

applicant transferred its assets to RMR Real Estate Income Fund, based on net asset value. Each holder of applicant's preferred shares received preferred shares of RMR Real Estate Income Fund having an aggregate liquidation preference equal to the aggregate liquidation preference attributable to applicant's preferred shares. Expenses of \$202,707 incurred in connection with the reorganization were paid by applicant.

**Filing Dates:** The application was filed on June 24, 2009, and amended on August 10, 2009.

**Applicant's Address:** 400 Centre St., Newton, MA 02458.

#### **RMR Dividend Capture Fund [File No. 811-22079]**

**Summary:** Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 22, 2009, applicant transferred its assets to RMR Real Estate Income Fund, based on net asset value. Each holder of applicant's preferred shares received preferred shares of RMR Real Estate Income Fund having an aggregate liquidation preference equal to the aggregate liquidation preference attributable to applicant's preferred shares. Expenses of \$128,701 incurred in connection with the reorganization were paid by applicant.

**Filing Dates:** The application was filed on June 23, 2009, and amended on August 10, 2009.

**Applicant's Address:** 400 Centre St., Newton, MA 02458.

#### **Morgan Stanley Total Market Index Fund [File No. 811-9259]**

**Summary:** Applicant seeks an order declaring that it has ceased to be an investment company. On July 25, 2008, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$78,565 incurred in connection with the liquidation were paid by Morgan Stanley Investment Advisors, Inc., applicant's investment adviser.

**Filing Dates:** The application was filed on July 6, 2009, and amended on August 7, 2009.

**Applicant's Address:** c/o Morgan Stanley Investment Advisors Inc., 522 Fifth Ave., New York, NY 10036.

#### **BNY Hamilton Funds, Inc. [File No. 811-6654]**

**Summary:** Applicant seeks an order declaring that it has ceased to be an investment company. On September 12, 2008, applicant transferred the assets from all of its series, except BNY Hamilton Multi-Cap Equity Fund and

BNY Hamilton Municipal Enhanced Yield Fund (the "remaining series"), to corresponding series of BNY Mellon Funds Trust, Dreyfus Institutional Reserves Funds, Dreyfus/Laurel Funds, Inc., Dreyfus/Laurel Funds Trust, Dreyfus Premier Investment Funds, Inc. and Dreyfus Tax Exempt Cash Management Funds, based on net asset value. On November 10, 2008, applicant's remaining series transferred their assets to Managers AMG Funds, based on net asset value. Expenses of \$2,772,500 incurred in connection with the reorganization were paid by The Bank of New York Mellon, applicant's administrator.

**Filing Date:** The application was filed on July 14, 2009.

**Applicant's Address:** 3435 Stelzer Rd., Columbus, OH 43219-3035.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-60582; File No. 4-429]**

#### **Joint Industry Plan; Order Approving Amendments To Withdraw From the Intermarket Options Linkage Plan Filed by Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.**

August 28, 2009.

#### **I. Introduction**

On June 25, 2009, June 25, 2009, July 2, 2009, July 2, 2009, July 7, 2009, July 17, 2009, and July 20, 2009, NYSE Arca, Inc. ("NYSE Arca"), NYSE Amex, LLC ("NYSE Amex"), International Securities Exchange, LLC ("ISE"), Chicago Board Options Exchange, Incorporated ("CBOE"), NASDAQ OMX BX, Inc. ("BX"), NASDAQ OMX PHLX, Inc. ("Phlx"), and The NASDAQ Stock Market LLC ("Nasdaq") (collectively, "Participants"),<sup>1</sup> respectively, submitted

<sup>1</sup> See letter from Peter G. Armstrong, NYSE Arca, to Elizabeth Murphy, Secretary, Commission, dated June 24, 2009; letter from Michael Babel, NYSE Amex, to Elizabeth Murphy, Secretary, Commission, dated June 24, 2009; letter from Michael J. Simon, ISE, to Elizabeth Murphy, Secretary, Commission, dated July 1, 2009; letter from Edward J. Joyce, CBOE, to Elizabeth Murphy, Secretary, Commission, dated July 1, 2009; letter from Maura A. Looney, Associate Vice President,

to the Securities and Exchange Commission ("Commission") amendments to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") ("Amendments").<sup>2</sup> The proposed Amendments were published for comment in the **Federal Register** on July 28, 2009.<sup>3</sup> The Commission received no comment letters in response to the Notice. This order approves the Amendments.

