- Under proposed ISE Rule 2002(d)(8),¹⁴ no single component security may account for more than ten percent (10%) of the weight of an index, and the five highest weighted component securities in the index may not, in the aggregate, account for more than thirty-three percent (33%) of the weight of an index. The Exchange believes that the 10% and 33% weighting concentration caps are reasonable for broad-based indexes, and, when applied in conjunction with the other listing requirements, will result in indexes that are not unreasonably dominated by a few heavily-weighted components.¹⁵ The Exchange notes that

¹³ Proposed ISE Rule 2002(d)(7) is based on ISE Rule 2002(b)(4).

¹⁴ Proposed ISE Rule 2002(d)(8) is based on ISE Rule 2002(b)(6).

¹⁵ There are a number of broad-based indexes with component weighting concentrations that approach the limits proposed by the Exchange. See, for example, as of February 22, 2005, Morgan Stanley Multinational Company Index—50 components, top 5 account for 33.24%; S&P 100 Index—100 components, top 5 account for 25.02%; Nasdaq 100 Index—100 components, top 5 account

the generic listing standards for narrow-based index options are more liberal, establishing 30% and 50% weighting concentration caps.

- Under proposed ISE Rule 2002(d)(9),¹⁶ all component securities must be “reported securities,” as defined in Rule 11Aa3-1 under the Act.¹⁷

- Under proposed ISE Rule 2002(d)(10),¹⁸ no more than 20 percent of the securities in the index, by weight, may be comprised of foreign securities or American depository receipts (“ADRs”) overlying foreign securities that are not subject to comprehensive surveillance sharing agreements.

- Under proposed ISE Rule 2002(d)(11),¹⁹ the current index value must be widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors during the time options on the index are traded on the Exchange.

- *Under proposed ISE Rule 2002(d)(12),²⁰ the Exchange must reasonably believe that it has adequate system capacity to support the trading of options on the index. That belief must be based on the performance of a calculation by the Exchange that takes into account the Exchange’s current Independent System Capacity Advisor (“ISCA”) allocation and the number of new peak messages per second expected to be generated by options on such index. The Exchange notes that it currently performs this calculation for all new broad-based index options that it lists under its current rules and represents it would use the same calculation for all broad-based index options listed pursuant to proposed ISE Rule 2002(d).*

- Under proposed ISE Rule 2002(d)(13),²¹ an equal dollar-weighted index must be rebalanced at least once every calendar quarter.

- Under proposed ISE Rule 2002(d)(14),²² if the index is maintained by a broker-dealer, it must be calculated by a third-party who is not a broker-dealer. Further, the broker-dealer must establish appropriate procedures to ensure that the broker-dealer will not possess or be able to misuse any informational advantages with respect to changes in, and adjustments to, an index. Such procedures must include, for example, the establishment of appropriate informational barriers.

- Under proposed ISE Rule 2002(d)(15),²³ the Exchange must have written surveillance procedures in place with respect to surveillance of trading of options on the index.

Generic Maintenance Standards for Broad-Based Index Options Listed Pursuant to Proposed ISE Rule 2002(d)

Following the listing of a broad-based index option pursuant to proposed ISE Rule 2002(d), the underlying index must continue to satisfy the maintenance standards contained in proposed ISE Rule 2002(e) in the manner prescribed in proposed ISE Rule 2002(e). If the underlying index fails to satisfy the maintenance standards, the Exchange may not open for trading any additional series of options on that class of index options unless the continued listing of

that class of index options has been approved by the Commission pursuant to section 19(b)(2) of the Act. Following are the maintenance standards contained in proposed ISE Rule 2002(e).

- Under proposed ISE Rule 2002(e)(1),²⁴ the requirements of proposed ISE Rule 2002(d)(1)–(3) and (9)–(15) must continue to be satisfied. In addition, the requirements of proposed ISE Rule 2002(d)(5)–(8) must be satisfied only as of the first day of January and July of each year. The Exchange believes that these maintenance standards are reasonable for broad-based indexes in as much as they strike an appropriate balance between the obligation to continually monitor and maintain critical attributes of the index, and the obligation to, at certain intervals, monitor and maintain non-critical attributes of the index, especially in light of the number of component securities that comprise broad-based indexes.

