

## 2. Statutory Basis

SCCP believes that the proposed rule change is consistent with the provisions of Section 17A of the Act,<sup>8</sup> in general, and with Section 17A(b)(3)(A) of the Act,<sup>9</sup> in particular, in that it is designed to ensure that SCCP is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions. SCCP believes that the proposed rule change and the issuance of Series A Preferred to existing investors will result in no substantive change to the corporate ownership structure of its parent NASDAQ OMX.

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

SCCP does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### 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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and subparagraph (f)(3) of Rule 19b-4 thereunder.<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, as amended, 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

approximately \$500,000 in aggregate principal amount of the outstanding Notes.

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(a)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(3).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number R-SCCP-2009- 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-SCCP-2009-04. 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 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 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 Number SR-SCCP-2009-04, and should be submitted on or before December 15, 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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<sup>12</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61016; File No. SR-ISE-2009-96]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program To Expose All-Or-None Orders Until December 31, 2009

November 17, 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 November 13, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange 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 is proposing to amend its rules to implement a broadcast message that will inform market participants when a non-marketable all-or-none limit order is placed on the limit order book. The text of the proposed rule change is as follows, with deletions in [brackets] and additions italicized:

Rule 717. Limitations on Orders

\* \* \* \* \*

Supplementary Material to Rule 717

.01-.03 No Change.

.04 A non-marketable all-or-none limit order shall be deemed "exposed" for the purposes of paragraphs (d) and (e) one second following a broadcast notifying [members] *market participants* that such an order to buy or sell a specified number of contracts at a specified price has been received in the options series. This provision shall be in effect on a pilot basis expiring [November 9, 2009] *December 31, 2009*.

\* \* \* \* \*

#### 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

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

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

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 self-regulatory organization 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*

(a) *Purpose*—Pursuant to ISE Rule 717(d) and (e), Electronic Access Members must expose agency orders on the Exchange for at least one second before entering a contra-side proprietary order or a contra-side order that was solicited from a broker-dealer, or utilize one of the Exchange's execution mechanisms that have one second exposure periods built into the functionality.<sup>3</sup>

The Exchange operates an integrated system that consolidates all market maker quotes and orders, and automatically disseminates the best bid and offer. If a limit order is designated as all-or-none ("AON"), the contingency that the order must be executed in full makes it ineligible for display in the best bid or offer. Nevertheless, such orders are maintained in the system and remain available for execution after all other trading interest at the same price has been exhausted.<sup>4</sup> Upon the receipt of a non-marketable all-or-none limit order, the system automatically will send a broadcast message to all market participants notifying them that an all-or-none order to buy or to sell a specified number of contracts at a specified price has been placed on the book.

On July 9, 2009, the Exchange adopted a proposed rule change on a three-month pilot basis to specify that a non-marketable all-or-none limit order is deemed "exposed" for the purposes of Rule 717(d) and (e) one second following a broadcast notifying members that such an order to buy or sell a specified number of contracts at a specified price has been received in the options series. The Exchange subsequently extended the pilot, which is set to expire on November 9, 2009.<sup>5</sup> The Exchange now proposes to extend the pilot through the end of the year, until December 31, 2009. During the extension, the broadcast message will be

made available to any market participant, not just members.<sup>6</sup> Thus, all of the terms of the order will be disclosed to all market participants.

(b) *Basis*—The basis under the Securities Exchange Act of 1934 ("Exchange Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and 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. In particular, under the proposed rule change all-or-none orders will continue to be exposed to all market participants so that there is a greater opportunity for them to interact with such orders.

#### *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*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

*Because the proposed rule change:* (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, 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) thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after

the date of filing.<sup>9</sup> However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. ISE has requested that the Commission waive the 30-day operative delay. The Commission notes that waiver of the operative delay will permit the pilot to continue until December 31, 2009 without further delay, and will provide all market participants, instead of only ISE members, with the opportunity to receive ISE's broadcast message with information about the terms of new AON orders. The Commission also notes that no comments were received to date on the existing pilot. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.<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-2009-96 on the subject line.

