

shares would pay a fee of \$0.0028 when removing liquidity from the Matching System and a rebate of \$0.0032 when they provided liquidity.

Under this program, Participants which, on a net basis, provide Tape A and C securities would pay fees at lower volume levels but, as their monthly ADV increases, this rate structure will ultimately invert. Through this mechanism, the Exchange seeks to maximize revenue at lower volume levels while incenting all Participants to provide greater liquidity to the Matching System. Furthermore, the Exchange believes that the increased rebate will help attract additional orders to be displayed and executed on our trading facilities. The Exchange notes that a number of other exchanges have tiered fee schedules which offer different rates depending on the monthly ADV of liquidity-providing executions on their facilities, and our proposed fee structure will help us remain competitive with these entities.<sup>5</sup> The Exchange believes that the implementation of a tiered fee schedule may incent firms to display their orders on our trading facility and increase the volume of securities traded here.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. Among other things, the change to the fee schedule would provide incentives to Participants to increase the amount of liquidity provided on our trading facilities, which may contribute to an increase in trading volume on the Exchange and in the income derived therefrom.

### 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 either solicited or received.

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

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder.<sup>9</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 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-CHX-2010-01 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-CHX-2010-01. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. 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-CHX-2010-01 and should be submitted on or before February 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61317; File No. SR-ISE-2009-103]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change Relating to Market Data Fees

January 8, 2010.

#### I. Introduction

On November 25, 2009, the International Securities Exchange, LLC (the "Exchange" or the "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 proposed rule change to amend its Schedule of Fees. Notice of the proposed rule change was published for comment in the **Federal Register** on December 1, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of Proposal

The Exchange proposes to amend its Schedule of Fees to (1) increase the annual subscription rate for the ISE Open/Close Trade Profile, (2) adopt subscription fees for the sale of three

<sup>5</sup> See, e.g., Nasdaq Stock Market ("Nasdaq") Rule 7018; National Stock Exchange ("NSX") Fee Schedule; NYSE Arca Fee Schedule; International Securities Exchange ("ISE") Fee Schedule (equity mid-point match orders).

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> See Securities Exchange Act Release No. 61086 (December 8, 2009), 74 FR 64783 ("Notice").

new market data offerings, all of which are based on the ISE Open/Close Trade Profile, and (3) increase the annual subscription and ad-hoc request rates for ISE's Historical Options Tick Data.

#### 1. ISE Open/Close Trade Profile

ISE currently sells a market data offering comprised of the entire opening and closing trade data of ISE listed options of both customers and firms ("ISE Open/Close Trade Profile").<sup>4</sup> The data is compiled and formatted by ISE as an end of day file. This market data offering is currently available to both members and non-members on an annual subscription basis.<sup>5</sup> ISE represents that it has added additional fields to this offering over the last two years and therefore, the costs of gathering and storing the data underlying the ISE Open/Close Trade Profile have increased. As a result, ISE now proposes to increase the subscription rate for both members and non-members to \$750 per month, effective January 4, 2010.

#### 2. New Open/Close Market Data Products

The Exchange proposes to expand its suite of ISE Open/Close Trade Profile market data offerings with three new products.

##### a. ISE Open/Close Trade Profile Intraday

The ISE Open/Close Trade Profile Intraday offering uses the same process as that used for the ISE Open/Close Trade Profile. The ISE Open/Close Trade Profile Intraday has the same trade-related fields contained in the ISE Open/Close Trade Profile. The ISE Open/Close Trade Profile Intraday file contains data that is updated at 10-minute intervals throughout the trading day. ISE proposes to charge both members and non-members \$2,000 per month on an annual subscription basis.

##### b. Historical ISE Open/Close Trade Profile Intraday

The Historical ISE Open/Close Trade Profile Intraday offering is a compilation of the ISE Open/Close Trade Profile Intraday files. ISE proposes to sell Historical ISE Open/Close Trade Profile Intraday on an ad-hoc basis. An ad-hoc request can be for any number of months, quarters or years for which the data is available. Members and non-members will be able to purchase this data by paying a one-time fee of \$1,000

<sup>4</sup> See Securities Exchange Act Release No. 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (approving SR-ISE-2007-70).

<sup>5</sup> The current subscription rate for both members and non-members is \$600 per month.

per month, \$2,000 per quarter or \$8,000 per year.<sup>6</sup>

##### c. ISE Open/Close Trade Profile and ISE Open/Close Trade Profile Intraday

As noted above, the Exchange already sells the ISE Open/Close Trade Profile end of day data. To incentivize current subscribers of ISE Open/Close Trade Profile to also subscribe to the ISE Open/Close Trade Profile Intraday offering, the Exchange proposes to offer a discounted subscription rate. Subscribers to both the ISE Open/Close Trade Profile and the ISE Open/Close Trade Profile Intraday will pay an annual subscription rate of \$2,500 per month.

All of the ISE Open/Close Trade Profile market data offerings, including the new products proposed by the Exchange, are compiled and formatted by ISE and sold as a zipped file.

#### 3. Historical Options Tick Data

ISE currently creates market data that consists of options quotes and orders that are generated by its members and all trades that are executed on the Exchange. ISE also produces a Best Bid/Offer, or BBO, with the aggregate size from all outstanding quotes and orders at the top price level, or the "top of the book." This data is formatted according to Options Price Reporting Authority ("OPRA") specification and sent to OPRA for redistribution. OPRA processes ISE data along with the same data sets from the other six options exchanges and creates a National BBO, or "NBBO," from all seven options exchanges.

