

to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ a proposed rule change to amend the Bylaws of its ultimate parent, NYSE Euronext ("Corporation"),⁴ and the Corporation's Director Independence Policy to require that at least three-fourths of the members of the Corporation's Board of Directors ("Board") satisfy independence requirements. The proposed rule change was published for comment in the **Federal Register** on July 16, 2009.⁵ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Section 10.10(C) of the Corporation's Bylaws provides, among other things, that for so long as the Corporation shall control, directly or indirectly, any U.S. Regulated Subsidiaries,⁶ before any amendment or repeal of any provision of the Bylaws shall be effective, such amendment or repeal shall be filed with or filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder. Consistent with this requirement, NYSE filed this proposed rule change. Currently, the Corporation's Bylaws and Director Independence Policy require that all members of the Board, other than the Chief Executive Officer and the Deputy Chief Executive Officer, must satisfy the independence requirements for directors of the Corporation.⁷ The proposed rule change would permit the Corporation to amend its Bylaws and Director Independence Policy to require that at least three-fourths of the members of the Board satisfy the independence requirements for directors of the Corporation.

The Exchange stated that the proposed amendment to the Bylaws and Director Independence Policy would not alter or amend the standards by which the Corporation determines whether an individual director is independent; would not affect the independence

requirements of the Exchange with respect to its directors or the director independence requirements of any of the other self-regulatory organizations for which the Corporation is the ultimate parent or of NYSE Group, Inc., the intermediate holding company, including in each case the number of required independent directors; and would not affect other director qualification requirements set forth in the Bylaws of the Corporation.⁸

The Exchange further stated that the current board independence requirement eliminates from consideration as potential directors of the Corporation a substantial number of individuals who could contribute significantly to the deliberations of the Corporation's Board by virtue of their knowledge, ability, and experience. The Exchange believes that the proposed rule change would continue to protect the independent judgment of the Board, while permitting the Corporation to consider a broader range of experienced and knowledgeable individuals as directors.⁹

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,¹⁰ which requires, among other things, that an exchange be so organized and have the capacity to be able to carry out the purposes of the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which requires, among other things, that the rules of a national securities exchange be 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 of, a free and open market and a national market system, and in general, to protect investors and the public interest.¹²

⁸ See e.g., Section 3.2 of the Bylaws (Certain Qualifications for the Board of Directors).

⁹ There are currently 18 directors on the Board, including the Chief Executive Officer and the Deputy Chief Executive Officer. The Bylaws currently require 16 of the directors (i.e., all but the two aforementioned employees) to be independent. The proposed amendment to the Bylaws would require a minimum of 14 of the directors to be independent.

¹⁰ 15 U.S.C. 78f(b)(1).

¹¹ 15 U.S.C. 78f(b)(5).

¹² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

The Bylaws currently require that 16 of the 18 directors of the Corporation's Board (all the directors except the Chief Executive Officer and the Deputy Chief Executive Officer) must satisfy the Corporation's independence requirements. The Commission notes that the proposed rule change, which would require that at least three-fourths of the Board to be independent, would still require a minimum of 14 directors to satisfy the Corporation's independence requirements. The Commission also notes that the proposal would not alter the Corporation's standards for determining director independence. The Commission believes that the proposal strikes a reasonable balance between the goals of retaining highly qualified and experienced directors for Board service and protecting the exercise of independent judgment by the Corporation's Board.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NYSE-2009-60) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60537; File No. SR-ISE-2009-63]

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

August 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 7, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 self-regulatory organization. The Commission is publishing this notice to

¹ 15 U.S.C. 78s(b)(2).

² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The NYSE, a New York limited liability company, is an indirect wholly-owned subsidiary of NYSE Euronext.

⁵ See Securities Exchange Act Release No. 60261 (July 8, 2009), 74 FR 34609 ("Notice").

