

ability to enter orders to buy or sell NYSE-listed securities for any account in which such member is interested, if the person responsible for the entry of such order has knowledge of any particular unexecuted customer order to buy or sell the same security that could be executed at the same price. In its approval order, the Commission noted that proprietary trading exceptions "did not minimize the importance of a broker-dealers' duty to their customers, which requires broker-dealers to place investors' interests before their own. On the contrary," the Commission continued, "member and member organizations remain obligated to consider their customers' interest in every customer transaction."<sup>17</sup>

#### *Amendment No. 2*

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>18</sup> to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the notice that was published in the **Federal Register**<sup>19</sup> discussed CBOE's intent to define "public customer orders." Therefore, the CBOE's proposed definition was subject to notice and comment. Accordingly, the Commission believes good cause exists, pursuant to Sections 6(b)(5) and 19(b) of the Act<sup>20</sup> to accelerate approval of Amendment No. 2 to the proposed rule change.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 the CBOE. All submissions should refer to File No. SR-CBOE-00-42 and should be submitted by February 22, 2002.

#### **V. Conclusion**

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR-CBOE-00-42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45337; File No. SR-ISE-2002-02]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC, Relating to an Extension of the Interim Intermarket Linkage Program**

January 25, 2002.

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 16, 2002, the International Securities Exchange LLC ("Exchange" or "ISE") 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. The Exchange filed this proposal under section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) 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 extend the effective date of its rules providing for an "interim linkage" from January 31, 2001 to the earlier of: January 31, 2003;

or the complete implementation of the permanent intermarket linkage in the options market.<sup>5</sup>

#### **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

On January 30, 2001, the Commission approved rules of the ISE permitting the ISE to implement an "interim linkage" with the other options exchanges.<sup>6</sup> The interim linkage utilizes existing order types to permit market makers on each of the exchanges to send orders to their counterparts on the other exchanges. Interim linkage orders are treated as "customer" orders upon receipt on an exchange and, thus, are eligible for automatic execution and similar processing efficiencies.

The options exchanges implemented the interim linkage pending completion of a permanent linkage. That linkage will provide enhanced connectivity between the markets and will have additional rules and mechanisms to help investors achieve best execution of their orders. While work continues on the permanent linkage, the ISE currently does not believe that it will be implemented until late this year. At the same time, the ISE's interim linkage rules will expire on January 31, 2002. ISE believes that the interim linkage has worked well and that it will benefit investors to continue operation of this linkage pending completion of the permanent linkage. The purpose of the proposed rule change is to extend the effectiveness of these rules until the full implementation of the permanent linkage or January 31, 2003, whichever comes first.

<sup>5</sup> The Commission approved the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Linkage Plan") in July 2000. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

<sup>6</sup> Securities Exchange Act Release No. 43904 (January 30, 2001), 66 FR 9112 (February 6, 2001) (File No. SR-ISE-00-15).

<sup>17</sup> See *supra* note 16.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> See *supra* note 3.

<sup>20</sup> 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</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).

<sup>4</sup> CFR 240.19b-4(f)(6). The ISE requested that the Commission waive the 30-day operative delay. The ISE provided the Commission with notice of its intention to file this proposal on January 14, 2002.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(5),<sup>8</sup> in particular, because it should prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, protect investors and the public interest.

### 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

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of filing, or such shorter date as the Commission may designate, if consistent with the protection of investors and the public interest; and (4) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if such

action is consistent with the protection of investors and the public interest. The ISE has requested, in order to permit the uninterrupted operation of the interim linkage, that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b-4(f)(6)(iii).<sup>12</sup> The Commission finds that the proposed rule change is consistent with the protection of investors and the public interest and, therefore, has determined to make the proposed rule change operative as of the date of this notice.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0069. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File Number SR-ISE-2002-02 and should be submitted by February 22, 2002.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45342; File No. SR-NASD-2001-96]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Institute a Quotation Update Charge and Introduce a Mechanism for Sharing Market Data Revenue with NASD Members

January 28, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 27, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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. On January 18, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>1</sup> 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

This is a proposed rule change, on a pilot basis, to: (1) Institute a quotation update charge and (2) introduce a mechanism for sharing market data revenue with NASD members. Pursuant to section 19(b)(3)(A)(ii) of the Act<sup>2</sup> and Rule 19b-4(f)(2) thereunder,<sup>3</sup> Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization, and therefore the proposed rule change is effective upon filing as applied to NASD members. The proposed rule change will become operative on a pilot basis, commencing on February 1, 2002 and ending on October 31, 2002. During the pilot period, Nasdaq will assess the effect of the rule change on market participants and Nasdaq and may file additional changes to the level or

<sup>1</sup> See Letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (January 15, 2002) ("Amendment No. 1"). In Amendment No. 1, Nasdaq provided further explanation as to its reasons for charging a quotation update fee.

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>3</sup> 17 CFR 240.19b-4(f)(2).

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

<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).