

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"), in general, and Section 6(b)(4) of the Act, 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. The proposed rates are part of the Exchange's continued effort to attract and enhance participation on the Exchange, by offering attractive rebates for liquidity providers and volume-based incentives. The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

### *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

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members. At any time within 60 days of the filing of the 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 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-NYSEArca-2009-31 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-NYSEArca-2009-31. 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 the 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-NYSEArca-2009-31 and should be submitted on or before May 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59806; File No. SR-ISE-2009-19]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness by International Securities Exchange, LLC of a Proposed Rule Change To Amend Exchange Rules Related to Confirmations to Customers**

April 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 8, 2009, 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 Exchange. 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 proposes to amend Rule 612—Confirmation to Customers to clarify that written confirmations relating to options transactions do not need to specify the exchange or exchanges on which an option contract is executed.<sup>3</sup> The text of the proposed

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The proposed filing is being done pursuant to an industry-wide initiative under the auspices of the Options Self-Regulatory Council ("OSRC"), which is a committee comprised of representatives from each of the options exchanges functioning pursuant to the OSRC Plan (the "Plan"). See Securities Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41256 (September 14, 1983). The Plan is not a National Market System ("NMS") plan under Section 11A of the Act, but rather is a plan to allocate regulatory responsibilities under Rule 17d-2 under the Act. 17 CFR 240.17d-2. As a result of the introduction of multiply listed options and the introduction of the Plan for the Purpose of Creating and Operating an Intermarket Options Market Linkage ("Options Linkage Plan"), the contracts in a customer options order could be executed on more than one options exchange, and the significance of the options exchange, or exchanges, that execute a particular options transaction has diminished significantly. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Furthermore, the OSRC believes that in light of the best execution and disclosure requirements, the usefulness of including on an options confirmation the name of the options exchange, or exchanges, on which the options transaction was effected does not outweigh the operational difficulties of capturing the information given the multiple trading of options and the application of the Options Linkage Plan industry wide.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

rule change is available on the Exchange's Web site <http://www.ise.com>, at the Exchange's Office of the Secretary, and at the Commission.

## 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 ("SRO") 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.

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

#### 1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 612 to eliminate the requirement that the market on which an options transaction is executed be disclosed on a written confirmation furnished to a customer of a member. Pursuant to Rule 612, the member will continue to be required to furnish a written confirmation that contains a description of each transaction in the option contracts which shall show: the type of option; the underlying security (e.g., stock or exchange traded fund); the expiration month; the exercise price; the number of option contracts; the premium and commissions; the transaction and settlement dates; whether the transaction was a purchase or a sale (writing) transaction; and whether the transaction was effected on a principal or agency basis.

The Exchange believes that with the expansion of multi-listing of options and the introduction of new options exchanges, it has become operationally inefficient to require the disclosure of the market center on which an order was executed on the confirmation. As an example, a customer may have a single option order containing numerous option contracts executed on multiple exchanges. As such, it would be inefficient for the member to be required to identify the exchange symbol for each contract executed on that customer's order. This proposal would clarify that written confirmations furnished by a member to a customer will not need to specify the exchange or exchanges on which such option contracts were executed.

This proposal is similar to rule change proposals that have been filed by the American Stock Exchange LLC ("Amex"), the Financial Industry Regulatory Authority, Inc. ("FINRA"), and the Chicago Board Options Exchange ("CBOE"), and approved by the Commission.<sup>4</sup> The Exchange believes that similar proposals will be filed with the Commission by other exchanges, and if adopted, would continue to provide a uniform approach with respect to confirmations to customers regarding standardized options.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in 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. Additionally, this proposed rule change will promote consistency between ISE and other SRO rules and clarify the Exchange's options confirmation procedure rules to better reflect the realities of the modern options market.

### 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

Written comments were neither solicited nor received.

<sup>4</sup> See Securities Exchange Act Release Nos. 58814 (October 20, 2008), 73 FR 63527 (October 24, 2008) (approval order); 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (approval order); and 58980 (November 19, 2008), 73 FR 72091 (November 26, 2008) (approval order).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition and (3) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6)<sup>8</sup> thereunder.

The Exchange believes that the proposal to amend the Exchange's rule with regard to written confirmations relating to options transactions will promote consistency between ISE and other SRO rules. The proposed rule change is substantially similar to Amex, FINRA, and CBOE rules that provide that written confirmations relating to options transactions are not required to specify the options exchange or exchanges on which such options were executed.<sup>9</sup> The Exchange believes that this proposed rule change does not raise any new, unique or substantive issues from those raised in the approved Amex, FINRA and CBOE filings. The Exchange also believes that acceleration of the operative date is consistent with the protection of investors and the public interest. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a "noncontroversial" rule change under paragraph (f)(6) of Rule 19b-4.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. Because the proposed rule change is based on rule changes previously approved by the Commission and the proposed rule change does not present any novel issues, the Exchange has requested that the Commission waive the 30-day operative delay period to

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> See *supra* note 4, and related text.

<sup>10</sup> 17 CFR 240.19b4(f)(6).

permit the proposed rule change to be implemented immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the rule change is substantially similar to rule changes by other SROs previously approved by the Commission, and will promote consistency between the rules of the ISE and other SROs. Thus, the Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative delay so that the proposal may take effect immediately.<sup>11</sup>

At any time within 60 days of the filing of the 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 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 No. SR-ISE-2009-19 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-2009-19. 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 Commissions 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-2009-19 and should be submitted on or before May 19, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59804; File No. SR-BX-2009-020]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Regarding Market Maker Obligations

April 21, 2009.

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 April 8, 2009, NASDAQ OMX BX, Inc. (the "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 Exchange. 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 purpose of the proposed rule change is to amend Chapter VI, Section 6 (Market Maker Quotations) of the BOX

Rules to amend certain Market Maker obligations. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXB/Filings/>.

#### 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

The purpose of the proposed rule change is to amend Chapter VI, Section 6 (Market Maker Quotations) of the BOX Rules to amend certain Market Maker obligations. As proposed, the Exchange will amend the obligations of a Market Maker regarding the Request for Quote ("RFQ") process. The new language found in section 6(b) clarifies that within three seconds of receiving an RFQ that a Market Maker must continuously maintain, without interruption, a valid two-sided quote for at least thirty seconds. However, if during that thirty second time span, the quote becomes invalid,<sup>3</sup> the Market Maker must as soon as practicable, but within five seconds, post a valid two sided quote. In addition, current section 6(d)(ii), which provided for a Market Maker to submit a quote in the interests of a fair and orderly market when called upon by Options Official will be removed. Instead, as proposed, section 6(b)(iv) will be used for circumstances where an Options Official determines, that a Market Maker should be called upon to quote in the interests of a fair and orderly market. Specifically, this new section will provide that an Options Official may, whenever on the judgment of such official, in the interest of a fair and orderly market, call upon Market Makers to post a quote in the

<sup>11</sup> For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</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> One example of such a circumstance is an execution resulting from that quote.