

The Commission has been willing to allow an exchange to rely on a memorandum of understanding entered into between regulators where the listing SRO finds it impossible to enter into an information sharing agreement.<sup>19</sup> In this case, Amex has attempted unsuccessfully to reach such an agreement with Bolsa.

Consequently, the Commission has determined to approve Amex's listing and trading of the Fund Options and to allow Amex to rely on the MOU<sup>20</sup> with respect to the underlying Fund components trading on Bolsa. The Commission believes that, regardless of the Commission's willingness to permit reliance on the MOU, Amex should continue to use its best efforts to obtain a comprehensive surveillance agreement with Bolsa, which shall reflect the following: (1) Express language addressing market trading activity, clearing activity, and customer identity; (2) the Bolsa's reasonable ability to obtain access to and produce requested information; and (3) based on the CSSA and other information provided by the Bolsa, the absence of existing rules, law or practices that would impede the Exchange from obtaining foreign information relating to market activity, clearing activity, or customer identity, or in the event such rules, laws, or practices exist, they would not materially impede the production of customer or other information.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>21</sup> for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register** because it will enable the Exchange to immediately consider listing and trading the Fund Options, similar to products already traded on the Exchange,<sup>22</sup> and because it does not raise any new regulatory issues.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-Amex-2007-100) be, and it hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56781; File No. SR-ISE-2007-93]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Send P/A Orders Through Linkage Prior to the Opening of Trading

November 13, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 2007, the International Securities Exchange, LLC ("Exchange" or "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 substantially prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend ISE Rule 701 to permit the sending of Principal Acting as Agent Orders ("P/A Orders")<sup>3</sup> through the Intermarket Options Linkage ("Linkage") prior to the opening of trading. This proposal would conform ISE Rule 701 to Joint Amendment No. 23<sup>4</sup> of the Linkage Plan.<sup>5</sup> The text of the proposed rule

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240. 19b-4.

<sup>3</sup> See Section 2(16)(a) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").

<sup>4</sup> See Securities Exchange Act Release No. 56780 (November 13, 2007) (File No. 4-429).

<sup>5</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the Amex, CBOE, and ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and BSE 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

change is available at the ISE, at the Commission's Public Reference Room, and at <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, its 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 III 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

The Exchange is proposing to amend ISE Rule 701 to conform it to a proposed amendment to section 7(a)(i) of the Linkage Plan. The proposed rule change will permit the use of Linkage prior to the opening of trading. Prior to the Commission's approval of Joint Amendment No. 23 to the Linkage Plan, the Linkage Plan did not permit use of Linkage before an exchange opens for trading and disseminates a quotation in an options series. In addition, there was no trade-through protection for opening trades. As a result, if there was a better market away at the time a Participant opens its market, the ISE Primary Market Maker ("PMM"), responsible both for the opening and for protecting customer orders, could not access that market for a customer. The customer thus could receive a price inferior to the national best bid and offer. This amendment to ISE Rule 701 will allow the sending of Linkage P/A Orders prior to the opening, allowing the PMM to access better markets on behalf of customers prior to the ISE's opening.

In implementing this proposed rule change, the Exchange will ensure that customers always receive the best price for their orders. Under the Linkage Plan, a receiving market has five seconds to respond to a P/A Order,<sup>6</sup> and the receiving market can reject a response it receives more than five seconds after sending the order.<sup>7</sup> In the unlikely event that the ISE opens its market during this five-second period, it is possible that the

(November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>6</sup> See Linkage Plan Section 7(a)(ii)(B)(1)(a).

<sup>7</sup> See Linkage Plan Section 7(a)(iii).

<sup>19</sup> See *supra* note 10; See also New Product Release, *supra* note 13.

<sup>20</sup> See *supra* note 10.

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> See *supra* note 14.

<sup>23</sup> 15 U.S.C. 78s(b)(2).

opening price could differ from the price of an executed P/A Order (either higher or lower). In that case, the ISE represents that it will ensure that the PMM provides the customer with the most advantageous price. Thus, the proposed rule change only can benefit customers by providing them with possible price improvement at the opening.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to national securities exchanges and, in particular, the requirements of section 6(b) of the Act.<sup>8</sup> Specifically, the Exchanges believe the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act<sup>9</sup> that the rules of an exchange be designed to prevent fraudulent and manipulative acts, 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.

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

The Exchange believes that the proposed rule change would impose no 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 neither solicited nor received comments on this proposal.

## III. 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2007-93 on the subject line.

### *Paper Comments*

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

All submissions should refer to File Number SR-ISE-2007-93. 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 submissions, 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 the filings also will be available for inspection and copying at the principal offices 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 No. SR-ISE-2007-93 and should be submitted on or before December 10, 2007.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Changes

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to national securities exchanges.<sup>10</sup> In particular, the Commission finds that the proposal is consistent with the provisions of section 6(b)(5) of the Act<sup>11</sup> in that it is 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. The Commission believes that allowing the Exchange to send P/A Orders to the Linkage prior to the opening should facilitate investors' intermarket access to superior prices.

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Granting accelerated approval would facilitate the implementation of the proposed rule change in conjunction with the Join Amendment No. 23 to the Linkage Plan.<sup>12</sup> In addition, the Commission notes that the Exchange has committed to ensuring that, for Linkage P/A Orders sent prior to the opening, PMMs will provide customers with the most advantageous price in the event that the ISE opens its market while the Exchange is awaiting a response to such a P/A Order. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>13</sup> to approve the proposed rule change on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>14</sup>, that the proposed rule change (SR-ISE-2007-93) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56777; File No. SR-NYSE-2007-87]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Incorporate Certain Definitions of Exchange Act Rules 13d-1 and 13d-3 Into NYSE Rule 460**

November 9, 2007.

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

<sup>10</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See *supra* note 4.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).