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VIA EMAIL AND FEDERAL EXPRESS

October 21, 2010

Ms. Elizabeth M. Murphy
Secretary
U. S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Release No. 34-62523; File No. SR-ISE-2010-73

Dear Ms. Murphy:

NYSE Euronext, on behalf of its subsidiary options exchanges, NYSE Arca Inc. ("NYSE Arca") and NYSE Amex LLC ("NYSE Amex"), appreciates the opportunity to further comment on the above-referenced filing, in which the International Securities Exchange ("ISE") seeks to adopt a modified version of its 2009 Qualified Contingent Cross ("QCC") order proposal, as set forth in File No. SR-ISE-2009-35, on which we commented previously. The ISE has responded to those comments and others in a letter dated August 25, 2010. In stating our opposition to the QCC proposal, we, along with a number of other market participants, have noted that the QCC proposal would lead to a significant change in the options market structure by allowing a substantial amount of orders to be crossed without any exposure to other market participants on the ISE (and ultimately other exchanges, as they each, to remain competitive, are forced to adopt a similar model). The ISE has not provided an explanation for its reasons for this major departure from established market practice other than to argue that QCC "is a way for ISE to compete against exchanges with trading floors by providing members with the ability to effect large stock-option orders in an all-electronic environment." Most importantly, the ISE has not answered a basic question about QCC, namely why the ISE believes that options legs of QCC orders should not be given any exposure whatsoever in the marketplace.

QCC Creates an Unprecedented 100% Participation Guarantee

The QCC proposal would create a de facto 100% participation guarantee, which is a marked departure from the longstanding 40% guarantee the Commission has enforced in most contexts. We note that there are some programs that grant a larger percentage of an order to a single participant such as those that give 100% of an order for five or fewer contracts to a Specialist or e-Specialist. However, under that program (unlike QCC), there is a requirement for the Specialist or e-Specialist to have a quote in the market at the NBBO when the order is received. By contrast, QCC would establish an explicit 100% participation guarantee with no apparent quoting obligation – much less a requirement to actively be quoting at the best price. The Commission has repeatedly voiced its concerns about the impact on quote competition and, specifically, granting too much participation of any one order to a single market. The approval of QCC would be counter to the Commission's objectives.

QCC is a Novel Proposal, Not a Replication of Open Outcry Crossing

The ISE continues to maintain that floor based exchanges "oppose the QCC because it would break the lock that they currently have on executing these trades," in reference to crossing stock/option orders. The ISE further states, "Floors accommodate these trades by providing a market structure in which there is little or no chance that members will break up the pre-arranged trade." Despite the ISE's contention, crosses are in fact broken up on our trading floors and the frequency of such events is dictated by whether the members view the crosses as being priced fairly to the customer, which often they find to be the case. The lack of broken crosses is not necessarily a deficiency but a reflection of efficient pricing.

The ISE also states that "While CBOE, NYSE and Phlx proclaim the sanctity of order exposure, in practice they do the exact opposite." As the Commission is aware, the NYSE Amex and NYSE Arca options markets have established rules and trading procedures that ensure that all of the terms, including the components, of each order are fully disclosed, either electronically or verbally, prior to allowing a permit holder to attempt to cross the order. Furthermore, the floors are an active place and an important source of liquidity, including participation in cross transactions. To take it to an extreme, even if the floor was empty, exposure to an empty room would be far superior to no exposure at all (which IS the case with QCC) because the ability of a market maker to join a floor crowd plays a significant role in preventing unfair or inefficient prices on open-outcry crosses. Specifically, the market maker community would notice any pricing dislocations and, by having the choice, would take the opportunity to send market makers into the pit to participate in those trades. With QCC this choice disappears permanently. Furthermore, any market maker has the ability to be on the floor, including electronic market makers. They may send a person to the floor at any time, again providing a check against abusive pricing of customer orders, which market makers would be precluded from doing with QCC orders. In addition, the open outcry platforms of all options markets operate under rules that have been specifically approved by the Commission. Arguments that open outcry platforms are somehow illegitimate simply because they are not electronic are not legally supportable.