#### **II. Description of the Proposed Amendments**

The Participants submitted the Amendments to withdraw from the Linkage Plan. Pursuant to Section 4(d) of the Linkage Plan, a Participant may withdraw from the Linkage Plan by: (i) Providing not less than 30 days prior written notice to each of the other Participants and to the facilities manager<sup>4</sup> of such intent to withdraw; and (ii) effecting an amendment to the Linkage Plan as specified in Section 5(c)(iii) of the Linkage Plan. Section 5(c)(iii) of the Linkage Plan states that a Participant can withdraw from the Linkage Plan by filing an amendment deleting its name in Section 4(a) of the Linkage Plan and submitting such amendment to the Commission for approval. The submitting Participant must state how it plans to accomplish, by alternate means, the goals of the Linkage Plan regarding limiting trade-throughs of prices on other exchanges trading the same options classes. Such amendment is effective upon Commission approval.

As set forth in the Notice, the Participants plan to accomplish the Linkage Plan's goals through

BX, to Elizabeth Murphy, Secretary, Commission, dated July 6, 2009; letter from Richard S. Rudolph, Assistant General Counsel, Phlx, to Elizabeth Murphy, Secretary, Commission, dated July 16, 2009; and letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq, to Elizabeth Murphy, Secretary, Commission, dated July 17, 2009.

<sup>2</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 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 BX), 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>3</sup> See Securities Exchange Act Release No. 60360 (July 21, 2009), 74 FR 37265 ("Notice").

<sup>4</sup> The facilities manager of the Linkage Plan is the Options Clearing Corporation.

membership in the Options Order Protection and Locked/Crossed Market Plan ("New Plan"), which was approved by the Commission on July 30, 2009.<sup>5</sup> The New Plan requires its participants to establish, maintain and enforce written procedures and policies that are reasonably designed to prevent trade-throughs.<sup>6</sup> The Participants state that the New Plan will accomplish this in a more efficient manner than the Linkage Plan. Specifically, the New Plan eliminates a central hub and addresses trade-through compliance through the use of intermarket sweep orders. The New Plan incorporates certain concepts of Regulation NMS<sup>7</sup> which, among other things, addresses trade-throughs in the equity market. The Participants further note that the New Plan also requires its participants to conduct surveillance of their markets to ascertain the effectiveness of these policies and procedures.<sup>8</sup> Finally, the New Plan contains provisions requiring its participants to establish, maintain and enforce written rules addressing locked and crossed markets.<sup>9</sup> The Participants believe that the New Plan will fully accomplish the same goals of the Linkage Plan, including imposing limits on trade-throughs.

### III. Discussion

After careful consideration, the Commission finds that the proposed Amendments to the Linkage Plan are consistent with the requirements of the Act and the rules and regulations thereunder.<sup>10</sup> Specifically, the Commission finds that the Amendments are consistent with Section 11A of the Act<sup>11</sup> and Rule 608 of Regulation NMS thereunder<sup>12</sup> in that they are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

The Commission believes that the New Plan accomplishes, by alternate means, the goals of the Linkage Plan, including the goal of limiting trade-throughs of prices on other exchanges trading the same options classes. The

Commission notes that it has approved the rule filings implementing the New Plan submitted by each of the Participants ("Exchange Linkage Rules") and has found such rules consistent with the requirements of the Act and the New Plan.<sup>13</sup>

The Commission notes that the withdrawal of each Participant will be effective with this approval of the Amendments. In addition, the Commission notes that each of the Exchange Linkage Rules will become effective upon this approval of the Amendments.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 11A of the Act<sup>14</sup> and Rule 608 thereunder,<sup>15</sup> that the proposed Amendments to the Linkage Plan are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-21214 Filed 9-2-09; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60584; File No. SR-ISE-2009-35]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule Change Relating to Qualified Contingent Cross Orders

August 28, 2009.

