

(ii) must not participate in the execution of the transaction once it has been transmitted to the member performing the execution;¹⁶ (iii) must not be affiliated with the executing member;¹⁷ and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the rule. To the extent a member submits an order for a proprietary account into HOSS from on the floor (including an order for a proprietary account initiated from off the floor and routed to the member or an affiliated member on the floor for submission into HOSS), such an order would not qualify for the effect versus execute exception.

The Exchange believes the proposed rule change should serve to further enhance the efficiency of HOSS opening rotations because it will further automate the process for addressing opening quote, acceptable opening range, and market order imbalance conditions that may occur on the openings, as well as address NBBO condition scenarios where the Exchange's opening trade might occur at a price when there is a better away market.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers

this requirement is met if an order for a proprietary account is transmitted from a remote location directly into the HOSS system by electronic means.

¹⁶ The Exchange states that given HOSS's existing and proposed automated matching and execution services, no Exchange member enjoys any special control or influence over the timing of execution or special order handling advantages for orders executed via HOSS (including as proposed to be amended), as all orders will be centrally processed for execution by computer, rather than being handled by a member through bids or offers made on the trading floor. The member may, however, participate in clearing and settling the transaction.

¹⁷ The Commission has recognized in the past that this requirement is not applicable where automated exchange facilities are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange. *See, e.g.*, NASDAQ Options Market Approval Order, 73 FR at 14539, and Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979). The Exchange believes that this principle is directly applicable to HOSS, including through the proposed new exposure period, due to HOSS's open, electronic structure that is designed to prevent any Exchange members from gaining any time and place advantages. Therefore, the Exchange believes that an Exchange member effecting a transaction through HOSS (including as proposed to be amended) satisfies the requirement for execution through an unaffiliated member.

¹⁸ 15 U.S.C. 78f(b).

the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of 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 the proposed rule change should serve to enhance the efficiency of HOSS opening rotations.

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

CBOE does not believe that the proposed rule change will 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

No written comments were solicited or received with respect to the proposed rule change.

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 Exchange 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. Please include File Number SR-CBOE-2008-30 on the subject line.

¹⁹ 15 U.S.C. 78f(b)(5).

Paper Comments

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

All submissions should refer to File Number SR-CBOE-2008-30. 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 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 CBOE. 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-CBOE-2008-30 and should be submitted on or before July 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58005; File No. SR-ISE-2008-45]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Definition of Qualified Contingent Trade

June 23, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

²⁰ 17 CFR 200.30-3(a)(12).

(“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 12, 2008, 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 and II below, which Items have been substantially prepared by the Exchange. The ISE designated the proposed rule change as “non-controversial” under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ 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

The ISE is proposing to amend its rules to delete from the definition of Qualified Contingent Trade the requirement that such transactions are for a minimum size of 10,000 shares or \$200,000 in transaction value. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <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 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’s rules currently define the term “Qualified Contingent Trade” according to the definition included in an exemptive order issued by the Commission on August 31, 2006.⁵

Pursuant to the Exemptive Order, Qualified Contingent Trades are exempt from the trade-through restrictions of Regulation NMS.⁶ The Exchange has incorporated an identical definition of Qualified Contingent Trades into ISE Rule 2107(c) so that such trades could be exempted from Exchange rules restricting intermarket trade-throughs.⁷

On April 4, 2008, the Commission issued a revised exemptive order eliminating one of the elements of the original Qualified Contingent Trade definition.⁸ Based upon a request from the Chicago Board Options Exchange, Incorporated, the Revised Exemptive Order deleted the minimum size conditions of 10,000 shares or \$200,000, which were part of the original definition. The Exchange proposes to eliminate these size conditions from its own definition of Qualified Contingent Trade in order to operate its marketplace in a manner consistent with the Revised Exemptive Order.

Accordingly, the Exchange proposes to amend its Rule 2107(c)(4)(ii) to eliminate any minimum size conditions in its definition of the term Qualified Contingent Trade.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,⁹ in general, and Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of 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 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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹² As required under Rule 19b-4(f)(6)(iii),¹³ the ISE provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to the 30th day after the date of filing.¹⁴ However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE requested that the Commission waive the 30-day operative delay for “non-controversial” proposals under Rule 19b-4(f)(6)¹⁶ and make the proposed rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposed language is identical to language contained in the Revised Exemptive Order.¹⁷ In addition, the Commission notes that the Chicago Stock Exchange, Inc. recently made identical changes to its qualified

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS) (“Exemptive Order”).

⁶ See Exemptive Order and 17 CFR 242.611.

⁷ See Securities Exchange Act Release No. 56671 (October 18, 2007), 72 FR 60400 (October 24, 2007) (SR-ISE-2007-88).

⁸ See Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (Order Modifying the Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS) (“Revised Exemptive Order”).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *supra* note 8.

contingent trade definition.¹⁸ Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.¹⁹

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. 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. Please include File Number SR-ISE-2008-45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-ISE-2008-45. 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 ISE. 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-2008-45 and should be submitted on or before July 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58006; File No. SR-NYSEArca-2008-64]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Schedule of Fees and Charges for Exchange Services

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 June 19, 2008, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange"), through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders it 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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities,

Inc. ("NYSE Arca Equities"), proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the "Schedule") that applies to orders submitted by ETP Holders and Market Makers.⁵ The changes to the Schedule pursuant to this proposal are effective upon filing; however the changes will become operative on July 1, 2008. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

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

In its filing with the Commission, NYSE Arca 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 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 proposes to amend the Schedule and introduce unified volume tiers for NYSE Arca equities pricing in Tape A, B, and C securities. Currently, ETP Holders and Market Makers must meet volume tiers independently in each Tape to qualify for a volume discount. Pursuant to this proposal, an ETP Holder's and Market Maker's volume in each Tape will be aggregated for purposes of attaining the applicable fee or credit associated with the tier attained. The Exchange believes these integrated volume tiers offer highly attractive volume-based incentives with the best rate combinations in NYSE-listed and Nasdaq-listed securities among major liquidity venues.

The Exchange proposes to amend the Schedule as it applies to ETP Holders and Market Makers as follows:

Tier 1:

For customers who transact average daily share volume per month greater than 90 million shares in total Tape A, B, and C volume, including adding liquidity of more than 45 million shares, the rates are as follows:

- For Tape A and C securities, a \$0.0028 per share credit for orders that add liquidity and a fee of \$0.0027 per share for orders that remove liquidity.

⁵ See NYSE Arca Equities Rule 1.1(n) and (u).

¹⁸ See Securities Exchange Act Release No. 57767 (May 2, 2008), 73 FR 26174 (May 8, 2008) (SR-CHX-2008-06).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).