

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 No. SR-NYSEArca-2010-89 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 No. SR-NYSEArca-2010-89. 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 Web site viewing and printing 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 NYSE Arca. 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-NYSEArca-2010-89 and should be submitted on or before November 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63117; File No. SR-ISE-2010-101]

#### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Enhancements to the Exchange's Electronic Trading Platform

October 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 7, 2010, International Securities Exchange, LLC ("ISE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 amend certain rules to facilitate enhancements to its electronic options trading system. 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, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

#### 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. 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

The Exchange has developed an enhanced technology trading platform. To assure a smooth transition, the Exchange will migrate option classes from its current trading system to the new trading system over time (the "Transition Period").<sup>5</sup> While the new trading platform will conform to the ISE's current trading rules, with a few proposed changes discussed below, some functionality offered on the current system will be phased-in during the initial implementation of the new trading platform. Accordingly, the Exchange seeks to identify in its rules any differences in the execution of orders on the new trading platform during the Transition Period. The Exchange will issue an information circular regarding these rule changes, and will also issue information circulars prior to transferring options classes to the new trading platform during the Transition Period.

##### Changes to Existing ISE Rules

The Exchange proposes to implement two new order types, Opening Only Orders and Good-Till-Date Orders on the new trading platform. An Opening Only order is a limit order that can be entered for the opening rotation only. Any portion of the order that is not executed during the opening rotation is cancelled. This order type currently is available on other options exchanges.<sup>6</sup>

<sup>5</sup> Options classes will be transferred from the current trading platform to the new trading platform. The same options cannot trade on both systems at the same time. The Exchange has been working with its members to assure a smooth transition to the new trading platform and will continue to do so up to the launch of the new technology and during the Transition Period. The name of the new trading platform, which as yet remains unannounced, will be communicated to Exchange members via circular.

<sup>6</sup> See NYSE Arca Rule 6.62(r) which defines an "Opening Only Order" as "a market order or limit order which is to be executed in whole or in part during the opening auction of an options series or not at all. Any portion not so executed is to be treated as cancelled." See also NASDAQ OMX PHLX ("PHLX") Rule 1066(c)(5), which defines an "Opening-Only-Market Order" as "a market order

<sup>7</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> 17 CFR 240.19b-4(f)(6).

A Good-Till-Date Order is a limit order to buy or sell which, if not executed, will be cancelled at the sooner of the end of the expiration date assigned to the order, or the expiration of the series. BATS Exchange, Inc. ("BATS") offers an order type that is similar in all respect but for the time when the order terminates.<sup>7</sup> ISE proposes to adopt new Supplementary Material .02 to Rule 715 to specify that these two new order types are applicable only to option classes that trade on the new trading platform.

The Exchange also proposes to modify the Minimum Quantity order type on the new trading platform. Currently, a minimum quantity order is an order that is available for partial execution, but each partial execution must be for the specified number of contracts or greater. If the balance of the order after one or more partial executions is less than the minimum, such balance is treated as all-or-none.<sup>8</sup> On the new trading platform, the Exchange proposes to offer an enhanced version of this order type, one that will allow members to determine, after the initial minimum quantity is executed, whether they want any subsequent execution to be subject to the specified minimum quantity or not. If the member chooses not to have the minimum quantity applied after the first partial execution, the remaining balance of the order will trade as a regular order. ISE proposes to include the enhanced functionality of the Minimum Quantity Order in new Supplementary Material .02 to Rule 715, specifying that it is only available to options traded on the new trading platform.

Finally, the Exchange proposes to enhance one of the services the ISE offers market makers to help them manage their quotations on the new trading platform and to discontinue one that is no longer necessary. While each ISE market maker employs its own sophisticated proprietary quotation and risk management systems to determine the prices and sizes at which its quotes, ISE rule 804(g) contains several voluntary tools that market makers can use to assist them in managing their

quotations.<sup>9</sup> ISE market makers are not required to use the ISE-provided functionality and can program their own systems to perform the same functions if they prefer.

On the new trading platform, the Exchange proposes to expand on the so call "speed bump" functionality contained in Rule 804(g)(1), which helps market makers manage their exposure across all series of a class. Currently, this functionality permits a market maker to establish parameters in the central system to move its quotations in all series of an option to an inferior price when the market maker trades a specified number of contracts in that class as a whole within a fixed time period. On the new trading platform, a market maker will have the ability to have its quotations removed based on the number of contracts traded, the percentage of the total of the market maker quotes that have traded, the absolute value of the net between contracts bought and contracts sold, and/or the absolute value of the net between (a) calls purchased plus puts sold, and (b) calls sold plus puts purchased. The Exchange will not offer the so called "step-up" functionality on the new trading platform contained in Rule 804(g)(3), which was designed to replenish the size of a market maker's quotation when it fell below an exchange-established minimum quotation size. This functionality has not proved useful to market makers. The Exchange proposes to include the services offered on the new trading platform in Supplementary Material .01 to Rule 804.

