

securities, 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.

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

The Exchange does not believe that the proposed rule change will 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 rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁷ and subparagraph (f)(6) of rule 19b-4⁸ thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.

Under rule 19b-4(f)(6)(iii) of the Act,⁹ the proposal does not become operative for 30 days after the date of its filing, or

such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has requested that the Commission waive the 30-day operative date in order for it to implement the proposed rule change as quickly as possible. The Exchange contends that this proposed rule is substantially similar to comparable rules the Commission approved for the CBOE, which was published for public notice and comment.¹⁰ As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period,¹¹ and, therefore, the proposal is 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 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 Exchange. All submissions should refer to File No. SR-ISE-2003-04 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47484; File No. SR-ISE-2003-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc., Relating to a One-Year Pilot for Options Intermarket Linkage Fees

March 11, 2003.

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, 2003, the International Securities Exchange, Inc. ("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 ISE. 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 amend its fee structure to clarify which fees apply to trades pertaining to the options intermarket linkage ("Linkage") and to specify that such fees are for a one-year pilot. The text of the proposed rule change is below; proposed new language is in italics.

* * * * *

SCHEDULE OF FEES

	Amount	Billable unit	Frequency	Notes
Electronic Market Place Execution Fees				
• Customer	\$0.05	contract/side	Transaction	Fee waived through June 30, 2003.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ See Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (approving SR-CBOE-2002-62).

¹¹ For purposes only of waiving the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on

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

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

SCHEDULE OF FEES—Continued

	Amount	Billable unit	Frequency	Notes
• Facilitation	0.15	contract/side	Transaction.	
• Market Maker & Firm Proprietary (for a pilot period expiring on January 30, 2004, including members of other exchanges executing Linkage transactions, except for Satisfaction Orders)				
A.D.V. Less Than 300,000	0.21	contract/side	Transaction	Based on Exchange A.D.V.
A.D.V. From 300,001 to 500,000	0.17	contract/side	Transaction	Based on Exchange A.D.V.
A.D.V. From 500,001 to 700,000	0.14	contract/side	Transaction	Based on Exchange A.D.V.
A.D.V. Over 700,000	0.12	contract/side	Transaction	Based on Exchange A.D.V.
• Surcharge for Options on Nasdaq 100 Index Tracing Stock sm , the Nasdaq Biotechnology Index®, the iSharesS&P 100 Index Fund, options on Select Sector SPDR® Funds*, and exchange traded funds based on indexes developed by the Frank Russell Company**.	0.10	contract/side	Transaction	Excludes Public Customer Orders; Firm Proprietary fees for trades in the iShares S&P 100 Index Fund waived through May 31, 2003. Applies to P Orders and P/A Orders in these options for a pilot period expiring on January 30, 2004. *Financial Select Sector SPDR Fund (XLF), Technology Select Sector SPDR Fund (XLK), Utilities Select Sector SPDR Fund (XLU). **Russell 2000 Value iShares (IWN), Russell 2000 Growth iShares (IWO), Russell 1000 Growth iShares (IWF), Russell 1000 Value iShares (IWD).
Comparison Fee03	contract/side	Transaction	Fee waived for Customer Trades through June 30, 2003. Applies to P Orders and P/A Orders for a pilot period expiring on January 30, 2004.

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

In File No. SR-ISE-2002-19, the Exchange adopted rules governing operation of the Linkage.³ That filing also specified that certain existing Exchange fees would apply to Linkage trades. The purpose of this filing is to clarify that three ISE fees apply to Linkage trades: trade execution fees; a \$.10 surcharge for options traded

pursuant to licensing agreements (but only for executions in options specifically subject to the surcharge); and the \$.03 comparison fee. Furthermore, at the request of the Commission staff, this filing would establish each of these Linkage-related fees as a one-year pilot, expiring on January 30, 2004. The Exchange intends to file an additional rule change prior to the expiration of this pilot period either to extend the term of the pilot or to establish these fees on a permanent basis.

2. Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(4) of the Act⁴ 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 Exchange 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 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 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.

³ See Securities Exchange Act Release No. 47293 (January 31, 2003), 68 FR 6232 (February 6, 2003).

⁴ 15 U.S.C. 78f(b)(4).

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 ISE. All submissions should refer to SR-ISE-2003-11 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47488; File No. SR-NASD-2002-107]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment Nos. 1, 2, 3, and 4 Thereto by the National Association of Securities Dealers, Inc. To Retroactively Establish Maximum Execution Fees and Liquidity Provider Rebates for SuperSoes Transactions in Low-Priced Securities

March 12, 2003.

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 August 6, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary The Nasdaq Stock Market, Inc. ("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. On August 19, 2002, Nasdaq submitted Amendment

No. 1 to the proposed rule change.³ On August 30, 2002, Nasdaq submitted Amendment No. 2 to the proposed rule change.⁴ On October 9, 2002, Nasdaq submitted Amendment No. 3 to the proposed rule change.⁵ On February 21, 2003, Nasdaq submitted Amendment No. 4 to the proposed rule change.⁶ 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

Retroactive to July 1, 2002, Nasdaq proposes to: (1) Establish a \$75 maximum execution fee cap for a single SuperSoes transaction; and (2) Establish a \$37.50 maximum cap on the rebate amount provided by Nasdaq to market participants that provide liquidity to its market.⁷ The text of the proposed rule change, as amended, appears below. New text is in italics; deletions are in brackets.

* * * * *

7010. System Services

(a)-(h) No change.

(i) Transaction Execution Services.

(1) No change.

(2) Nasdaq National Market Execution System (SuperSOES).

The following charges shall apply to the use of the Nasdaq National Market Execution System:

Order Entry Charge—\$0.10 per order entry (entering party only)

³ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 16, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made technical corrections to the proposed rule text.

⁴ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 30, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq made a technical correction to the proposed rule text.

⁵ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 9, 2002 ("Amendment No. 3"). In Amendment No. 3, Nasdaq made a technical correction to the proposed rule text.

⁶ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated February 20, 2003 ("Amendment No. 4"). In Amendment No. 4, Nasdaq made technical corrections to the proposed rule text.

⁷ Nasdaq also filed a separate proposal, pursuant to Section 19(b)(3)(A)(ii) of the Act, 15 U.S.C. 78s(b)(3)(A)(ii), to establish these same fee and rebate limits on a going-forward basis. See Securities Exchange Act Release No. 46456 (September 3, 2002), 67 FR 57470 (September 10, 2002) (SR-NASD-2002-106).

Per Share Charge—\$0.001 per share executed for all fully or partially executed orders (entering party only)
Cancellation Fee—\$0.25 per order cancelled (canceling party only)

For a pilot period commencing on November 1, 2001 and lasting until March 31, 2003, the per share charge will be \$0.002 per share executed for all fully or partially executed orders (entering party only).

Effective July 1, 2002, [F] for trades in securities that are executed at a price of \$1.00 or less per share, the maximum charge per trade under this section shall not exceed \$75.00.

(3) No change.

(4) Liquidity provider rebate.

For a pilot period commencing on November 1, 2001 and lasting until March 31, 2003:

(A) NASD members that do not charge an access fee to market participants accessing their quotations through the Nasdaq National Market Execution System will receive a rebate of \$0.001 per share when their quotation is executed against by a Nasdaq National Market Execution System order.

(B) NASD members will receive a rebate of \$0.001 per share when they send a Nasdaq National Market Execution System order that executes against the quotation of a market participant that charges an access fee to market participants accessing its quotations through the Nasdaq National Market Execution System.

(C) *Effective July 1, 2002*, [F] for trades in securities that are executed at a price of \$1.00 or less per share, the maximum rebate available per trade under section (4) of this rule shall not exceed \$37.50.

(j)-(s) No change.

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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, as amended, 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.

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.