

or approximately 9.78% of HTGC's outstanding voting securities. As of July 31, 2007, the amount of voting securities issued as Restricted Stock under the Amended and Restated 2006 Plan and that would result from the exercise of all outstanding warrants and options issued to directors, officers, and employees of HTGC under the Original 2004 Plan and the First Amended and Restated 2004 Plan would be 2,799,874 shares of Common Stock, or approximately 8.66% of HTGC's outstanding voting securities.

#### **Applicant's Legal Analysis**

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (b)(1) or (b)(2) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. HTGC represents that the proposal to issue options to Non-employee Directors under the Amended and Restated 2006 Plan meets all of the requirements of section 61(a)(3) of the Act. HTGC states that the Board, including the Non-employee Directors, actively oversees HTGC's affairs and HTGC relies on the judgment and experience of the Board. HTGC states that the Non-employee Directors provide advice on financial and operational issues, credit and underwriting policies, asset valuation, strategic direction, as well as serve on various committees. HTGC states that the professional experiences and expertise of the Non-employee Directors make them valuable resources for management. HTGC states that the options that will be granted to the Non-employee Directors under the Amended and Restated 2006 Plan will provide significant incentives to the Non-employee Directors to remain on the Board and to devote their best efforts to the success of HTGC's business and the enhancement of stockholder value. HTGC states that the options granted under the Amended and Restated 2006 Plan will provide a means for the Non-employee Directors to increase their ownership interests in HTGC, thereby ensuring close identification of their interests with those of HTGC and its stockholders. HTGC asserts that by providing incentives in the form of options under the Amended and Restated 2006 Plan, HTGC would be better able to retain and attract qualified persons to serve as Non-employee Directors.

4. HTGC submits that the proposal to issue options to Non-employee Directors to purchase Common Stock under the Amended and Restated 2006 Plan is fair and reasonable and does not involve overreaching of HTGC or its stockholders. HTGC states that the amount of voting securities issued as Restricted Stock under the Amended and Restated 2006 Plan and that would result from the exercise of all outstanding options and warrants issued to directors, officers and employees of HTGC under the Original 2004 Plan and the First Amended and Restated 2004 Plan would be 2,799,874 shares of Common Stock, or approximately 8.66% of HTGC's outstanding voting securities as of July 31, 2007, which is below the percentage limitations in the Act. In light of the above, HTGC asserts that the granting of options pursuant to the Amended and Restated 2006 Plan will not have a substantial dilutive effect on the net asset value of Common Stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56375A; File No. SR-NASD-2004-183]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Amendment Nos. 3 and 4 and Order Granting Accelerated Approval of the Proposed Rule, as Amended, Related to Sales Practice Standards and Supervisory Requirements for Transactions in Variable Annuities**

September 14, 2007.

### **Correction**

In FR Document No. E7-18022, beginning on page 52403 for Thursday, September 13, 2007, at the third column of page 52410, first full paragraph, beginning on line 24, revise "120 days" to read "180 days".

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56383; File No. SR-ISE-2007-61]

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Specific Performance Commitments for Primary Market Makers**

September 11, 2007.

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 July 17, 2007, the International Securities Exchange, LLC ("ISE" or "Exchange") 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 substantially prepared by the Exchange. On September 10, 2007, ISE

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

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

filed Amendment No. 1 to the proposed rule change. 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**

ISE is proposing to amend its rule regarding specific performance commitments for the Exchange's Primary Market Makers ("PMM"). The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange, and at <http://www.ise.com>.

### **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 is proposing to amend its rule regarding performance commitments for the Exchange's PMMs. Specifically, the Exchange is proposing to amend its Rule 802(b)(2), which currently requires PMMs to submit specific performance commitments when requesting an allocation of options on indices, foreign currency options and Fund Shares (collectively, "Index-Based Products"). The initial rationale behind adopting commitments was to require a stronger commitment for certain competitive products like exchange-traded funds and indices and to assist the Exchange's Allocation Committee when choosing between PMMs seeking the same product. With the recent proliferation of ETFs and indices in the marketplace, and as ISE's practice under this rule has developed, the Exchange believes that the rule is overly broad and a deterrent to these products being allocated effectively. For example, if a certain Index-Based Product is of interest to a single PMM, a performance commitment has no effect because the PMM is not in

competition with another PMM. As a consequence of the rule, PMMs are sometimes submitting the broadest commitments allowed, contrary to the intent of the rule. Further, this requirement could discourage some PMMs from seeking allocations altogether if they are expected to maintain additional performance commitments. The Exchange notes that none of the other options exchanges have a similar requirement. ISE therefore proposes to amend the rule so that specific performance commitments need only be submitted upon a request by the Exchange, thereby eliminating their submission as a uniform requirement.<sup>3</sup>

