

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 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 Number SR-CBOE-2007-57 and should be submitted on or before July 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55895; File No. SR-ISE-2007-38]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Payment for Order Flow Fees

June 11, 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 June 1, 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. 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 from interested persons.

#### 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

On January 26, 2007, ISE and all of the other options exchanges commenced the Pilot for the quoting and trading of specified options contracts in \$.01 increments. 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. Subsequent to the commencement of the Pilot, the Exchange amended its

<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 preferred 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).

Schedule of Fees by reducing the PFOF fees for issues that trade as part of the Pilot from \$0.65 per contract to \$0.25 per contract ("Pilot PFOF Fees").<sup>8</sup>

The Exchange now proposes to reduce the Pilot PFOF Fees from \$0.25 per contract to \$0.10 per contract for transactions in all Pilot issues. This fee reduction shall 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 notes that quoting and trading in one cent increments pursuant to the Pilot has resulted in narrower spreads in the 13 Pilot securities. PFOF, as a result, has become less of a competitive factor in the Pilot securities. The Exchange thus believes that while it is prudent for it to maintain its PFOF fee, \$0.10 per contract is an appropriate PFOF rate relative to the trading increments in these instruments.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</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 further in 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

<sup>8</sup> See Exchange Act Release No. 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR-ISE-2007-08) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Payment for Order Flow Fees).

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</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)(3)(A)(ii).

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

Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</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.

#### 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-2007-38 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-2007-38. 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 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-2007-38 and should be submitted on or before July 9, 2007.

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

Nancy M. Morris,  
Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55892; File No. SR-NASDAQ-2007-043]

#### Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto To Remove Provisions Governing the Operation of the ACES Service

June 11, 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 April 25, 2007, the NASDAQ Stock Market LLC ("Nasdaq" 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. The Exchange filed Amendments No. 1 and 2 to the proposed rule change on May 29, 2007, and June 5, 2007, respectively. The Commission is publishing this notice to solicit comment 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 remove from its rules provisions governing the operations of the ACES communications service. Nasdaq's rule book contains rules pertaining to "facilities" of the exchange, and ACES is not such a "facility" within the meaning of the Act. Specifically, Nasdaq proposes to delete: (a) The entire Rule 6200 Series (titled ACES), consisting of Rules 6210, 6220, 6230, 6240 and 6250; and (b) the entire Rule 7026 (titled ACES). The Rule

book will show the Rule 6200 Series and Rule 7026 as "Reserved."

The text of the proposed rule change is available at Nasdaq, at the Commission's Public Reference Room, and at <http://www.nasdaq.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, NASDAQ 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

ACES is a neutral communications service that allows market participants to route orders to one another. ACES does not effect trade executions, and it does not report executed trades to "the tape." Moreover, market participants receiving orders through ACES may execute them in any manner that they deem consistent with duties of best execution and other applicable industry obligations. As the ACES service can be of value to all market participants, both members and non-members of Nasdaq are permitted to use it.

Sections 6(b)<sup>3</sup> and 19(b)(1)<sup>4</sup> of the Act and Rule 19b-4 thereunder<sup>5</sup> require a national securities exchange to file its rules with the Commission. Section 3(a)(27) of the Act<sup>6</sup> and Rule 19b-4 define the "rules" of an exchange with reference to its "facilities": a rule includes "any material aspect of the operation of the facilities" of the exchange or any statement with respect to "the rights, obligations or privileges" of exchange members or persons having or seeking access to the facilities of the exchange.<sup>7</sup> Finally, Section 3(a)(2) of the Act defines "facility," when used with respect to an exchange, to include: its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any services thereof for the purpose of effecting

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> 15 U.S.C. 78c(a)(27).

<sup>7</sup> 17 CFR 240.19b-4.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</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.