

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-NYSEAmex-2009-56 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEAmex-2009-56. 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 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 publicly available. All submissions should refer to File Number SR-NYSEAmex-2009-56 and should be submitted on or before September 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60563; File No. SR-NYSE-2009-87]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending Until August 31, 2009, the Operation of Interim NYSE Rule 128 Which Permits the Exchange To Cancel or Adjust Clearly Erroneous Executions If They Arise Out of the Use or Operation of Any Quotation, Execution or Communication System Owned or Operated by the Exchange, Including Those Executions That Occur in the Event of a System Disruption or System Malfunction**

August 24, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 21, 2009, 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 extend until August 31, 2009, the operation of interim NYSE Rule 128 ("Clearly Erroneous Executions for NYSE Equities") which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, 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 Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange proposes to extend until August 31, 2009, the operation of interim NYSE Rule 128 ("Clearly Erroneous Executions for NYSE Equities") which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

Prior to the implementation of NYSE Rule 128 on January 28, 2008,<sup>4</sup> the NYSE did not have a rule providing the Exchange with the authority to cancel or adjust clearly erroneous trades of securities executed on or through the systems and facilities of the NYSE.

In order for the NYSE to be consistent with other national securities exchanges which have some version of a clearly erroneous execution rule, the Exchange is drafting an amended clearly erroneous rule which will accommodate such other exchanges but will be appropriate for the NYSE market model.

The NYSE notes that the Commission approved an amended clearly erroneous execution rule for Nasdaq in May 2008.<sup>5</sup> On July 28, 2008, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until October 1, 2008<sup>6</sup> in order to review the provisions of Nasdaq's clearly erroneous rule and to consider integrating similar standards into its own amendment to Rule 128. On October 1, 2008,<sup>7</sup> the Exchange filed with the SEC a further request to extend the operation of interim Rule 128 until January 9, 2009

<sup>4</sup> See Securities Exchange Act Release No. 57323 (February 13, 2008), 73 FR 9371 (February 20, 2008) (SR-NYSE-2008-09).

<sup>5</sup> See Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008) (SR-NASDAQ-2007-001).

<sup>6</sup> See Securities Exchange Act Release No. 58328 (August 8, 2008), 73 FR 47247 (August 13, 2008) (SR-NYSE-2008-63).

<sup>7</sup> See Securities Exchange Act Release No. 58732 (October 3, 2008), 73 FR 61183 (October 15, 2008) (SR-NYSE-2008-99).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

in order to consider integrating similar standards into the amendment to Rule 128. On January 9, 2009,<sup>8</sup> the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until March 9, 2009, indicating that the Exchange was still in the process of reviewing the Nasdaq rule with a view towards incorporating certain provisions into the amendment of interim Rule 128.

On February 10, 2009, NYSE Arca submitted a proposal to the SEC to amend its clearly erroneous rule. The NYSE Arca proposed rule differed in certain respects from the Nasdaq clearly erroneous rule. On March 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until June 9, 2009<sup>9</sup> to finalize review of NYSE Arca's proposed amended CEE rule, which included marketwide CEE initiatives, to determine if it was appropriate to incorporate such provisions into the Rule 128 amendment.

Thereafter, on April 24, 2009, NYSE Arca filed a revised rule change with the Commission to amend its clearly erroneous rule (NYSE Arca Rule 7.10).<sup>10</sup> The Exchange was in the process of finalizing its review of NYSE Arca's revised CEE rule change, which also included marketwide CEE initiatives, to determine if it was appropriate to incorporate all such provisions into NYSE's interim Rule 128 amendment. On June 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until July 15, 2009<sup>11</sup> to finalize review of NYSE Arca's proposed amended CEE rule. On July 15, 2009<sup>12</sup> the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 1, 2009 to finalize review of NYSE Arca's proposed amended CEE rule. On July 31, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 10, 2009<sup>13</sup> to finalize review of NYSE Arca's proposed amended CEE rule. On August 11, 2009 the Exchange

filed with the SEC a request to extend the operation of interim Rule 128 until August 21, 2009<sup>14</sup> to finalize review of NYSE Arca's proposed amended CEE rule.

The Exchange anticipates finalizing proposed rule text of its clearly erroneous execution rule shortly, and is, therefore, requesting to extend the operation of interim Rule 128 until August 31, 2009. Prior to August 31, 2009, the Exchange intends to formally file a 19b-4 rule change amending interim Rule 128.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")<sup>15</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>16</sup> that an Exchange have rules that are designed 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.