The Exchange notes that using the speed bump functionality offered by the Exchange does not alleviate market makers from any of the quotation requirements contained in the Exchange's rules.

#### Phased-In Functionality

Certain functionality currently available on the ISE will not immediately be available on the new trading platform. This functionality will be phased-in by the Exchange shortly after the initial launch of the system. Accordingly, the Exchange proposes to add supplementary material to the applicable rules to specify that such functionality is not available for options traded on the new trading platform,<sup>10</sup> as follows:

<sup>9</sup> See Securities Exchange Act Release No. 51050 (January 18, 2005), 70 FR 3758 (January 26, 2005) (order approving SR-ISE-2004-31).

<sup>10</sup> As the functionality is phased-in, the Exchange will file a proposal under Section 19(b)(3)(A) of the Exchange Act and Rule 19b-4(f)(5) thereunder and delete the supplementary material from its rules.

(i) The Exchange proposes to adopt Supplementary Material .10 to Rule 716 to specify that the Block, Facilitation and Solicited Order Mechanisms will not be available for options traded on the new trading platform.

(ii) The Exchange proposes to adopt Supplementary Material .01 to Rule 718, to specify that Cabinet trading will not be available for options traded on the new trading platform.

(iii) The Exchange proposes to adopt Supplementary Material .03 to Rule 722 to specify that Complex Orders will not be available for options traded on the new trading platform.

(iv) The Exchange proposes to adopt Supplementary Material .08 to Rule 723 to specify that the Price Improvement Mechanism will not be available for options traded on the new trading platform.

#### 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b),<sup>11</sup> in general, and Section 6(b)(5)<sup>12</sup> in particular, that an exchange have rules that are 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes the new trading platform will improve the efficiency and quality of options executions on the Exchange, and that the proposed new order types and enhanced speed bump functionality on the new trading platform will provide greater flexibility for Exchange users in how they quote and trade, while also enhancing the overall market quality for options traded on the Exchange. The Exchange further believes that the proposed rule change will facilitate an orderly transition from the Exchange's current technology trading platform to the new trading platform.

#### 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.

The Exchange will also notify members via circular as the functionality is made available on the new trading platform.

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

which is to be executed in whole or in part during the opening rotation of an options series or not at all" and Rule 1066(c)(9), which defines a "Limit on Opening Order" as "a limit order which is to be executed in whole or in part during the opening rotation of an options series or not at all."

<sup>7</sup> See BATS Rule 11.9(b)(4), which defines a "Good 'til Day Order" as a limit order to buy or sell which, if not executed, will be cancelled at the expiration time assigned to the order, which can be no later than the close of the After Hours Trading Session."

<sup>8</sup> See ISE Rule 715(l). See Also Securities Exchange Act Release No. 61640 (March 3, 2010), 75 FR 11608 (March 11, 2010) (SR-ISE-2010-13).

*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 30 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<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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-2010-101 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-2010-101. 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 website viewing and printing 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 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-ISE-2010-101 and should be submitted on or before November 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63110; File No. SR-NASDAQ-2010-107]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval to a Proposed Rule Change To Modify the Eligibility Criteria for the Second Compliance Period for a Bid Price Deficiency on the Nasdaq Capital Market**

October 14, 2010.

**I. Introduction**

On August 25, 2010, The NASDAQ Stock Market LLC ("Nasdaq") 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 modify the eligibility criteria in order for a listed company to qualify for the second compliance period for a bid price deficiency on the Nasdaq Capital Market. The proposed rule change was published for comment in the **Federal Register** on September 2, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

Nasdaq is proposing, in order for a company to receive a second compliance period for a bid price deficiency on the Nasdaq Capital Market ("Capital Market"), to modify the eligibility criteria concerning market value of publicly held shares. Under the current Nasdaq rules, when a company has a closing bid price below \$1 for 30 consecutive days, it is deemed deficient under Nasdaq's bid price continued listing standard, and promptly receives written notice that it has 180 calendar days from such notification to regain compliance.<sup>4</sup> Compliance can be achieved by maintaining a minimum \$1 closing bid price for ten consecutive days. At the expiration of the 180-day compliance period, a company can receive an additional 180-day compliance period,<sup>5</sup> provided it is either already listed on the Capital Market or transfers to that market and satisfies all of the Capital Market's

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). When filing a proposed rule change pursuant to Rule 19b-4(f)(6) under the Act, an exchange is required to give 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 the Exchange has satisfied this requirement.

<sup>15</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> See Securities Exchange Act Release No. 62782 (August 27, 2010), 75 FR 53994 ("Notice").

<sup>4</sup> See Nasdaq Rule 5810(c)(3)(A).

<sup>5</sup> In its filing, Nasdaq refers to the 180-day compliance period as a "grace" period.