

designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. 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.

The Exchange has requested that the Commission accelerate the operative date. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹² The Commission believes that acceleration of the operative date will allow the Exchange to implement this new automatic functionality floor-wide on January 2, 2002 and to permit a pilot version of the functionality to be tested beginning the week of December 16, 2002. For these reasons, the Commission designates this proposal as both effective and operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 CHX. All submissions should refer to File No. SR-CHX-2002-37 and should be submitted by January 21, 2003.

¹² For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47075; File No. SR-ISE-2002-29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Fee Changes

December 20, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 16, 2002, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("SEC" or "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 December 20, 2002, the Exchange submitted Amendment No. 1 to the proposal.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 Exchange is proposing to establish a \$.10 surcharge for non-Public Customer transactions in options on certain exchange traded funds ("ETFs") based on indexes developed by the Frank Russell Company ("Russell").

¹³ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 20, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the schedule of fees to list the specific ETFs based on indexes developed by the Frank Russell Company that ISE either has listed or have been allocated to a Primary Market Maker and will soon be listed for trading. The Exchange also clarified the fee schedule by stating that public customer orders are exempted from the proposed fee. The Commission notes that this is consistent with the manner in which the fee has been imposed with respect to options on the Nasdaq 100 Index Tracking Stock and the Nasdaq Biotechnology Index, and represents only a change in terminology.

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 Exchange 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 entered into a license agreement to use various indexes and trademarks of Russell in connection with the listing and trading of options on certain ETFs based on Russell indexes. The purpose of this proposed rule change is to adopt a fee for trading in five of these options that the ISE either has listed or have been allocated to a Primary Market Maker and will soon be listed for trading.⁴ The ISE believes that charging the participants that trade in options on these instruments is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in the waiver of all transaction fees for customer transactions, we do not propose to charge this additional fee with respect to customer transactions. Specifically, Public Customer Orders will be exempted from the proposed surcharge.⁵

This fee would be charged to the executing member of the ISE if the order is for the account of a broker-dealer. For example, if broker A has a Public Customer Order that broker A gives to broker B (an ISE electronic access member) to execute on the ISE, broker B will not be charged the proposed \$.10 fee. On the other hand, if broker A gives broker B (an ISE electronic access

⁴ The proposed fee will apply to options on the following ETFs: Russell 2000 iShares, Russell 2000 Value iShares, Russell 2000 Growth iShares, Russell 1000 Growth iShares, and Russell 1000 Value iShares.

⁵ Under ISE Rule 100, a Public Customer is a person that is not a broker or dealer in securities, and a Public Customer Order is an order for the account of a Public Customer. Accordingly the execution of orders for the account of a non-broker-dealer will not be subject to the proposed \$.10 fee. All other orders, i.e., orders for the account of a broker-dealer, will be subject to the proposed fee.

member) an order for the account of broker A (or another broker-dealer), broker B will be charged the \$.10 fee.

2. Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.⁶

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

The foregoing amended rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(2)⁸ thereunder. At any time within 60 days of the filing of such amended 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 20549-0609. 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 Section. 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 No. SR-ISE-2002-29 and should be submitted by January 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47054; File No. SR-NASD-2002-171]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to NASD's Minor Rule Violation Plan

December 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 29, 2002 the National Association of Securities Dealers, Inc. ("NASD") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change 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 NASD is proposing to amend Interpretative Material 9216 ("IM-

9216") to clarify that a failure to timely file annual audit reports is eligible for disposition under the NASD's Minor Rule Violation Plan ("MRVP" or the "Plan"). The text of the proposed rule change is available at the office of the secretary of the NASD, and at the Commission.

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 NASD 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 NASD 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to clarify that a failure to timely file annual audit reports is appropriate for disposition under the NASD's MRVP. As described in more detail herein, the NASD believes that the current rule language in IM-9216 referring to Rule 17a-5 under the Act does not clearly reflect that a failure to timely file annual audit reports is included in the NASD's MRVP.

In 1984, the SEC adopted amendments to Rule 19d-1(c) under the Act⁵ to allow self-regulatory organizations to adopt, with SEC approval, plans for the disposition of minor violations of rules.⁶ In 1993, pursuant to Rule 19d-1(c), the NASD established an MRVP,⁷ which is currently set forth in NASD Rule 9216. In 2001, the SEC approved amendments to the NASD's MRVP.⁸

NASD Rule 9216(b) authorizes the NASD to impose a fine of \$2,500 or less on any member or associated person of a member for a violation of any of the rules specified in NASD IM-9216. The number and seriousness of the violations, as well as the previous disciplinary history of the respondent, is reviewed to determine if a matter is

⁵ 17 CFR 240.19d-1(c).

⁶ See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23833 (June 8, 1984).

⁷ See Securities Exchange Act Release No. 32076 (March 31, 1993), 58 FR 18291 (April 8, 1993). See also Notice to Members 93-42 (July 1993).

⁸ See Securities Exchange Act Release No. 44512 (July 3, 2001), 68 FR 36812 (July 13, 2001).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 19b-4(f)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).