

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46189; File No. SR-ISE-2002-16]

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

July 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 17, 2002, the International Securities Exchange, Inc. ("ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the ISE has prepared. 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 five fee changes: (1) Suspending its marketing fee for six months; (2) imposing a \$.10 surcharge for non-customer transactions in options on the iShares S&P 100 Index Fund; (3) adopting a fee for members who connect to the ISE through a high-bandwidth T-3 line; (4) discounting the fees for multiple connections to the ISE Order Routing System ("IORS"); and (5) imposing a "cancellation fee." The text of the rule amendment is available at the ISE 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 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

The purpose of the proposed rule change is to adopt the following five ISE fee changes:

- **Marketing Fee:** The ISE currently imposes a \$.10 fee to fund marketing efforts. There currently is sufficient money in the marketing fund to finance these efforts for the foreseeable future. Thus, the ISE proposes suspending that fee for six months beginning July 1, 2002.

- **Licensing Fee:** The ISE proposes to adopt a \$.10 surcharge on non-customer transactions in options on the iShares S&P 100 Index Fund. The ISE has entered into a license agreement to use various trademarks regarding this index, and this proposed rule change will defray the licensing costs. We also propose to correct the name of the Nasdaq Biotechnology Index exchange-traded fund in the fee schedule.

- **T-3 Connection Fee:** ISE Members currently connect to the ISE through either a T-1 line or lines with smaller capacities. Some members now are requesting to connect through a T-3 line, providing very high capacity. The ISE proposes a connectivity charge of \$1,250 a month per T-3 line to recover its costs in providing this level of connectivity.

- **Multiple IORS Discount:** IORS is the ISE order routing system. While most Members have only one IORS connection, some members maintain separate connections for each clearing relationship. We propose to discount multiple IORS connections to reflect the reduced costs on the ISE for supporting such members.

- **Cancellation Fee:** There are a number of Electronic Access Members ("EAMs") who use a disproportionate amount of communication bandwidth by canceling orders immediately following the entry of the orders. These order/cancellation messages often happen in large numbers, and can cause congestion in IORS. The ISE proposes to impose on each EAM an order cancellation fee of \$1 for every cancellation through IORS in excess of the number of orders that the EAM executes in a month. The fee would not apply to any EAM that cancels fewer than 500 orders through IORS in a month. The ISE believes that this will ease congestion in IORS and will fairly allocate costs.<sup>3</sup>

##### 2. Basis

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

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

The ISE believes that 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 ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE 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 rule change establishes or changes a due, fee, or other ISE charge and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(2) thereunder.<sup>6</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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

American Stock Exchange, Inc., and the Pacific Exchange, Inc. See Securities Exchange Act Release No. 44607 (July 27, 2001), 66 FR 40757 (August 3, 2001) (SR-CBOE-2001-40); Securities Exchange Act Release No. 45110 (November 27, 2001) 66 FR 63080 (December 4, 2001) (SR-Amex-2001-90); and Securities Exchange Act Release No. 45262 (January 9, 2002), 67 FR 2266 (January 16, 2002) (SR-PCX-2001-47).

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 19b-4(f)(2).

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

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

<sup>3</sup> The cancellation fee is similar to fees adopted by the Chicago Board Options Exchange, Inc., the

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 the filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to SR-ISE-2002-16 and should be submitted by August 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46191; File No. SR-NYSE-2001-24]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Amending Exchange Rule 97 Which Limits Member Trading Because of Block Positioning

July 12, 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 August 17, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on April 17, 2002.<sup>3</sup> The Exchange filed Amendment No. 2 to the proposed rule change on

June 28, 2002.<sup>4</sup> The Commission is publishing this notice, as amended by Amendment Nos. 1 and 2, 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 NYSE Rule 97 (Limitation on Member Trading Because of Block Positioning) so that it applies only to transactions executed at or near the end of the trading day, and to provide exceptions to the rule for member organizations that establish the requisite internal information barriers and for certain hedging transactions.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

\* \* \* \* \*

#### Limitation on Members' Trading Because of Block Positioning

##### Rule 97

(a) When a member organization holds any part of a long position in a stock in [its trading] *a proprietary* account resulting from a block transaction it effected with a customer, such member organization may not effect *within twenty minutes of the close of trading on the Exchange a purchase on a "plus" tick in such stock at a price higher than the lowest price at which any block was acquired in a previous transaction on that day* [the following transactions] for any account in which it has a direct or indirect interest [for the remainder of the trading day on which it acquired such position.] *if the person responsible for the entry of such order to purchase such stock has knowledge of such block position.[.]*

*A member, allied member, or an employee of a member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular block position unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about block positions by those responsible for entering such proprietary orders.*

[(i) A purchase on a "plus" tick if such purchase would result in a new daily high;

(ii) A purchase on a "plus" tick within one-half hour of the close;

(iii) A purchase on a "plus" tick at a price higher than the lowest price at which any block was acquired in a previous transaction on that day; or

(iv) A purchase on a "zero plus" tick of more than 50% of the stock offered at a price higher than the lowest price at which any block was acquired in a previous transaction on that day.]

For purposes of [the restrictions in subparagraphs (iii) and (iv) above] *this rule*, in the case where more than one block was acquired during the day, the lowest price of any such block will be the governing price.

(b) The provisions of paragraph (a) shall not apply to transactions made:

(1) For bona fide arbitrage or to engage in the purchase and sale, or sale and purchase of securities of companies involved in publicly announced merger, acquisition, consolidation, tender, etc.;

(2) To offset a transaction made in error;

(3) To facilitate the conversion of options;

(4) By specialists in the stocks in which they are registered;

(5) To facilitate the sale of a block of stock or a basket of stocks by a customer;

(6) To facilitate an existing customer's order for the purchase of a block of stock, or a specific stock within a basket of stocks, or a stock which is being added to or reweighted in an index, at or after the close of trading on the Exchange, provided that the facilitating transactions are recorded as such and the transactions in the aggregate do not exceed the number of shares required to facilitate the customer's order for such stock; [or]

(7) Due to a stock's addition to an index or an increase in a stock's weight in an index, provided that the transactions in the aggregate do not exceed the number of shares required to rebalance the index portfolio[.] or;

(8) *To hedge a position that is economically equivalent to a short stock position, provided that (i) the creation of the hedge, whether through one or more transactions, occurs so close in time to the completion of the transaction precipitating such hedge that the hedge is clearly related; (ii) the risk to be offset is the result of a position acquired in the course of facilitating a customer's order, and (iii) the size of the hedge is commensurate with the number of shares required to hedge such position when netted with any long position in the stock.*

*Supplementary Material:* No change.

<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> See letter from Richard P. Bernard, Executive Vice President and General Counsel, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 16, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposed rule text to clarify which types of hedging transactions it would exclude from the restrictions of NYSE Rule 97.

<sup>4</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 27, 2002 ("Amendment No. 2"). In Amendment No. 2, the Exchange amended the example in the Purpose section of the proposal to clarify the types of hedging transactions that would fall under the proposed exemption to NYSE Rule 97.