### I. Introduction

On June 15, 2009, the International Securities Exchange, LLC ("Exchange" or "ISE") 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 provide for Qualified Contingent Cross Orders. The proposed rule change was published for comment in the **Federal Register** on

June 26, 2009.<sup>3</sup> The Commission received two comment letters in response to the proposed rule change<sup>4</sup> and a comment response letter from the Exchange.<sup>5</sup> This order grants approval of the proposed rule change.

### II. Description of the Proposal

The Exchange is currently a participant in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Current Plan").<sup>6</sup> Subject to certain conditions, the Current Plan provides for a limited trade-through<sup>7</sup> exemption for "block trades" which are trades that, among other things, consist of 500 or more contracts with a premium value of at least \$150,000.<sup>8</sup> The Commission recently approved the Order Protection and Locked/Crossed Market Plan ("New Plan"),<sup>9</sup> which will replace the Current Plan. Unlike the Current Plan, however, the New Plan does not provide an exemption for block trades. The Exchange believes that the loss of the block trade exemption will adversely affect the ability of its members to effect large trades that are tied to stock, and is proposing a new order type, the Qualified Contingent Cross Order,<sup>10</sup> which the Exchange proposes to implement contemporaneously with its New Linkage Rules.

The proposed Qualified Contingent Cross Order would permit an ISE member to cross the options leg of a Qualified Contingent Trade ("QCT")<sup>11</sup>

<sup>3</sup> See Securities Exchange Act Release No. 60147 (June 19, 2009), 74 FR 30651 ("Notice").

<sup>4</sup> See letter from Angelo Evangelou, Assistant General Counsel, Chicago Board Options Exchange ("CBOE"), to Elizabeth M. Murphy, Secretary, Commission, dated July 16, 2009 ("CBOE Letter") and letter from Gerald D. O'Connell, Chief Compliance Officer, Susquehanna International Group, LLP ("SIG"), to Elizabeth M. Murphy, Secretary, Commission, dated August 10, 2009 ("SIG Letter").

<sup>5</sup> See letter from Michael J. Simon, Secretary and General Counsel, ISE, to Elizabeth M. Murphy, Secretary, Commission, dated August 20, 2009 ("ISE Letter").

<sup>6</sup> See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (File No. 4-429).

<sup>7</sup> A trade-through is a transaction in a given options series at a price that is inferior to the best price available in the market ("Trade-Through"). See Section 2(21) of the New Plan and Section 2(29) of the Current Plan.

<sup>8</sup> Current Plan Section 2(3) and 8(c)(i)(C).

<sup>9</sup> See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546). The Exchange has also proposed revisions to its rules to implement the New Plan ("New Linkage Rules"). See Securities Exchange Act Release No. 60559 (August 21, 2009), 74 FR 44425 (August 28, 2009) (SR-ISE-2009-27).

<sup>10</sup> Proposed ISE Rule 715(j), proposed Supplementary Material .01 to ISE Rule 715, and proposed ISE Rule 721(b).

<sup>11</sup> A Qualified Contingent Trade is a transaction consisting of two or more component orders,

Continued

<sup>5</sup> See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

<sup>6</sup> Section 5(a)(i) of the New Plan.

<sup>7</sup> 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.*

<sup>8</sup> Section 5(a)(ii) of the New Plan.

<sup>9</sup> Section 6 of the New Plan.

<sup>10</sup> In approving the proposed Amendments, the Commission has considered the Amendments' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78k-1.

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

<sup>13</sup> See Securities Exchange Act Release Nos. 60525 (August 18, 2009) (SR-NASDAQ-2009-056); 60526 (August 18, 2009) (SR-NYSEAmex-2009-19); 60527 (August 18, 2009) (SR-NYSEArca-2009-45); 60530 (August 18, 2009) (SR-BX-2009-028); 60550 (August 20, 2009) (SR-Phlx-2009-61); 60551 (August 20, 2009) (SR-CBOE-2009-040); and 60559 (August 21, 2009) (SR-ISE-2009-27).

<sup>14</sup> 15 U.S.C. 78k-1.

<sup>15</sup> 17 CFR 242.608.

<sup>16</sup> 17 CFR 200.30-3(a)(29).

<sup>17</sup> 15 U.S.C. 78s(b)(1).

<sup>18</sup> 17 CFR 240.19b-4.