##### **2. Statutory Basis**

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>4</sup> 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. The Exchange believes the proposed rule change will strengthen the effectiveness of an existing rule and allow PMMs to seek allocations of more products on the Exchange, thus fostering competition for the benefit of investors.

#### **B. Self-Regulatory Organization's Statement on Burden on Competition**

This 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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

<sup>3</sup> ISE notes that relaxing the requirement proposed in this filing does not affect a PMM's other obligations as a market maker on the Exchange under Chapter 8 of the Exchange Rules.

<sup>4</sup> 15 U.S.C. 78f(b)(5).

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

### **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-2007-61 on the subject line.

#### **Paper Comments**

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

All submissions should refer to File Number SR-ISE-2007-61. 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, 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 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-2007-61 and should be submitted on or before October 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56390; File No. SR-NASDAQ-2007-075]

### Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees for the VTE Terminal

September 12, 2007.

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 August 30, 2007, The NASDAQ Stock Market LLC (“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 substantially prepared by Nasdaq. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act <sup>3</sup> and Rule 19b-4(f)(2) 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

Nasdaq proposes to modify the pricing for its members using the VTE terminal to connect to the Nasdaq Market Center and to make other clarifying changes to the relevant rule text. Nasdaq proposes to implement the proposed rule change on October 1, 2007. The text of the proposed rule change is available at Nasdaq, the Commission’s Public Reference Room, and [www.nasdaq.com](http://www.nasdaq.com).

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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 purpose of this filing is to modify fees for Nasdaq members using the VTE terminal (formerly the INET terminal), to move the rule text under existing Rule 7034 to Rule 7015, and to make other clarifying changes to the relevant rule text.

The VTE terminal is a former INET protocol that is used by Nasdaq members to connect to, and enter orders in, The Nasdaq Market Center. Since Nasdaq acquired INET, VTE users have paid a \$50 monthly fee for access to the terminal via an Internet connection (which is optional) and a \$50 monthly minimum commission fee for users executing orders totaling less than 100,000 shares per month. In addition, VTE users pay the exchanges directly for data feeds and services provided by Nasdaq and other exchanges or market centers through VTE at the Commission-approved rate that they would pay to receive the data feeds through other means. The data feeds provide information that is necessary for users to enter orders through VTE.

Nasdaq is increasing the monthly fee for accessing the VTE terminal through the Internet from \$50 to \$100 per month per user. In addition, Nasdaq is increasing the monthly minimum commission fee for users executing orders totaling less than 100,000 shares per month from \$50 to \$100 per month per user. Users will continue to be charged directly for Nasdaq and non-Nasdaq data feeds and services at Commission-approved rates by the exchange or market center providing the service.

Based on Nasdaq’s operation of the VTE since it was acquired from INET, Nasdaq believes that the pricing changes are warranted in order to appropriately balance the demand for the product

with increasing platform, overhead, and technology infrastructure costs.

The proposed rule change also moves the text of Rule 7034 to Rule 7015 “Access Services” to further consolidate access services fees in one rule, removes references to access alternatives no longer in use (dedicated FIX server and Brut Workstation), and updates the rule language by replacing references to “INET Terminal” with the term “VTE Terminal” to reflect the new name of this protocol after Nasdaq system integration.

In addition, the proposed rule change also eliminates from the rule text references to INET and the locations of data centers (because the relevant fees do not vary based on data center location) and INET, and eliminates the reference to and pricing for Instinet Portal (a product now available from INET’s former owner, Instinet, which INET was supporting on a transitional basis).

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that the fees are reasonably allocated among members based on their usage of the trading systems operated by Nasdaq, and are generally consistent with fees charged by other market centers for comparable services.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act <sup>7</sup> and

<sup>5</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)(2).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).