

also will be available for inspection and copying at the principal office of NFA. 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-NFA-2010-03 and should be submitted on or before August 31, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62644; File No. SR-ISE-2010-61]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Crossing Mechanisms

August 4, 2010.

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 July 30, 2010, the International Securities Exchange, LLC ("ISE" 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 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 Exchange proposes to adopt changes to its crossing mechanisms to adopt an auto-match feature. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Price Improvement Mechanism ("PIM") and Facilitation Mechanism allow members to enter two-sided orders for execution with the possibility of the agency order receiving price improvement.<sup>3</sup> In both mechanisms, an agency order is submitted to the ISE by the initiating member with a matching guaranteed contra-side order equal to the full size of the agency order. The agency side of this two-sided order is then exposed to market participants during a one-second auction to give them an opportunity to compete so that they may participate in the execution of the agency order. Currently, in both mechanisms, the contra-side order must represent a single price.

The purpose of the proposal is to add step-up-and-match functionality (the "auto-match feature") to both mechanisms for an initiating member to submit a contra-side order that will automatically match both the price and size of all competing interest (*i.e.*, auction responses, quotes and orders) at any price level achieved during the auction or only up to a designated limit price. As is currently the case with both mechanisms, the contra-side order specifies the auction start price. With the auto-match feature, the contra-side order will automatically match the prices set forth by the competing interest from other market participants up to a specified limit price (the "auto-match limit") if a limit is specified. After the commencement of the auction, the initiating participant would not be able to cancel or modify the auto-match instruction. Currently, there is no ability for members to match better prices in

the Facilitation Mechanism.<sup>4</sup> With respect to PIM, currently members can match better prices received during the auction by sending an additional message.<sup>5</sup> With the auto-match feature, initiating members will not respond in the PIM auction at all, but instead must honor the prices set forth by the competing interest. Thus, with respect to both mechanisms, the initiating member would not have control over the prices at which it receives an allocation at the conclusion of the auction.

Under the proposal, at the conclusion of a Facilitation Mechanism or PIM auction, if an initiating member elects to use the auto-match feature, the contra-side of the agency order will be allocated its full size at each price level where there are competing quotes or orders, up to the auto-match limit if one is specified, until a price level is reached where the balance of the agency order can be fully executed. At such price level, the contra-side order will be allocated the greater of one contract or 40% of the size of the agency order. The following examples illustrate how the proposed auto-match feature will operate in the Facilitation and PIM auctions.

Assume the NBBO is \$10.60 bid and \$10.70 offered. An agency order to sell 50 contracts at \$10.65 is entered into the Facilitation Mechanism or PIM by the initiating member with a contra-side buy order that has an auto-match limit of \$10.70:

- If one response is received for 10 contracts to buy at \$10.70, the agency order will receive 20 contracts at \$10.70 (10 against the response and 10 against the contra-side order) and 30 contracts at \$10.65 (against the contra-side order).
- If there is one response for 10 contracts to buy at \$10.70 and two responses each for 5 contracts to buy at \$10.65, the agency order will receive 20 contracts at \$10.70 (10 against the response and 10 against the contra-side order), and then the balance of the 30 contracts will be allocated between the contra-side order and the two responses at \$10.65 as follows: 20 contracts would be allocated to the contra-side order (40% of the initial order); and 5

<sup>4</sup> The Facilitation Mechanism conducts blind auctions. This is also the case with the actions conducted through the CBOE's Automated Improvement Mechanism ("AIM"). CBOE Rule 6.74A; Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (Order approving SR-CBOE-2005-60) ("AIM Approval Order").

<sup>5</sup> Responses received during a PIM auction are broadcast to all market participants. This is also the case with the Boston Stock Exchange's Price Improvement Period. NASDAQ OMX BX Rules, Chapter V, Sec. 18.

<sup>7</sup> 17 CFR 200.30-3(a)(73).

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

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

<sup>3</sup> ISE Rule 716(d) (Facilitation Mechanism); and ISE Rule 723 (Price Improvement Mechanism).

contracts would be allocated to each of the responding participants.

