

adoption of the Pilot Program.<sup>7</sup> Also, the Exchange has not encountered any problems or difficulties relating to the Pilot Program since its inception. For these reasons, the Exchange requests that the Commission extend the Pilot Program for the aforementioned additional period.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements provided under Section 6(b)(5)<sup>8</sup> of the Act that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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

CBOE 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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the forgoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action

is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and in the public interest because it will allow the Pilot Program to continue uninterrupted.<sup>13</sup>

At any time within 60 days of the filing of the 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 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 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](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2007-12 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-CBOE-2007-12. 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 such filing will also be available for inspection and copying at the principal office of CBOE. 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 No. SR-CBOE-2007-12 and should be submitted on or before March 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-2765 Filed 2-15-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55271; File No. SR-ISE-2007-08]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Payment for Order Flow Fees

February 12, 2007.

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 January 26, 2007, 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 substantially prepared by the Exchange. On February 1, 2007, the ISE submitted Amendment No. 1 to the proposed rule change. ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>14</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> 15 U.S.C. 78s(b)(1)(3)(A)(ii).

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

<sup>7</sup> See Pilot Program Order, *supra* note 5.

<sup>8</sup> 15 U.S.C. 78f (b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. CBOE has satisfied the five-day pre-filing requirement.

<sup>12</sup> *Id.*

<sup>13</sup> For the purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to reduce the payment for order flow ("PFOF") fees for options on issues that trade as part of the Penny Pilot ("Pilot").<sup>5</sup> The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.iseoptions.com>.

## 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 substantially 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 is proposing to amend its Schedule of Fees in conjunction with the introduction of the Pilot by reducing the PFOF fees for options on issues that trade as part of the Pilot. The Pilot is scheduled to begin on January 26, 2007. The following issues will be included in the Pilot: Agilent Technologies (A), Advanced Micro Devices (AMD), Caterpillar (CAT), Flextronics International (FLEX), General Electric (GE), Intel (INTC), iShares Russell 2000 Index fund (IWM), Microsoft (MSFT), Nasdaq-100 Index Tracking Stock (QQQQ), Semiconductor Holders Trust (SMH), Sun Microsystems (SUNW), Texas Instruments (TXN), and Whole Foods Markets (WFMI).

The Exchange currently operates a PFOF program as approved by the Commission.<sup>6</sup> This program is funded through a fee, currently set at \$0.65 per contract, paid by Exchange market makers for each customer contract they execute. All funds collected by the Exchange are administered by specified

market makers.<sup>7</sup> PFOF fees collected by the Exchange that are not distributed are rebated back to the market makers. The Exchange now proposes to reduce the PFOF fees to \$0.25 per contract for transactions in all options on Pilot issues. This fee reduction would also apply to other issues that become a part of the Pilot in the event the Pilot is expanded beyond the current 13 securities. The Exchange believes that quoting and trading in one cent increments pursuant to the Pilot would narrow spreads, resulting in PFOF being less of a competitive factor. Thus, the Exchange believes it is prudent for it to maintain its PFOF fee, but at a lower level in options on Pilot issues.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and Section 6(b)(4) of the Act<sup>9</sup> in particular, because it is an equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities. In particular, the Exchange believes that lowering PFOF fees in options on Pilot issues would enhance competition.

### 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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly,

the proposal will take effect upon filing with the Commission. 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.<sup>12</sup>

## 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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2007-08 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2007-08. 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 such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does

<sup>5</sup> See Securities Exchange Act Release No. 54603 (October 16, 2006), 71 FR 62024 (October 20, 2006) (SR-ISE-2006-62) (Notice of Filing of Proposed Rule Change to Implement a Pilot Program To Quote and To Trade Options in Pennies).

<sup>6</sup> See Securities Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (SR-ISE-2000-10).

<sup>7</sup> Initially only Primary Market Makers administered PFOF pools. However, the Exchange recently amended its PFOF program to allow a Competitive Market Maker ("CMM") to administer the PFOF funds collected by the Exchange with respect to orders in a group of options classes preferred to that CMM. See Securities Exchange Act Release No. 53127 (January 13, 2006), 71 FR 3582 (January 23, 2006) (SR-ISE-2005-57).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78F(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on February 1, 2007, the date on which the Exchange filed Amendment No. 1.