ISE also captures the OPRA tick data<sup>7</sup> and makes it available as an "end of day" file<sup>8</sup> or as a "historical" file<sup>9</sup> for ISE members and non-ISE members alike. ISE has data available from June 2005 through the present month. ISE currently charges all subscribers of

<sup>6</sup> For example, a subscriber that wants to purchase data for August 2009 would pay \$1,000; a subscriber that wants to purchase data for July, August and September of 2009 would pay \$2,000; a subscriber that wants to purchase data for all twelve months of 2009 would pay \$8,000.

<sup>7</sup> The Exchange collects this data throughout each trading day and at the end of each trading day, the Exchange compresses the data and uploads it onto a server. Once the data is loaded onto the server, it is then made available to subscribers.

<sup>8</sup> An end of day file refers to OPRA tick data for a trading day that is distributed prior to the opening of the next trading day. An end of day file is made available to subscribers as soon as practicable at the end of each trading day on an on-going basis pursuant to an annual subscription or through an ad-hoc request.

<sup>9</sup> An end of day file that is distributed after the start of the next trading day is called a historical file. A historical file is available to customers for a pre-determined date range by ad-hoc requests only.

Historical Options Tick Data \$1,500 per month per firm on an annual subscription basis. For ad-hoc requests, ISE charges \$85 per day, with a minimum order size of \$1,000 plus a processing fee to pay for hard drives and shipping. ISE also currently charges a processing fee of \$499 per order for up to 400 Giga Bytes (GB). An order that exceeds 400 GB is currently charged an additional \$399 for up to another 400 GB.<sup>10</sup>

The Exchange now proposes to increase the annual subscription rate to \$2,000 per month per firm. For ad-hoc requests, the Exchange proposes to increase the rate to \$120 per day. The minimum order size of \$1,000 will remain unchanged as will the processing fees of \$499 and \$399. As the size of the data has increased since the Exchange first introduced this product, the Exchange is also increasing the size allowance for ad-hoc requests from 400 Giga Bytes to 1.5 Terabytes (TB). Pursuant to this proposed rule change, for ad-hoc requests, the Exchange will charge a processing fee of \$499 per order for up to 1.5 TB. An order that exceeds 1.5 TB will be charged an additional \$399 for up to another 1.5 TB. These fee changes will be made effective by the Exchange on January 4, 2010.

The Exchange's market research indicates that OPRA tick data is primarily used by market participants in the financial services industry for back-testing trading models, post-trade analysis, compliance purposes and analyzing time and sales information. This market data offering provides both ISE members and non-members with a choice to subscribe to a service that provides a daily file on an on-going basis (end of day file), or simply request data on an ad-hoc basis for a pre-determined date range (historical file).

### III. Discussion and Commission Findings

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.<sup>11</sup> In particular, the

<sup>10</sup> See Securities Exchange Act Release Nos. 53212 (February 2, 2006), 71 FR 6803 (February 9, 2006) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Fees for Historical Options Tick Market Data) (SR-ISE-2006-07); and 53390 (February 28, 2006), 71 FR 11457 (March 7, 2006) (Order Granting Accelerated Approval of a Proposed Rule Change Establishing Fees for Historical Options Tick Market Data for Non-Members) (SR-ISE-2006-08).

<sup>11</sup> In approving this proposed rule change, the Commission has considered the proposed rule's

Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(4) of the Act,<sup>12</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities. The Commission also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act<sup>14</sup> in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Because ISE's instant proposal relates to the distribution of non-core data, the Commission will apply the market-based approach set forth in the Commission's approval of a NYSE Arca market data proposal.<sup>15</sup> The Commission believes that ISE was subject to significant competitive forces in setting the terms of its proposal, including the level of fees.<sup>16</sup> Specifically, the Exchange has a compelling need to attract order flow to maintain its share of trading volume, imposing pressure on the Exchange to act reasonably in establishing fees for these data offerings.<sup>17</sup> Further, ISE is

impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78f(b)(8).

<sup>15</sup> See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

<sup>16</sup> The Commission has previously made a finding that the options industry is subject to significant competitive forces. See Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR-ISE-2009-97) (order approving ISE's proposal to establish fees for a real-time depth of market data offering).

<sup>17</sup> ISE states that it has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. ISE further states that this compelling need to attract order flow imposes significant pressure on ISE to act reasonably in setting the fees for its market data

constrained in pricing these data offerings because of the availability of alternatives to purchasing ISE's market data products.<sup>18</sup> Finally, the Commission does not believe that a substantial countervailing basis exists to support a finding that the proposed fees fail to meet the requirements of the Act or the rules thereunder. The Commission did not receive any comments on the terms of the proposal. Further, the fees charged will be the same for all market participants, and therefore do not unreasonably discriminate among market participants. In addition, ISE represents that it has enhanced its Open/Close Trade Profile and Historical Options Ticket Data offerings, and that the increase "is nominal in light of the increased costs borne by the Exchange for the enhancements."<sup>19</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-ISE-2009-103), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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offerings, particularly given that the market participants that will pay such fees often will be the same market participants from whom ISE must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. ISE states that, given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high market data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. See Notice, *supra* note 3, at 64785.

<sup>18</sup> For example, the Exchange represents that all of the information available in the Historical Options Tick Data product is available from the core data feed offered by the Options Price Reporting Authority. Further, the Exchange represents that CBOE is a potential competitor because it also sells an Open/Close market data product. See Notice, *supra* note 3, at 64785.

<sup>19</sup> See Notice, *supra* note 3, at 64784.

<sup>20</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61314; File No. SR-NASDAQ-2009-112]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASDAQ Rules 1140 and 3080 to Reflect Changes to a Corresponding FINRA Rule

January 7, 2010.

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 December 30, 2009, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange 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 the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend NASDAQ Rules 1140 and 3080 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). The Exchange will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com>, at the Exchange's principal office, on the Commission's Web site at <http://www.sec.gov>, 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, 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

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

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

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