- Under the current rules, the agency order in both examples would sell 10 contracts at \$10.70 and 40 contracts at \$10.65. Thus, the proposed auto-match feature benefits the agency order because it sells an additional 10 contracts at the better price.

Both mechanisms allow for broad participation in their competitive auctions by all types of market participants (e.g., public customers, broker-dealers and market makers). All market participants are able to receive the auction broadcast and may respond by submitting competing interest (i.e., responses, orders and quotes). All agency orders entered into the mechanisms will continue to be broadly exposed in the auction before the initiating member can execute against the agency order via the auto-match feature.

The Exchange notes that when the initiating member selects the auto-match feature prior to the start of an auction, the available liquidity at improved prices is increased and competitive final pricing is out of the initiating member's control. The Exchange believes that the proposal, if approved, will increase competition in the auctions, will provide more options contracts with price improvement and incent market participants to initiate more auctions with the auto-match feature. Increases in the number of auctions initiated on the Exchange using the mechanisms will directly correlate with an increase in the number of agency orders that are provided with the opportunity to receive price improvement over the NBBO.

The Exchange also notes that this auto-match feature has been implemented by two other options exchanges with respect to their automated price-improvement auction facilities,<sup>6</sup> and that these automated price improvement auction facilities are substantially similar to the ISE's mechanisms. The ISE has separately defined mechanisms, rather than one crossing rule like the Chicago Board Options Exchange's Automated Price Improvement Mechanism ("AIM") because the Exchange developed the electronic auction functionalities over time since its launch in 2000.<sup>7</sup> The

<sup>6</sup> AIM Approval Order, *supra* note 4; NASDAQ OMX BX Rules, Chapter V., Sec. 18 (The Price Improvement Period ("PIP")); Securities Exchange Act Release No. 61805 (March 31, 2010), 75 FR 17454 (April 6, 2010) (Notice of Filing and Immediate Effectiveness of SR-BX-2010-22) ("BOX Auto-Match Release").

<sup>7</sup> The ISE adopted the Facilitation Mechanism in 2000 at the time it gained approval of its exchange

CBOE's AIM rule was first adopted in 2006 and currently includes characteristics of the ISE's Facilitation Mechanism and PIM, with provisions applying to orders under 50 contracts similar to the ISE's PIM and provisions applying to orders over 50 contracts similar to the ISE's Facilitation Mechanism.<sup>8</sup> The AIM auctions are blind like the ISE's Facilitation, whereas the BOX Price Improvement Period broadcasts responses received during the auctions as does the ISE's PIM. While there are variations among all of these crossing facilities, they all operate on the same fundamental principles that crossing orders are broadcast to all (or in the case of AIM, a sub-set of) market participants to give them an opportunity to participate in the trade and to provide the agency order that is being executed an opportunity for price improvement. An auto-match feature has the same effect of increasing the opportunity for price improvement within all of these auction facilities regardless of the variations in functionality.

The CBOE's AIM was approved with the auto-match feature, which applies regardless of the size of the order. In the approval order for AIM, the Commission discussed this functionality specifically and found that the auto-match feature would not unfairly discriminate against other AIM participants, and that the blind auction would not necessarily deprive auction participants with information necessary to participate in the auctions.<sup>9</sup> Subsequently, the BOX added an auto-match feature to its Price Improvement Period.<sup>10</sup> Even though the BOX Price Improvement Period functionality has variations from the AIM functionality (such as the auctions not being blind like AIM), the Commission permitted the rule change to become effective on filing indicating that the variations between AIM and PIP were not relevant to the approval of the auto-match feature. In the same fashion,

registration. Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000) (File No. 10-127) (Order Granting Registration as a National Securities Exchange); Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10-127) (Findings and Opinion of the Commission). The Facilitation Mechanism is a facility for crossing block-size orders (i.e., greater than 50 contracts) in the standard trading increments. The ISE subsequently gained approval of the PIM at the end of 2004. Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (Approving SR-ISE-2003-06). The PIM allows for the execution of orders at penny increments even when the standard minimum trading increment is greater than one penny and for the inclusion of orders that are less than 50 contracts.