⁶ Section 7.3(G) of the Corporation's Bylaws defines "U.S. Regulated Subsidiaries" as New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., NYSE Arca, LLC, NYSE Arca, Inc., NYSE Arca Equities, Inc. and NYSE Alternext US LLC or their successors, in each case to the extent that such entities continue to be controlled, directly or indirectly, by the Corporation.

⁷ See Section 3.4 of the Amended and Restated Bylaws of NYSE Euronext ("Bylaws").

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 Schedule of Fees to establish fees for transactions in options on a narrow based index. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, 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, 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*—The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the Morgan Stanley Retail Index ("MVR").³ The Exchange is proposing to adopt an execution fee for all transactions in options on MVR.⁴ There will be no execution fee for Public Customer Orders⁵ in MVR. All Firm Proprietary orders will be charged \$0.20 per contract. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the

³ The Exchange represents that MVR is eligible for options trading because it meets the standards of ISE Rule 2002(d), which allows the ISE to begin trading this product by filing Form 19b-4(e) at least [sic] five business days after commencement of trading pursuant to Rule 19b-4(e) of the Act.

⁴ These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2010, these fees will also be charged to Linkage Principal Orders ("Linkage P Orders") and Linkage Principal Acting as Agent Orders ("Linkage P/A Orders"). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is \$0.27 per contract side and \$0.18 per contract side, respectively. See Securities Exchange Act Release No. 60175 (June 25, 2009), 74 FR 32026 (July 6, 2009) (SR-ISE-2009-36).

⁵ Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.⁶ Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be \$0.45 per contract.⁷

Additionally, the Exchange has entered into a license agreement with Morgan Stanley & Co., Inc. in connection with the listing and trading of options on MVR. As with certain other licensed options, to defray the licensing costs, the Exchange is adopting a surcharge fee of fifteen (15) cents per contract for trading in options on MVR. The Exchange believes charging the participants that trade this instrument is the most equitable means of recovering the costs of the license. However, because of competitive pressures in the industry, the Exchange proposes to exclude Public Customer Orders from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (e.g., ISE Market Maker, non-ISE Market Maker & Firm Proprietary orders) and Linkage Orders. The Exchange believes the proposed rule change will further ISE's goal of introducing new products to the marketplace at a competitive price.

2. *Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁸ in general, and furthers the objectives of Section 6(b)(4),⁹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace at a competitive priced.

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.

⁶ The Exchange applies a sliding scale, between \$0.01 and \$0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

⁷ The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is \$0.19 [sic] per contract.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

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) of the Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder. 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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-2009-63 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-2009-63. 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

¹⁰ 15 U.S.C. 78s(b)(3)(A). [sic]

¹¹ 17 CFR 240.19b-4(f)(2).

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 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-2009-63 and should be submitted on or before September 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60551; File No. SR-CBOE-2009-040]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change To Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan

August 20, 2009.

I. Introduction

On June 24, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend and adopt rules to implement the Options Order Protection and Locked/Crossed Market Plan. The proposed rule change was published for comment in the **Federal Register** on July 8, 2009.³ The Commission received no

comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend and adopt new CBOE rules to implement the Options Order Protection and Locked/Crossed Market Plan ("Plan").⁴ Specifically, the Exchange proposes to completely replace its current Intermarket Linkage Rules (Rules 6.80—6.85) with new rules implementing the Plan, amend other Exchange rules to reflect the Plan, and delete rules rendered unnecessary by the Plan.

The Old Plan

Each of the Participating Options Exchanges are signatories to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Old Plan").⁵ In pertinent part, the Old Plan generally requires its participants to avoid trading at a price inferior to the national best bid or offer ("trade-through"), although it provides for a number of exceptions to trade-through liability.⁶ The Participating Options Exchanges comply with this requirement of the Old Plan by utilizing a stand alone system ("Linkage Hub") to send and receive specific order types,⁷ namely Principal Acting as Agent Orders ("P/A Orders"), Principal Orders, and Satisfaction Orders.⁸ The

