

of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

*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>5</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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-NASDAQ-2011-103 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-2011-103. 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 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-NASDAQ-2011-103 and should be submitted on or before August 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Elizabeth M. Murphy,  
Secretary.

[FR Doc. 2011-19981 Filed 8-5-11; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65011; File No. SR-ISE-2011-42]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Exchange, Inc., Relating to Rule 717**

August 2, 2011.

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 25, 2011, the International Securities Exchange, Inc. ("ISE" or the

"Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 specify in its rules an existing policy related to the application of Rule 717(d) and (e). The text of the proposed rule change is as follows (additions are in *italics*):

**Rule 717. Limitation on Orders**

(a) through (g) no change.

*Supplementary Material to Rule 717*

.01 through .05 no change.

*.06 The exposure requirement of paragraph (d) and (e) of Rule 717 applies to the entry of orders with knowledge that there is a pre-existing unexecuted agency, proprietary, or solicited order on the Exchange. Members may demonstrate that orders were entered without knowledge by providing evidence that effective information barriers between the persons, business units and/or systems entering the orders onto the Exchange were in existence at the time the orders were entered. Such information barriers must be fully documented and provided to the Exchange upon request.*

**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**

Rule 717(d) and (e) requires members to expose orders entered on the limit order book for at least one second before executing them as principal or against orders that were solicited from other broker-dealers. This requirement gives

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

<sup>6</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.

other market participants an opportunity to participate in the execution of orders before the entering member executes them. The Exchange recognizes, however, that because the Exchange does not identify the member that entered an order on the limit order book, orders from the same firm may inadvertently execute against each other as a result of being entered by disparate persons and/or systems at the same member firm. Therefore, when enforcing Rule 717(d) and (e), the Exchange has never considered the inadvertent interaction of orders from the same firm within one second to be a violation of the exposure requirement.

When investigating potential violations of Rule 717(d) and (e), the Exchange takes into consideration whether orders that executed against each other within one second on the limit order book were entered by persons, business units and/or systems at the same firm that did not have knowledge of the order on the limit order book.<sup>3</sup> Commonly, member firms are able to demonstrate that orders were entered by individuals or systems that did not have the ability to know of the pre-existing order on the limit order book due to information barriers in place at the time the orders were entered.

The Exchange proposes to codify this longstanding policy in Supplementary Material .06 to Rule 717. The proposed rule text specifies that members can demonstrate that orders were entered without knowledge of a pre-existing order on the book represented by the same firm by providing evidence that effective information barriers between the persons, business units and/or systems entering the orders onto the Exchange were in existence at the time the orders were entered. The rule requires that such information barriers be fully documented and provided to the Exchange upon request.<sup>4</sup>

## 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>5</sup> in

general, and Section 6(b)(5)<sup>6</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 that codifying the Exchange's policy that appropriate information barriers can be used to demonstrate that the execution of two orders within one second was inadvertent because the orders were entered without knowledge of each other, will clarify the intent and application of Rule 717(d) and (e) for ISE members.

The Exchange believes that proposed rule change also is consistent with Section 6(b)(7) of the Act,<sup>7</sup> which requires the rules of an exchange to provide a fair procedure for the disciplining of members and persons associated with members. In particular, by specifying that the information barriers must be fully documented, members will be better prepared to properly respond to requests for information by the Exchange in the course of a regulatory investigation. Moreover, while members are generally required to provide information to the Exchange as requested, specifying that members must provide written documentation regarding information barriers within the context of this rule will assure that all members adhere to the same standard for demonstrating compliance with the rule.

### *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

Within 45 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 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 Exchange consents, the Commission shall: (a) By order approve or disapprove 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-2011-42 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-2011-42. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from

<sup>3</sup> The Exchange conducts routine surveillance to identify instances when an order on the limit order book is executed against an order entered by the same firm within one second.

<sup>4</sup> The Exchange reviews information barrier documentation to evaluate whether a member has implemented processes that are reasonably designed to prevent the flow of pre-trade order information given the particular structure of the member firm. Additionally, information barriers are reviewed as part of the Exchange's examination program, which is administered by the Financial Industry Regulatory Authority ("FINRA") pursuant to a regulatory services agreement.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(7).

submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-ISE-2011-42 and should be submitted on or before August 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Elizabeth M. Murphy,  
Secretary.

[FR Doc. 2011-19982 Filed 8-5-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65014; File No. SR-NASDAQ-2011-101]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees Assessed Under Rule 7015(h)

August 2, 2011.

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 26, 2011, 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 prepared by NASDAQ. 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 the Substance of the Proposed Rule Change

NASDAQ is proposing to amend the fees assessed under Rule 7015(h). NASDAQ will implement the amended fees effective August 1, 2011.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 7015. Access Services

The following charges are assessed by Nasdaq for connectivity to systems operated by NASDAQ, including the Nasdaq Market Center, the FINRA/NASDAQ Trade Reporting Facility, and FINRA's OTCBB Service. The following fees are not applicable to the NASDAQ Options Market LLC. For related options

fees for Access Services refer to Rule 7053.

(a)-(g) No change.

(h) VTE Terminal Fees

- Each ID is subject to a minimum commission fee of \$125[100] per month unless it executes a minimum of 100,000 shares.

- Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.

- Each ID that is given web access is subject to a \$125[100] monthly fee.

\* \* \* \* \*

#### 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

NASDAQ is proposing to increase the fees assessed members under Rule 7015(h) for use of VTE terminals. A VTE terminal is a basic front-end user interface used by NASDAQ members to connect to, and enter orders in, The Nasdaq Market Center. Members using VTE terminals pay the exchanges directly for data feeds and services provided by NASDAQ and other exchanges or market centers through VTE at the SEC-approved rate that they would pay to receive the data feeds through other means. These data feeds provide information that is necessary for users to enter orders through VTE. The two fees assessed under Rule 7015(h) relate to optional web access and commissions.

Rule 7015(h) currently assesses monthly a minimum commission fee of \$100 fee per ID, and a web access fee of \$100 per ID. NASDAQ last raised fees assessed under Rule 7015(h) in 2007 when it raised the fee for access to the terminal via the web from \$50 monthly to \$100 monthly, and raised the minimum commission fee for users executing orders totaling less than

100,000 shares per month from \$50 monthly to \$100 monthly.<sup>3</sup> In light of increasing costs, NASDAQ is proposing to increase the fee for access to the terminal via the web from \$100 monthly to \$125 monthly, and increase the minimum commission fee for users executing orders totaling less than 100,000 shares per month from \$100 monthly to \$125 monthly.

NASDAQ notes that web connectivity is one option available to NASDAQ users for accessing the VTE terminal. Another option is access through extranet connectivity, where a user contracts directly with a third-party extranet provider and pays fees to that provider. With respect to minimum commission fees, members that execute total orders above the 100,000 share threshold will continue to not be assessed a commission fee.

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.

###### 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(4) of the Act,<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. All similarly situated members are subject to the same fee structure, and access to this NASDAQ service is offered on fair and non-discriminatory terms. As noted, NASDAQ has not increased the fees assessed under Rule 7015(h) since 2007 despite incurring increased costs. Use of VTE terminals is voluntary and members can avail themselves of numerous other means of accessing The Nasdaq Market Center. NASDAQ further notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive.

##### 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

<sup>3</sup> Securities Exchange Act Release No. 56390 (September 12, 2007), 72 FR 53614 (September 19, 2007) (SR-NASDAQ-2007-075).

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

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

<sup>8</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.