<sup>8</sup> CBOE Rule 6.74A.

<sup>9</sup> AIM Approval Order, *supra* note 4.

<sup>10</sup> BOX Auto-Match Release, *supra* note 6.

ISE's proposal to add an auto-match feature to its crossing mechanisms does not raise any new or unique policy issues that were not considered at the time the Commission approved AIM.

The Exchange will provide the Commission with the following data: (1) The percentage of trades in which the entering member submitted a step-up instruction with a limit price and the percentage submitted without a limit price; and (2) the average amount of price improvement provided to orders when the entering member designated a step-up limit and the average amount of price improvement provided to orders when the entering member submitted a step-up instruction without a limit versus the average versus the average amount of price improvement provided to orders when the entering member did not choose to use the step-up feature.<sup>11</sup>

After effectiveness of the proposal, and at least one week prior to implementation of the rule change, ISE will issue a notice to members informing them of the implementation date of the auto-match feature. This will give ISE members an opportunity to make any necessary modifications to coincide with the implementation date.

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b),<sup>12</sup> in general, and Section 6(b)(5)<sup>13</sup> in particular, 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

<sup>11</sup> Certain aspects of the PIM were approved on as a pilot, which has been extended annually since its initial approval in late 2004. Securities Exchange Act Release No. 52027 (July 13, 2005), 70 FR 41804 (July 20, 2005) (SR-ISE-2005-30) (Extending PIM Pilot Through July 18, 2006); Securities Exchange Act Release No. 54146 (July 14, 2006), 71 FR 41490 (July 21, 2006) (SR-ISE-2006-39) (Extending PIM Pilot through July 18, 2007); Securities Exchange Act Release No. 56106 (July 19, 2007), 72 FR 40914 (July 25, 2007) (SR-ISE-2007-62) (Extending PIM Pilot Through July 25, 2007); Securities Exchange Act Release No. 56156 (July 27, 2007), 72 FR 43305 (August 3, 2007) (SR-ISE-2007-66) (Extending PIM Pilot through July 18, 2008); and Securities Exchange Act Release No. 58197 (July 18, 2008), 73 FR 43810 (July 28, 2008) (SR-ISE-2008-60) (Extending PIM Pilot through July 17, 2009); and Securities Exchange Act Release No. 60333 (July 17, 2009), 74 FR 36792 (July 24, 2009) (SR-ISE-2009-52) (Extending PIM Pilot through July 17, 2009 [sic]). The Commission notes that the PIM pilot was recently extended again through July 17, 2011. Securities Exchange Act Release No. 62513 (July 16, 2010), 75 FR 43221 (July 23, 2010) (SR-ISE-2010-75). The Exchange has provided the Commission with monthly data reports related to the execution of orders in the PIM since its approval in 2004.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest. In particular, the Exchange believes that the proposal, if approved, will result in additional liquidity available at improved prices with competitive final pricing out of the initiating member's control, thus increasing competition in the crossing auctions and providing more options contracts with price improvement. As a result of the increased opportunity for price improvement, the Exchange believes that market participants will be incented to initiate more crossing actions. Increases in the number of auctions will directly correlate with an increase in the number of customer orders that are provided with the opportunity to receive price improvement over the NBBO.

#### *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 Exchange 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 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>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>16</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>17</sup>

permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay because the proposed changes will allow immediate increases in the liquidity available at improved prices. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.<sup>18</sup>

At any time within the 60-day period beginning on the date of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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-ISE-2010-61 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-2010-61. 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,<sup>19</sup> 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 Web site viewing and printing in the Commission's Public Reference Room, 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-ISE-2010-61 and should be submitted on or before August 31, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62650; File No. SR-CHX-2010-18]

### **Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Alter its Tiered Schedule of Fees and Rebates for Participants for Trade Executions of Single-Sided Orders in Securities Priced Over One Dollar**

August 4, 2010.

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 July 30, 2010, the Chicago Stock Exchange, Inc. ("CHX" or "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 Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</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 Exchange has satisfied this requirement.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>18</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>19</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

<sup>20</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> 15 U.S.C. 78s(b)(3)(A).

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