Old Plan also provided that dissemination of "locked" or "crossed" markets should be avoided, and remedial actions that should be taken to unlock or uncross such market.⁹ Each of the Participating Options Exchanges, including the Exchange, has submitted an amendment to the Old Plan to withdraw from such Plan.¹⁰ The withdrawals will be effective upon approval by the Commission of such amendments pursuant to Rule 608 of Regulation NMS under the Act ("Regulation NMS").¹¹

The Plan

The Plan does not require a central linkage mechanism akin to the Old Plan's Linkage Hub. Instead, the Plan includes the framework for routing orders via private linkages that exist for NMS stocks under Regulation NMS.¹² The Plan requires the Participating Options Exchanges to adopt rules "reasonably designed to prevent Trade-Throughs."¹³ Participating Options Exchanges are also required to conduct surveillance of their respective markets on a regular basis to ascertain the effectiveness of the policies and procedures to prevent Trade-Throughs and to take prompt action to remedy deficiencies in such policies and procedures.¹⁴ As further described below, the Plan incorporates a number of exceptions to trade-through liability.¹⁵ Some of these exceptions are carried over from the Old Plan, including exceptions for trading rotations, non-firm quotes, and complex trades.¹⁶ Others are substantially similar to exceptions available for NMS stocks

⁹ Section 7(a)(i)(C) of the Old Plan.

¹⁰ See Securities Exchange Act Release No. 60360 (July 21, 2009) 74 FR 37265 (July 28, 2009) (File No. 4-429).

¹¹ 17 CFR 242.608.

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7-10-04); 17 CFR 242.600 *et seq.* For discussions of the similarities between the provisions of Regulation NMS and the provisions in the Plan, see the Plan Notice and Plan Approval, *supra* note 4.

¹³ Under the Plan, a "Trade-Through" is generally defined as a transaction in an option series, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer." See Section 2(21) of the Plan. A "Protected Bid" and "Protected Offer" generally means a bid or offer in an option series, respectively, that is displayed by a Participant, is disseminated pursuant to the Options Price Reporting Authority ("OPRA") Plan, and is the Best Bid or Best Offer. See Section 2(17) of the Plan. A "Best Bid" or "Best Offer" means the highest bid price and the lowest offer price. Section 2(2)(1) of the Plan. "Protected Bid" and "Protected Offer," together are referred to herein as "Protected Quotation." See Section 2(18) of the Plan.

¹⁴ Section 5(a)(ii) of the Plan.

¹⁵ Section 5(b) of the Plan.

¹⁶ Subparagraphs (ii), (vii), and (viii), respectively, of Section 5(b) of the Plan.

⁴ The Plan is a national market system plan proposed by the seven existing options exchanges and approved by the Commission. See Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) (File No. 4-546) ("Plan Notice") and 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546) ("Plan Approval"). The seven options exchanges are: International Securities Exchange LLC ("ISE"); The NASDAQ Stock Market LLC ("NASDAQ"); NASDAQ OMX BX, Inc. ("BOX"); NASDAQ OMX PHLX, Inc. ("Phlx"); NYSE Amex LLC ("NYSE Amex"); NYSE Arca, Inc. ("NYSE Arca"); and CBOE (each exchange individually a "Participant" and, together, the "Participating Options Exchanges").

⁵ On July 28, 2000, the Commission approved the Old Plan as a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the American Stock Exchange LLC (n/k/a NYSE Amex), CBOE, and ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc. (n/k/a Phlx), Pacific Exchange, Inc. (n/k/a NYSE Arca), Boston Stock Exchange, Inc. (n/k/a BOX), and Nasdaq joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004); and 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008).

⁶ Section 8(c) of the Old Plan.

⁷ The Linkage Hub is a centralized data communications network that electronically links the Participating Options Exchanges to one another. The Options Clearing Corporation ("OCC") operates the Linkage Hub.

⁸ Section 2(16) of the Old Plan.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60187 (June 29, 2009), 74 FR 32664 ("Notice").