As articulated more fully in the "Purpose" Section above, the proposed rule would place the NYSE on equal footing with other national securities exchanges. This will promote the integrity of the market and protect the public interest, since it would permit all exchanges to cancel or adjust clearly erroneous trades when such trades occur, rather than canceling them on all other markets, but leaving them standing on only one market.

### 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

Because the foregoing 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>19</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>20</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay because the Exchange believes that the absence of such a rule in an automated and fast-paced trading environment poses a danger to the integrity of the markets and the public interest. NYSE notes that immediate effectiveness of the proposed rule change will immediately and timely enable NYSE to cancel or adjust clearly erroneous trades that may present a risk to the integrity of the equities markets and all related markets. The Commission believes that waiving the 30-day operative delay<sup>21</sup> is consistent with the protection of investors and the public interest because such waiver will permit the Exchange to continue operation of interim NYSE Rule 128 on an uninterrupted basis, and therefore designates the proposal operative upon filing.

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.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give 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 Commission has determined to waive the five-day pre-filing period in this case.

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 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).

<sup>8</sup> See Securities Exchange Act Release No. 59255 (January 15, 2009), 74 FR 4496 (January 26, 2009) (SR-NYSE-2009-02).

<sup>9</sup> See Securities Exchange Act Release No. 59581 (March 9, 2009), 74 FR 12431 (March 24, 2009) (SR-NYSE-2009-26).

<sup>10</sup> See Securities Exchange Act Release No. 59838 (April 28, 2009), 74 FR 20767 (May 5, 2009) (SR-NYSEArca-2009-36) (See NYSE Arca Rule 7.10).

<sup>11</sup> See Securities Exchange Act Release No. 60131 (June 17, 2009), 74 FR 30196 (June 24, 2009) (SR-NYSE-2009-57).

<sup>12</sup> See Securities Exchange Act Release No. 60312 (July 15, 2009), 74 FR 36298 (July 22, 2009) (SR-NYSE-2009-70).

<sup>13</sup> See Securities Exchange Act Release No. 60419 (August 7, 2009), 74 FR 39987 (August 10, 2009) (SR-NYSE-2009-79).

<sup>14</sup> See Securities Exchange Act Release No. 60478 (August 11, 2009), 74 FR 41769 (August 18, 2009) (SR-NYSE-2009-81).

<sup>15</sup> 15 U.S.C. 78f(a). [sic]

<sup>16</sup> 15 U.S.C. 78f(b)(5).

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-NYSE-2009-87 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-2009-87. 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 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 publicly available. All submissions should refer to File Number SR-NYSE-2009-87 and should be submitted on or before September 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

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

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60559; File No. SR-ISE-2009-27]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan

#### I. Introduction

On May 11, 2009, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> 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 June 8, 2009.<sup>3</sup> On June 10, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposal

The Exchange proposes to amend and adopt new ISE rules to implement the Options Order Protection and Locked/Crossed Market Plan ("Plan").<sup>5</sup> Specifically, the Exchange proposes to completely replace Chapter 19 of its

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

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

<sup>3</sup> See Securities Exchange Act Release No. 60014 (June 1, 2009), 74 FR 27224 ("Notice").

<sup>4</sup> Amendment No. 1 clarified that this proposed rule change will become effective upon the Exchange's withdrawal from the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage and the effectiveness of the Options Order Protection and Locked/Crossed Market Plan. Because the amendment only provided clarification and did not affect the substance of the rule filing, the amendment did not require notice and comment.

<sup>5</sup> 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: Chicago Board Options Exchange, Incorporated ("CBOE"); 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 ISE (each exchange individually a "Participant" and, together, the "Participating Options Exchanges").

rules 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").<sup>6</sup> 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.<sup>7</sup> 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,<sup>8</sup> namely Principal Acting as Agent Orders ("P/A Orders"), Principal Orders, and Satisfaction Orders.<sup>9</sup> 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.<sup>10</sup> Each of the Participating Options Exchanges, including the Exchange, has submitted an amendment to the Old Plan to withdraw from such Plan.<sup>11</sup> 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").<sup>12</sup>

#### *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

<sup>6</sup> 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).

<sup>7</sup> Section 8(c) of the Old Plan.

<sup>8</sup> 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.

<sup>9</sup> Section 2(16) of the Old Plan.

<sup>10</sup> Section 7(a)(i)(C) of the Old Plan.

<sup>11</sup> See Securities Exchange Act Release No. 60360 (July 21, 2009) 74 FR 37265 (July 28, 2009) (File No. 4-429).

<sup>12</sup> 17 CFR 242.608.

<sup>22</sup> 17 CFR 200.30-3(a)(12).