Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5)[6] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission believes that a reduction in the determinative spread from $.03 to $.02 may increase the opportunities for price improvement, resulting in a benefit to investors. Additionally, the Commission believes the proposal is reasonable because it contemplates equality among order-sending firms and their customers by mandating that additional price improvement be provided by CHX specialists on an issue-by-issue basis, rather than allowing specialists to distinguish among order-sending firms when designating price improvement levels.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In the notice,[7] the Commission indicated that it would consider granting accelerated approval of the proposal after a 15-day comment period. The Commission received no comments on the proposal during the 15-day comment period. The Commission believes it is reasonable to implement the proposal on an accelerated basis, in view of the anticipated benefits of the proposal. For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 6(b)(5)[8] in particular.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CHX–2001–05), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* footnote 3, *supra.*

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44151; File No. SR–ISE–01–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC, Relating to Fees Related to Options on the Nasdaq-100 Index Tracking Stock sm

April 4, 2001.

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 March 6, 2001, 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 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 proposes to amend its fee schedule to impose a charge of $.10 per contract, per side, for transactions in options on the Nasdaq-100 Index Tracking Stock sm (excluding transactions by public customers).

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 Exchange has entered into a license agreement to use various trademarks regarding the Nasdaq-100 Index® in connection with its trading of options on the Nasdaq-100 Index Tracking Stock sm. The purpose of this proposed rule change is to adopt a fee for trading in these options to defray the licensing costs. The ISE believes that charging the participants that trade in the options on the Nasdaq-100 Index Tracking Stock sm is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in a waiver of all transaction fees for customer transactions, the ISE does not propose to charge this additional fee with respect to customer transactions. The fee will be charged only with respect to non-customer transactions.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule to impose a charge of $.10 per contract, per side, for transactions in options on the Nasdaq-100 Index Tracking Stock sm (excluding transactions by public customers) is consistent with section 6(b)[3] of the Act, in general, and section 6(b)(4) of the Act,[4] in particular, because it provides for the 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 Exchange does not believe that the proposed rule change will impose any burden on competition.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)[5] of the Act and subparagraph (f)(2) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–01–09 and should be submitted by May 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44158; File No. SR–NASD–01–08]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Rule 10301 of the Code of Arbitration Procedure To Prohibit Terminated, Suspended, Barred or Otherwise Defunct Firms From Enforcing Predispute Arbitration Agreements in the NASD Arbitration Forum

April 6, 2001.

I. Introduction

On January 25, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed a rule change to amend Rule 10301 of the Code of Arbitration of the NASD, to prohibit a firm that has been terminated, suspended, or barred from the NASD, or that is otherwise defunct, from enforcing a predispute arbitration agreement against a customer in the NASD arbitration forum. On February 15, 2001, NASD Dispute Resolution filed Amendment No. 1 to the proposal. On February 22, 2001, NASD Dispute Resolution filed Amendment No. 2 to the proposal.

The proposed rule change including Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on March 5, 2001.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

NASD Dispute Resolution is proposing to amend Rule 10301 of the Code of Arbitration Procedure to prohibit a member whose membership has been terminated, suspended, cancelled or revoked, or has been expelled from the NASD, or that is otherwise defunct, from enforcing a predispute arbitration agreement against a customer in the NASD forum. The proposed rule change precludes a member whose membership has been terminated, suspended, cancelled or revoked, or has been expelled from the NASD, or that is otherwise defunct, from requiring a customer to arbitrate in the NASD forum under Rule 10301, unless the customer agrees in writing to arbitrate the claim in the NASD forum after the claim has arisen. As a corollary to this rule change, NASD Dispute Resolution stated in its Notice that it will advise customers making arbitration claims in the NASD forum against a member whose membership has been terminated, suspended, cancelled or revoked, or a member that has been expelled from the NASD, or that is otherwise defunct, of the member's status, so that the customers can decide whether to proceed in arbitration, to file their claim in court, or to take no action.

III. Discussions

After careful review, the Commission finds that the proposed rule changes is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[4] In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that because terminated, suspended, barred or otherwise defunct firms have a significantly higher incidence of non-payment of arbitration awards than do active firms,[6] the proposed rule change will protect investors and the general public by giving customer greater flexibility to seek remedies against such firms. The Commission believes that because of experience with non-payment by such firm, it is inappropriate to permit terminated or suspended members to require customers who have claims against them to arbitrate such claims in the NASD forum when an arbitration award may be unenforceable against the terminated or suspended member. In such cases, the Commission believes that even if customers have signed a predispute arbitration agreement, they should be able to seek relief in court before engaging in arbitration proceedings, where they could more directly avail themselves of any judicial remedies available under state law, including those that might prevent the dissipation of assets. The Commission notes that the NASD and other self-regulatory organizations that administer arbitration programs have concluded that other categories of claims, such as class action claims, should be resolved in court rather than through arbitration.[7] The Commission believes that allowing customers to choose to go directly to seek relief may save them time and expense in cases against members who have been terminated or expelled and in which the dissipation of assets is a threat.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43998 (February 23, 2001), 66 FR 13362.

[4] In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*(b)(6).

[6] *See* June 2000 General Account Office Report, *Securities Arbitration: Actions Needed to Address Problem of Unpaid Awards.*

[7] *See e.g.,* NASD Rule 10301(d) and New York Stock Exchange Rule 600(f).

[8] 15 U.S.C. 78s(b)(2).