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-2007-08 and should be submitted on or before March 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-2793 Filed 2-15-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55264; File No. SR-NYSE-2006-45]

### Self-Regulatory Organizations; New York Stock Exchange LLC.; Order Approving Proposed Rule Change Relating to Amendments to Exchange Rule 638 Concerning Mediation

February 9, 2007.

#### I. Introduction

On June 22, 2006, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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 relating to amendments to Exchange Rule 638 concerning mediation. The proposed rule change was published for comment in the *Federal Register* on December 21, 2006,<sup>3</sup> and the Commission received one comment on the proposal.<sup>4</sup> This order approves the proposed rule change.

#### II. Description

The proposal would delete references in NYSE Rule 638 to the mediation pilot program that expired on January 31, 2003. The proposed amendments would also codify or, in some cases, recodify certain existing mediation procedures, including that: (1) The mediator's fees and method of payment are subject to agreement of the parties and the mediator, and all such fees and costs incurred in mediation are the parties' responsibility; (2) an adjournment fee will be assessed if an arbitration hearing is adjourned for purposes of the parties

pursuing mediation unless the fee is waived under Exchange Rule 617; (3) a mediator may not represent a party or act as an arbitrator in an arbitration relating to the matter mediated, nor be called to testify regarding the mediation in any proceeding;<sup>5</sup> and (4) the mediation is confidential and no record is kept of the proceeding,<sup>6</sup> and, except as may be required by law, the parties and mediator agree not to disclose the substance of the mediation without the prior written authorization of all parties to the mediation.

In addition, the proposed rule change would clarify that any party may withdraw from mediation at any time prior to the execution of a settlement agreement upon written notification to all other parties, the mediator, and the Director of Arbitration. It also would clarify that parties may select a mediator on their own or request a list of potential mediators from the Exchange, and that, upon request of any party, the Director of Arbitration would send the parties a list of five potential mediators together with the mediators' biographical information described in Rule 608.<sup>7</sup>

Finally, the proposed rule change would provide that the parties will advise the Exchange as to the name of the agreed-upon mediator. In addition, it would clarify that once the parties agree to mediate, the Exchange would facilitate the mediation, if requested, by contacting the mediator selected and by assisting in making necessary arrangements, as well as that parties to mediation may use the Exchange meeting facilities in New York, when available, without charge.

#### III. Summary of Comment

The Commission received one comment on the proposal.<sup>8</sup> The commenter objected to the provision of the proposed rule change that would prohibit a mediator from acting as an arbitrator in an arbitration related to the matter mediated.<sup>9</sup> The NYSE responded that because the provision is substantially the same as in the current rule this comment is outside the scope of this rule filing.<sup>10</sup> The Commission finds the NYSE's determination that these comments are beyond the scope of the rule filing to be reasonable because they suggest substantive changes from

<sup>5</sup> See current NYSE Rule 638(a)(4).

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

<sup>7</sup> See current NYSE Rule 638(a)(2).

<sup>8</sup> Hochman.

<sup>9</sup> *Id.*

<sup>10</sup> See letter from Mary Yeager, Assistant Secretary, NYSE, to Katherine A. England, Assistant Director, Division of Market Regulation, dated February 7, 2007.

the current mediation rules that were not intended to be addressed by this rule filing. Thus, the Commission finds the NYSE's determination not to amend the proposed rule change in connection with this comment at this time to be reasonable.

#### IV. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the NYSE's rules be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>11</sup> The Commission believes that the proposed rule change will bring greater clarity to the mediation process by deleting outdated references to the expired mediation pilot program and codifying certain existing mediation procedures.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act<sup>12</sup> that the proposed rule change (SR-NYSE-2006-45), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-2721 Filed 2-15-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55258; File No. SR-OCC-2006-01]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change as Modified by Amendment No. 1 To Revise Option Adjustment Methodology

February 8, 2007.

#### I. Introduction

On January 12, 2006, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2006-01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On March 9, 2006, the Commission published notice of the proposed rule

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> See Exchange Act Release No. 54917 (Dec. 11, 2006), 71 FR 76714 (Dec. 21, 2006).

<sup>4</sup> See letter from Stephen A. Hochman to Nancy Morris, dated January 16, 2007 ("Hochman").