

Options Exchange also recently adopted the use of attributable orders (*See* CBOE Rule 6.53(o)). As proposed, the Exchange may limit the systems/processes and the class of securities for which attributable orders will be available. Prior to turning on this functionality, ISE will issue a regulatory circular specifying the systems and the options classes for which the attributable order type will be available. This proposal is responsive to requests by Exchange users who believe that enhanced executions may be obtained if Firm ID is allowed on orders (on a voluntary basis).

(b) *Basis*—The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act’s<sup>5</sup> requirements that the rules of a national securities 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. In particular, the proposed rule change will allow for greater customization by providing users with an additional order type.

#### *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**

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if

consistent with the protection of investors and the public interest. The Exchange provided the Commission with 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 the proposed rule change as required by Rule 19b–4(f)(6).<sup>6</sup> For the foregoing reasons, the Exchange believes the proposed rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b–4 of the Act.<sup>7</sup>

The Exchange believes the proposed rule change is non-controversial in that it is similar to the rules of the CBOE and the NOM. Further, the Exchange believes the proposed rule change may assist investors by allowing market participants the benefits of attributable orders. The Exchange also believes that the proposed rule change does not raise any new, unique or substantive issues, and is beneficial for competitive purposes and to promote a free and open market for the benefit of investors.

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 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–2008–74 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–ISE–2008–74. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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–2008–74 and should be submitted on or before October 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–58710; File No. SR–ISE–2008–63]

#### **Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Relating to the Price Improvement Mechanism**

October 1, 2008.

#### **I. Introduction**

On July 31, 2008, the International Securities Exchange, LLC (“Exchange” or “ISE”) filed with the Securities and Exchange Commission (“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

<sup>8</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>4</sup> 15 U.S.C. 78f(b).

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

<sup>6</sup> 17 C.F.R. 240.19b–4(f)(6).

<sup>7</sup> *Id.*

proposed rule change to modify its Price Improvement Mechanism ("PIM") auction eligibility requirements to eliminate the requirement that there be at least three market makers quoting in the relevant series. The proposed rule change was published for comment in the **Federal Register** on August 27, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange's PIM auction process currently allows Electronic Access Members ("EAMs") to enter two-sided orders ("Crossing Transaction") to provide better prices than the ISE best bid or offer to agency orders.<sup>4</sup> The customer side of these orders is then exposed to other members to give them an opportunity to participate in the trade at the proposed cross price or better. ISE's current rules require, among other things, that an EAM enter an order into the PIM only when there are at least three market makers quoting in the options series.<sup>5</sup> The Exchange is now proposing to eliminate this requirement.

## III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of a national securities exchange be 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.<sup>7</sup>

ISE's current requirement that there must be at least three market makers quoting in the option series at the time an EAM enters an order into the PIM

<sup>3</sup> See Securities Exchange Act Release No. 58401 (August 21, 2008), 73 FR 50663.

<sup>4</sup> See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (approving rules implementing the PIM). See also Securities Exchange Act Release No. 57847 (May 21, 2008), 73 FR 30987 (May 29, 2008) (approving a proposed rule change to permit a member to enter an agency order into the PIM at a price that is equal to the national best bid or offer ("NBBO") when the ISE's best bid or offer is inferior to the NBBO).

<sup>5</sup> See ISE Rule 723(b)(1).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

was designed, in part, to increase the likelihood of competition in the auction. In approving ISE's proposal to establish the PIM, the Commission stated that it believed that the three market maker requirement would "improve the opportunity for an [agency] order to be exposed to a competitive auction."<sup>8</sup>

ISE rules permit all members to enter improvement orders into the PIM for their own account or for the account of a public customer.<sup>9</sup> Because of this opportunity for broad participation in PIM auctions, the Commission believes that orders submitted to the PIM will continue to be exposed to a meaningful, competitive auction, even without the three market maker requirement. For this reason, the Commission finds that ISE's proposal to eliminate the three market maker requirement is consistent with the Act.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-ISE-2008-63) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58646; File No. SR-NASDAQ-2008-074]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The NASDAQ Stock Market LLC To Remove Rule 6800 From the Nasdaq Rules

September 25, 2008.

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 September 17, 2008, The NASDAQ Stock Market LLC ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, which Items have been

<sup>8</sup> See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093, 75096 (December 15, 2004).

<sup>9</sup> See ISE Rule 723(c)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<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.

prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</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

Nasdaq proposes to remove from the Nasdaq rule book Rule 6800 pertaining to Nasdaq's Mutual Fund Quotation Service ("MFQS"). The Commission recently approved Nasdaq's proposal to remove MFQS-related rules from the Nasdaq rule book, but reference to Rule 6800 was inadvertently omitted from Nasdaq's proposal.<sup>4</sup> Nasdaq proposes to implement the proposed rule change immediately.

Nasdaq proposes to delete in its entirety Rule 6800 (titled Mutual Fund Quotation Service), showing this Rule in the rule book as "Reserved." The text of the proposed rule change is available on NASDAQ's Web site (<http://nasdaqomx.cchwallstreet.com>), at NASDAQ's principal office, and at the Commission's Public Reference Room.

### 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. Nasdaq 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 Commission recently approved Nasdaq's proposal to remove MFQS-related rules from the Nasdaq rule book.<sup>5</sup> In its proposal, Nasdaq stated its view that its rule book should not contain rules that do not pertain to "facilities" of the exchange and that

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> Securities Exchange Act Release No. 34-58392 (August 20, 2008), 73 FR 50382 (August 26, 2008) (approving SR-NASDAQ-2008-019).

<sup>5</sup> *Id.*