necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change permits Nasdaq to implement the rule without further delay and in time for the operative date of FINRA's financial responsibility rules.[12]

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.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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.* Please include File Number SR–NASDAQ–2001–004 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–NASDAQ–2010–009. 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 also will be available for inspection and copying at the principal offices 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 Number SR–NASDAQ–2010–009, and should be submitted on or before February 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2331 Filed 2–3–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61433; File No. SR–ISE–2010–04]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct Inconsistencies in Certain Execution Rules

January 27, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 Exchange proposes to correct inconsistencies in certain of its execution rules. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, 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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6). 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. The Commission notes that NASDAQ has satisfied the five-day pre-filing notice requirement.

[12] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on January 21, 2010, the date Nasdaq filed Amendment No. 1.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

In January 2009,[3] the Exchange received Commission approval of a rule change to give certain non-broker-dealer orders (identified as Professional Orders) the priority given broker-dealer orders and market maker quotes rather than the priority given all public customer orders. Those public customers who continue to receive priority in the execution algorithm are called Priority Customers under the rule change. The rule change uniformly changed the execution priority in each of the Exchange's execution rules as they existed in January 2009. After reviewing its execution rules, the Exchange has identified three inconsistencies with the Priority Customer priority execution rules. Accordingly, the Exchange proposes to amend these execution rules to be consistent with what is now the standard execution algorithm:

(i) Rule 715(g) regarding Reserve Orders. The proposed change clarifies that the execution of the displayed portion of a Reserve Order will follow the standard priority rules that now provide priority only to Priority Customers.[4]

(ii) Rule 715(i) and Rule 721(a) regarding Customer Cross Orders. A Customer Cross Order is currently defined as a Public Customer order to buy and a Public Customer order to sell, and such orders are not permitted to trade at the same price as Public Customers on the book. Since only Priority Customer Orders receive priority, the proposed change narrows the definition of a Customer Cross Order to Priority Customers only and specifies that such orders cannot be executed at the same price as Priority Customer Orders.[5]

(iii) Rule 803, Supplementary Material .02 regarding flash orders. Execution of a flash order when the ISE BBO changes during the exposure period to a price that matches against the order being flashed is according to the standard priority rules that now provide priority only to Priority Customers.

The Exchange also proposes to delete a provision from Rule 721 regarding Customer Cross Orders that was related to a block exemption from the old linkage rules that does not now exist under the distributive linkage plan.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 ("Exchange Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, the proposal corrects inconsistencies in the Exchange's rules.

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

Because the foregoing proposed 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 thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)[7] thereunder.[8]

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.* Please include File Number SR–ISE–2010–04 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–ISE–2010–04. 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

[3] Securities Exchange Act Release No. 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009).

[4] Reserve orders are limit orders that contain both a displayed portion and a non-displayed portion. The entire size of a displayed price (including Priority Customer Orders, Professional Orders, and market maker quotes) is executed in full before any portion of the non-displayed portion of a reserve order. *See* ISE Rule 713(c) and ISE Rule 715(g)5.

[5] Under ISE Rule 717(d) and (e), members are required to expose trading interest to the market before executing agency orders as principal or before executing agency orders against orders that were solicited from other broker-dealers (i.e., proprietary and solicited crossing transactions). However, the ISE options rules do not contain any limitations or exposure requirements regarding the execution of customer orders against other customer orders. Customer Cross Orders was adopted to provide a way to enter opposing customer orders using a single order type that protected customer orders on the book. See Securities Exchange Act Release No. 60253 (July 7, 2009), 74 FR 34063 (July 14, 2009). While only Priority Customers will be permitted to be executed using the Customer Cross Order under the proposed rule change, Rule 717(d) continues to allow the execution of all Public Customer Orders against other Public Customer Orders without an exposure period. Communication between Samir Patel, Assistant General Counsel, ISE and Ira Brandriss, Special Counsel, Division of Trading and Markets, Commission, on January 26, 2010. Members may continue to enter two Public Customer orders on the exchange with the intent to cross them without the use of the Customer Cross Order type.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] Pursuant to Rule 19b–4(f)(6)(iii), the Exchange gave 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 on which the Exchange filed the proposed rule change. *See* 17 CFR 240.19b–4(f)(6)(iii).

submission,[9] 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 the 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–2010–04 and should be submitted on or before February 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2333 Filed 2–3–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61434; File No. SR–ISE–2010–06]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to Fee Changes

January 27, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. On January 27, 2010, ISE filed Amendment No. 1 to the proposed rule change. On January 27, 2010, ISE withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change.[3] 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. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, 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 self-regulatory organization 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 self-regulatory organization 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

ISE proposes to amend its Schedule of Fees. Specifically, the Exchange proposes to adopt a $0.20 per contract execution fee for professional customers who execute orders as a result of posting liquidity to ISE's order book.

ISE recently adopted a rule change to distinguish between Priority Customer Orders and Professional Orders.[4] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Professional Order is defined in ISE Rule 100(a)(37C) as an order that is for the account of a person or entity that is not a Priority Customer. For purpose of this discussion, "professional customers" are non-broker/dealer participants who enter at least 390 orders per day on average during a calendar month for their own beneficial account(s). The level of trading activity by professional customers more resembles that of market makers and proprietary traders on the Exchange than it does of other customers.

Currently, the primary distinction between the two types of customers is that Priority Customers take priority on the order book over professional customers. Professional customers are on parity with market makers and broker/dealers. However, professional customers generally do not pay transaction fees. Market makers and broker/dealers on the other hand pay transaction fees to the Exchange. Specifically, for market makers, the Exchange applies a sliding scale, between $0.01 and $0.18 per contract side, based on the number of contracts an ISE market maker trades in a month. Broker/dealer orders pay a flat execution fee of $0.20 per traded contract, regardless of whether they post liquidity to or take liquidity from ISE's order book when they enter orders. Broker/dealer fees are posted on the Exchange's fee schedule under the Firm Proprietary line item.

The Exchange now proposes to adopt a $0.20 per contract execution fee for professional customers who execute orders as a result of posting liquidity to ISE's order book. The proposed fee applies only to professional customer orders, i.e., non-broker/dealer customer orders; it does not apply to market maker and broker/dealer orders who, as noted above, already pay transaction fees.

As discussed, professional customers engage in trading activity similar to that conducted by market makers and proprietary traders. For example, professional customers continue to join bids and offers on the Exchange and thus compete for incoming order flow. Professional customers do so in direct competition with ISE's market makers, but with the distinct advantage of generally not paying transaction fees to the Exchange. ISE believes that adopting a "maker fee" for professional customers will put these market participants on a more equal footing with market makers and proprietary traders regarding fees paid for transacting on the Exchange.

The Exchange further notes that the proposed fees, while comparable to fees currently paid by broker/dealer orders, are less than those fees as the Exchange is only proposing to charge professional customers who execute orders as a result of posting liquidity to ISE's order

[9] The text of the proposed rule change is available on ISE's Web site at *http://www.ise.com*, on the Commission's Web site at *http://www.sec.gov,* at ISE, and at the Commission's Public Reference Room.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 deleted a sentence in the purpose section of the filing and in Exhibit 1.

[4] *See* Exchange Act Release No. 59287 (Jan. 23, 2009), 74 FR 5694 (Jan. 30, 2009).