With respect to open outcry trading, the NYSE Arca and NYSE Amex options markets maintain a very detailed electronic audit trail that ensures that orders are systematized prior to being represented in a trading crowd and systematically locked down to ensure that an order cannot be traded until an exchange trading official has heard the broker clearly verbalize ALL components of the order so that the trading crowd can provide competitive bids and offers in response. Only then is the order "released" for trading. Accordingly, the arguments that QCC is simply intended to replicate the manner in which orders are crossed in our open outcry markets are simply not valid.

The QCC Proposal Does Not Include Meaningful Limitations on Scope

In our comment letter, we raised a legitimate concern that the 1,000 contract minimum condition of the ISE's QCC proposal was structured in a manner that would impose little or no impediment to establishing a 100% participation guarantee on crossed orders consisting of fewer than 1,000 contracts. Rather than addressing our concern, the ISE has tried to misrepresent it as an attack on the ISE's members, specifically claiming that our argument was that the ISE's "members would fraudulently arrange a 1,000 contract QCC." As discussed in more detail below, the plain language of the QCC proposal leads to the possibility, if not the conclusion, that market participants could legitimately avoid the 1,000 contract minimum by pairing a small number of contracts with value with a larger number of out-of-the-money contracts. In any event, we are not aware of any empirical evidence that the 1,000 contract minimum would create a meaningful limitation on market participants' ability to use QCC orders to cross options orders without exposure.

It is not our contention that ISE members would have to commit fraud to achieve a 100% participation guarantee. In fact, our comment letter does not even include the word "fraud." Our point was that given the way the text of the proposed rule for QCC is written, it would be perfectly acceptable to pair a vertical spread – a legitimate trading strategy – consisting of a large number of relatively worthless or cheap options with a smaller number of other options so as to fulfill the 1,000 contract requirement as currently proposed. For example, in an attempt to ensure a 100% participation guarantee, a customer interested in buying 100 contracts tied to stock is offered the opportunity by the facilitating party to also buy a 10 point vertical spread 900 times for zero cost. There would be little or no reason for the customer to refuse – the customer gets to own a position at no cost that has 10 points of possible upside, while the counterparty would lock up the 100% participation guarantee.

The ISE argues in its response letter that the QCC proposal is clear that the options leg of a QCC order would have to consist of a single options order of at least 1,000 contracts, not a combination of orders totaling 1,000 contracts. In our view, the rule text should provide that clearly, which it currently does not. In either case, as the rule currently stands, appending a large number of worthless options to a small number of options with actual value could satisfy the 1,000 contract minimum without constituting a violation of the ISE rules.

Regardless of the ultimate meaning of ISE's proposed rule text, and despite arguments that the QCC proposal would affect only a small portion of options orders, we see nothing in the QCC proposal that would meaningfully limit the ability of market participants to use QCC to effect crosses on ISE. In considering whether to approve ISE's proposal, the Commission should consider a fundamental question: At what level of overall QCC activity will the Commission step in to prevent QCC orders from permanently altering the basic principles of options market structure?

Conclusion

We believe that the ISE proposal is an attempt to gain market share at the expense of transparency and fair competition. The ISE's past practice of permitting the crossing of block sized option orders tied to stock with NO disclosure of the stock leg enabled it to garner market share because floor based exchanges had higher standards requiring that all components of an order had to be disclosed prior to attempting to cross the order. Now that the ISE's ability to offer such a crossing (possibly at prices worse than the NBBO) has been eliminated due to the loss of the block trade exemption under the linkage plan, the ISE seeks to obtain a 100% participation guarantee on the basis that it is needed to compete with floor based exchanges for crossing business. NYSE currently operates numerous sophisticated electronic markets globally and continues to be on the forefront of electronic trading. The ISE's argument is not only to advance functionality for electronic trading but in fact to shut out competition from exchanges and participants who embrace traditional open outcry trading by eliminating the disclosure and transparency that has been a key building block of our securities markets. Because the ISE has made a business decision to not open a trading floor is no reason to reduce competition. As we and the many others have previously demonstrated, passage of QCC would be detrimental to price discovery and reduce market transparency. For these reasons, we believe the ISE has not demonstrated that the QCC proposal is consistent with the Exchange Act and, as a result, the Commission should disapprove the proposal.

Very truly yours,

Janet L McGinness