##### *Paper Comments*

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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 Exchange satisfied this requirement.

<sup>10</sup> *Id.*

<sup>11</sup> For the 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>3</sup> See ISE Rule 716(d) (Facilitation Mechanism), Rule 716(e) (Solicited Order Mechanism) and Rule 723 (Price Improvement Mechanism for Crossing Transactions).

<sup>4</sup> Supplementary Material .02 to ISE Rule 713.

<sup>5</sup> See Securities Exchange Act Release No. 60866 (October 22, 2009), 74 FR 55879 (October 29, 2009).

<sup>6</sup> The AON broadcast message is available through the Exchange's application programming interface ("API"). Any member or non-member connecting to the API can receive the AON broadcast message. The Exchange is not proposing to adopt a fee associated with receiving this message, and any future fee would be filed with the Commission.

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

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

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-ISE-2009-96. 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 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 No. SR-ISE-2009-96 and should be submitted on or before December 15, 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. 34-61024; File No. SR-CBOE-2009-025]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Related to the Simple Auction Liaison (SAL)

November 18, 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 May 4, 2009, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) 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. On November 13, 2009, the Exchange filed Amendment No. 1 to the proposal, which replaced the original filing in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Rule 6.13A, *Simple Auction Liaison (SAL)*, to revise the Designated Primary Market-Maker (“DPM”)/Lead Market-Maker (“LMM”) participation entitlement formula that is applicable to SAL executions in Hybrid 3.0 classes. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE 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 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 purpose of Amendment No. 1, which replaces the original filing in its entirety, is to modify the proposed rule change so that the revised DPM/LMM participation entitlement formula applicable to SAL executions in selected Hybrid 3.0 classes will operate on a 1-year pilot basis.

SAL is a feature within CBOE's Hybrid System that auctions marketable orders for price improvement over the

national best bid or offer (“NBBO”). For Hybrid 3.0 Classes, the Exchange determines, on a class-by-class basis, which electronic matching algorithm from Rule 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System*, shall apply to SAL executions (e.g., pro-rata, price-time, UMA priority with public customer, participation entitlement and/or market turner priority overlays). Additionally, the Exchange may establish, on a class-by-class basis, a DPM/LMM participation entitlement that is applicable only to SAL executions. Pursuant to Rules 8.15B and 8.87, the participation entitlement generally is 50% when there is one other Market-Maker also quoting at the best bid/offer on the Exchange, 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange, and 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange. In addition, the participation entitlement must be in compliance with Rule 6.45B(a)(i)(2). In relevant part, Rule 6.45B(a)(i)(2) provides that the DPM or LMM may not be allocated a total quantity greater than the quantity that it is quoting (including orders not part of quotes) at that price. In addition, if pro-rata priority is in effect and the DPM or LMM's allocation of an order pursuant to its participation entitlement is greater than its percentage share of quotes/orders at the best price at the time that the participation entitlement is granted (the “pro-rata share”), the DPM or LMM shall not receive any further allocation of that order. The rule also provides that the participation entitlement shall not be in effect unless public customer priority is in effect in a priority sequence ahead of the participation entitlement and then the participation entitlement shall only apply to any remaining balance.<sup>3</sup> In addition, responses to SAL auctions are capped to the size of the Agency Order for allocation purposes pursuant to Rule 6.13A.

Thus, for example, assume an incoming agency order to buy 250 contracts is received and at the conclusion of the SAL auction the LMM is offered at the best price for 200 contracts, 1 customer is offered at the best price for 50 contracts and 4 other Maker-Makers are offered at the best price for 140 contracts each. In this

<sup>3</sup> Rule 6.45B(a)(i)(2) also provides that, to be entitled to their participation entitlement, the DPM/LMM's order and/or quote must be at the best price on the Exchange. For purposes of SAL executions, the Exchange interprets this to mean that the DPM/LMM must be at the best price at both the start and the conclusion of the SAL auction.

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

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

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