UNITED STATES OF AMERICA

Before the
Securities and Exchange Commission
November 12, 2009

Securities Exchange Act of 1934
Release No. 60988

In the Matter of **Chicago Board Options Exchange, Incorporated** **File No. SR-ISE-2009-35**	**Order Denying International Securities Exchange, LLC's Motion to Lift the Commission Rule 431(e) Automatic Stay of Delegated Action Triggered by Chicago Board Options Exchange, Incorporated's Notice of Intention to Petition for Review**

On August 28, 2009, the Division of Trading and Markets ("Division") issued an order pursuant to delegated authority, 17 CFR 200.30-3(a)(12), approving a proposed rule change submitted by the International Securities Exchange, LLC ("ISE") to establish a Qualified Contingent Cross ("QCC") Order.[1]

On September 4, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE") filed a notice of intention to petition for review of the Delegated Order pursuant to Rule 430 of the Rules of Practice.[2] Pursuant to Rule 431(e), upon the filing of such notice the action by delegated authority shall be stayed until the Commission orders otherwise.

On September 11, 2009, ISE filed a motion to lift the automatic stay arguing that the process that led to the Division's exercise of delegated approval provided a reasonable opportunity for the public to express its views and that there was nothing arbitrary or unreasonable in the Division's exercise of delegated authority. Further, ISE argued that there would not be irreparable or irreversible harm to CBOE or other market participants if the stay were to be lifted.

On September 14, 2009, CBOE filed a response to ISE's motion arguing that the stay should not be lifted because the public and that CBOE would be harmed in absence of the stay. Specifically, CBOE argues that public customers would be harmed if ISE is permitted to implement its QCC Order because such orders would lose priority to QCC Orders and may not be executed. CBOE also argues that those customers whose orders are being crossed would be harmed because their orders would not be exposed for potential price improvement. Finally,

1 See Securities Exchange Act Release No. 60584 (August 28, 2009), 74 FR 45663 (September 3, 2009) (File No. SR-ISE-2009-35) ("Delegated Order").

2 17 CFR 201.430.

CBOE argues that it would be harmed if ISE's QCC Orders were implemented because it could lose significant numbers of orders from firms that would take advantage of ISE's new order type. In contrast, CBOE asserts that ISE would not suffer any irreparable harm if the QCC Order were not available as ISE could still execute large stock-options trades, after exposure to the market.

CBOE also argues in its response that if ISE is permitted to implement the QCC Order while that Commission is considering CBOE's petition, other exchanges, including CBOE, would be pressured for competitive reasons to expend resources to adopt similar order types. If the Commission ultimately decides to set aside the Delegated Order, CBOE argues these resources would have been wasted.

On September 22, 2009, ISE submitted a reply to CBOE's response to its Motion to Lift the Stay. Among other things, in its reply ISE reiterates its position that CBOE's Petition is not likely to succeed due to the thorough analysis contained in the Delegated Order. ISE also contends that CBOE would not suffer irreparable harm if the Commission lifts the stay. ISE argues that the only harm that CBOE would suffer is from competition from ISE for order flow for large stock/option combination orders. ISE, on the other hand, argues that it would suffer harm if the stay remains in effect because without the QCC order, it cannot offer its members the ability to execute large stock/option trades that are not presented as package as the exchanges with floors do.

ISE further states in its reply that lifting the stay will benefit other market participants and serve the public interest. Specifically, ISE claims that lifting the stay will benefit ISE members by providing an alternative, efficient means for effecting large stock/option combination orders. Further, ISE claims that continuation of the stay harms the public by prohibiting ISE from offering an efficient, competitive alternative to the those processes offered on the floor of certain exchanges for effecting large stock/option trades that are not presented as package.

The Commission finds that lifting the automatic stay of the Delegated Order is inappropriate in this instance. The Commission understands that for competitive reasons additional options exchanges have proposed, and others are likely to propose, to adopt similar order types for use on their exchanges. Thus, the Commission's decision on CBOE's Petition could have a wide effect on the other markets and their participants. The Commission believes that CBOE has raised important policy issues that warrant Commission consideration prior to allowing use of the QCC order on ISE or similar order types on other exchanges.

It is therefore ORDERED, that ISE's Motion to Lift the Automatic Stay is hereby denied, and

It is FURTHER ORDERED that the stay in effect shall be continued.

By the Commission.

Elizabeth M. Murphy
Secretary