- Under proposed ISE Rule 2002(e)(2),²⁵ the number of component securities in the index may not increase or decrease by more than ten percent (10%) from the number of component securities in the index at the time of its initial listing. The Exchange believes that this maintenance standard is reasonable for broad-based indexes, and, when applied in conjunction with the other maintenance requirements, will result in indexes that remain sufficiently broad-based and not readily subject to manipulation. The Exchange notes that the generic maintenance standards for narrow-based index options are more liberal, establishing a 33⅓% increase or decrease maximum.

Position Limits for Broad-Based Index Options Listed Pursuant to Proposed ISE Rule 2002(d)

Following the listing of a broad-based index option pursuant to proposed ISE Rule 2002(d), trading in the broad-based index option shall be subject to position limits. If the Exchange sought to apply a different position limit, the Exchange would be required to file a proposed rule change with the Commission on Form 19b-4 pursuant to section 19(b)(2) of the Act and obtain Commission approval in order to apply the different position limit. The position limit for broad-based index options listed pursuant to proposed ISE rule 2002(d) shall be 25,000 contracts. The Exchange believes that this position limit is reasonable for broad-based indexes and

for 24.32%; GSTI Composite Index—178 components, top 5 account for 33.68%; Dow Jones Industrial Average Index—30 components; top 5 account for 29.92%; and Amex Major Market Index—20 components, top 5 account for 37.14%.

¹⁶ Proposed ISE Rule 2002(d)(9) is based on ISE Rule 2002(b)(8).

¹⁷ 17 CFR 240.11Aa3-1. A “reported security” is defined in paragraph (a)(4) of this rule as any listed equity security or NASDAQ security for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan. A “transaction reporting plan” is defined in paragraph (a)(2) of this rule as “any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in reported securities filed with the Commission pursuant to, and meeting the requirements of, this section.”

¹⁸ Proposed ISE Rule 2002(d)(10) is based on ISE Rule 2002(b)(9).

¹⁹ Proposed ISE Rule 2002(d)(11) is based on ISE Rule 2002(b)(10).

²⁰ Proposed ISE Rule 2002(d)(12) is not based on a current ISE rule, but codifies its current practice with respect to the listing of a broad-based index option under its current rules.

²¹ Proposed ISE Rule 2002(d)(13) is based on ISE Rule 2002(b)(11).

²² Proposed ISE Rule 2002(d)(14) is based on ISE Rule 2002(b)(12).

²³ Proposed ISE Rule 2002(d)(15) is not based on a current ISE rule, but codifies its current practice with respect to the listing of a broad-based index option under its current rules.

²⁴ Proposed ISE Rule 2002(e)(1) is based on ISE Rule 2002(c)(1).

²⁵ Proposed ISE Rule 2002(e)(2) is based on ISE Rule 2002(c)(2).

will result in indexes that are not readily subject to manipulation.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirement under section 6(b)(5)²⁶ to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

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

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 ISE 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. 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. Please include File Number SR-ISE-2005-27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-27. 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 Room. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. 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 Number SR-ISE-2005-27 and should be submitted on or before August 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52089; File No. SR-NASD-2005-071]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Modify Pricing for NASD Members Using the Nasdaq Market Center and Nasdaq's Brut Facility

July 20, 2005.

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 June 1, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("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 Nasdaq. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization. On June 9, 2005, Nasdaq filed an amendment to the proposed rule change.⁵ On July 8, 2005, Nasdaq filed a second amendment to the proposed rule change.⁶ 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 proposes to modify the pricing for NASD members using the Nasdaq Market Center and Nasdaq's Brut Facility. The proposal modifies the fee schedule applicable to orders in Nasdaq-listed stocks and exchange-traded funds listed on the American Stock Exchange that are entered into the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Partial Amendment dated June 9, 2005 ("Amendment No. 1). Amendment No. 1 made minor, technical corrections to the discussion section on page 4 of the original filing.

⁶ See Partial Amendment dated July 8, 2005 ("Amendment No. 2"). Amendment No. 2 made minor changes to the rule text quoted on pages 6 and 15 of the original filing.

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ 17 CFR 200.30-3(a)(12).