SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Exchange Rule 103B To Modify the Application of the Exchange’s Designated Market Maker (“DMM”) Allocation Policy in the Event of a Merger Involving One or More Listed Companies

March 4, 2011.

Pursuant to Section 19(b)(1) 1 of the Securities Exchange Act of 1934 (the “Act”) 2 and Rule 19b–4 thereunder, 3 notice is hereby given that, on February 24, 2011, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 proposes to amend Exchange Rule 103B to modify the application of the Exchange’s Designated Market Maker (“DMM”) allocation policy in the event of a merger involving one or more listed companies. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, on the Commission’s Web site at http://www.sec.gov, and http://www.nyse.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 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 those 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 parts of such statements.

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

1. Purpose

Policy Note VI(D)(1) to Exchange Rule 103B provides that when two NYSE listed companies merge, the post-merger listed company is assigned to the DMM in the company that is determined to be the survivor-in-fact (dominant company). Under Exchange policy, the determination of which company is the survivor-in-fact is based on which of the merging companies provides the chief executive officer and a majority of the board of directors of the post-merger listed company. The policy focuses on the CEO and the make-up of the board of the post-merger listed company rather than on any of the criteria based on the relative sizes of the pre-merger companies because the Exchange believes that the post-merger listed company’s CEO and board will have the relationship with the DMM going forward and should therefore be comfortable with the DMM allocated to the post-merger listed company. Under the Exchange policy, no survivor-in-fact will be found if one of the merging companies provides the CEO and the other merging company provides a majority or half of the board of the post-merger listed company. Where no survivor-in-fact can be identified, the post-merger listed company may select one of the units trading the merging companies without the security being referred for reallocation, or it may request that the matter be referred for allocation through the allocation process pursuant to Exchange Rule 103B, Section III. In addition, Policy Note VI(D)(3) provides that in situations involving the merger of a listed company and an unlisted company, where the unlisted company is determined to be the survivor-in-fact, the post-merger listed company may choose to remain registered with the DMM unit that had traded the listed company entity in the merger, or it may request that the matter be referred for allocation through the allocation process pursuant to Exchange Rule 103B. 4

The Exchange believes that the decision as to how the stock of a post-merger listed company is allocated should be made solely by the post-merger listed company itself, rather than on the basis of which company is determined to be the survivor-in-fact in the merger. The Exchange believes that it is important that the CEO and board of the post-merger listed company are comfortable with its assigned DMM and that it therefore makes sense to give the post-merger listed company as much control as possible over the allocation decision. Consequently, the Exchange proposes to amend Policy Note VI(D)(1) and (3) to provide that in all listed company mergers, either between two listed companies or a listed company and an unlisted company, the management of the post-merger listed company will be able to choose to retain either of the incumbent DMMs (in the case of a merger between two listed companies) or the incumbent DMM (in the case of a merger between a listed company and an unlisted company) or request to have the security referred for reallocation. In no case will the policy dictate that a post-merger listed company must retain an incumbent DMM unless it chooses to do so. The Exchange notes that Section 806.01 of the NYSE Listed Company Manual provides that a listed company can request a change of DMM at any time and that giving post-merger listed companies control over the allocation decision in connection with a merger is consistent with that approach. The Exchange also notes that the proposed rule change would affect only a small number of companies and their DMMs, as it would be applicable only in the case of a merger transaction where one of the two merging companies would otherwise be deemed the “survivor-in-fact” under Exchange policies.

The Exchange notes that Policy Note VI(D)(1) and (3) both provide that DMM units that are ineligible to receive a new allocation due to their failure to meet the requirements of Exchange Rule 103B, Section III(b) and (b) will remain eligible to be selected pursuant to Policy Note VI(D)(1) or (3), as applicable. The Exchange proposes to amend the language in each section to clarify that its intent is that in such cases the applicable DMM unit will be eligible to be selected in its capacity as the DMM for one of the two pre-merger listed companies (in the case of a merger between two listed companies) or in its capacity as DMM of the pre-merger

4 A company seeking to choose a DMM through the allocation process must select a minimum of three DMM units to interview from the pool of DMM units eligible to participate in the allocation process and must notify the Exchange of its choice of DMM within two business days of the interviews. Alternatively, the company can designate to the Exchange the authority to select its DMM. In that case, the selection is made by an Exchange Selection Panel (“ESP”) comprised of senior management of the Exchange, Exchange floor operations staff and non-DMM Executive Floor Governors or Floor Governors.
listed company (in the case of a merger between a listed company and an
unlisted company), but will not be
eligible to participate in the allocation
process if the post-merger company
requests that the matter be referred for
allocation through the allocation
process pursuant to NYSE Rule 103B,
Section III. In the event that such a
situation were to arise, the Exchange
would inform the listed company of
such DMM unit’s ineligibility under
Exchange Rule 103B, Section II(D) or
(E).

2. Statutory Basis

The Exchange believes that the
proposed rule change is consistent with
Section 6(b) ➃ of the Securities Exchange
Act of 1934 (the “Act”), ➄ in general, and
furthers the objectives of Section 6(b)(5)
of the Act, ➅ in particular in that it is
designed to promote just and equitable
principles of trade, 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. The
Exchange believes that the proposed
amendments are consistent with Section
6(b)(5) of the Act in that their sole
purpose is to provide more control over
the DMM allocation process to
companies involved in mergers. All
DMMs are subject to the same Exchange
rules and oversight when conducting
their DMM activities, and the proposed
amendments are consistent with Section
806.01 of the Listed Company Manual
as previously approved by the
Commission.

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 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 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 self-regulatory
organization consents, the Commission
will:
(A) by order approve or disapprove
the 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–NYSE–2011–09 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–NYSE–2011–09. 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 website 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
submissions. You should submit only
information that you wish to make
available publicly. All submissions
should refer to File Number SR–NYSE–
2011–09 and should be submitted on or
before March 31, 2011.

For the Commission, by the Division of
Trading and Markets, pursuant to delegated
authority.*
Cathy H. Ahn,
Deputy Secretary.

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SECURITIES AND EXCHANGE
COMMISSION

[Release No. 34–64038; File No. SR–ISE–
2011–12]

Self-Regulatory Organizations;
International Securities Exchange,
LLC; Notice of Filing and Immediate
Effectiveness of Proposed Rule
Change Relating to Access Fees for
Foreign Currency Options

March 4, 2011.

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 February
23, 2011, 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 and II below, which items
have been prepared by the self-
regulatory organization. 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 terminate an
access fee charged to foreign currency
(“FX”) options market makers. The text
of the proposed rule change is available
on the Exchange’s website (http://
www.isec.com), at the principal office of
the Exchange, on the Commission’s
website at http://www.sec.gov, and at
the Commission’s Public Reference
Room.


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