

UNITED STATES OF AMERICA
before the
Securities and Exchange Commission

Securities Exchange Act of 1934
Release No. 63954 / February 24, 2011

File No. SR-ISE-2009-35

In the Matter of)	
Chicago Board Options)	
Exchange, Incorporated)	
400 South LaSalle Street)	
Chicago, IL 60605)	
)	Order Setting Aside the Order by Delegated Authority Approving SR-ISE-2009-35 and Dismissing CBOE's Petition for Review

On June 15, 2009, the International Securities Exchange, LLC (“ISE”) filed a proposed rule change with the Commission seeking to establish a Qualified Contingent Cross (“QCC”) Order. The proposed rule change was published for comment on June 26, 2009.¹ On August 28, 2009, the Commission approved, by authority delegated to the Division of Trading and Markets, the proposed rule change (“Approval Order”).² On September 4, 2009, the Chicago Board Options Exchange (“CBOE”) filed a notice of intention to file a petition for review of the Approval Order and, on September 14, 2009, CBOE filed a petition for review with the Commission (“Petition for Review”). Under the Commission’s Rules of Practice, the filing of CBOE’s Petition for Review automatically stayed the Approval Order.³ On September 11, 2009, ISE filed a motion to lift the automatic stay. On November 12, 2009, the Commission granted CBOE’s Petition for Review and denied a motion filed by ISE to lift the automatic stay.⁴

On March 17, 2010, the Commission approved the placement in the public file of a memorandum by its Division of Risk, Strategy, and Financial Innovation (“RiskFin”) analyzing certain data relating to ISE’s proposed rule change (“RiskFin Memo”). At the same time that the Commission approved placement of the RiskFin Memo in the public file, the Commission also issued an order extending the time to file statements in support of or in opposition to the

¹ See Securities Exchange Act Release No. 60147 (June 19, 2009), 74 FR 30651 (June 26, 2009).

² See Securities Exchange Act Release No. 60584 (August 28, 2009), 74 FR 45663 (September 3, 2009).

³ 17 C.F.R. § 201.431(e).

⁴ See Securities Exchange Act Release Nos. 60988 and 60989.

Approval Order to give the public an opportunity to review the data and analysis in the RiskFin Memo.⁵

On July 14, 2010, ISE filed a new proposed rule change to modify the requirements for QCC Orders (file number SR-ISE-2010-73). The Commission published for public comment the modified proposal.⁶ Also on July 14, 2010, ISE submitted a letter requesting that the Commission vacate the Approval Order concurrently with the approval of the new proposed rule, SR-ISE-2010-73.⁷

We have determined to construe ISE's request as a petition to vacate the Approval Order pursuant to Commission Rule of Practice 431(a), which permits us to "affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, any action made pursuant to" delegated authority.⁸ We find that, in light of the filing of ISE's modified proposal regarding the QCC Orders,⁹ it is appropriate to grant ISE's request and set aside the Approval Order. We also find that, given this disposition of the Approval Order, CBOE's petition for review of that order has become moot.

Accordingly, IT IS ORDERED that the August 28, 2009 order approving by delegated authority ISE's proposed rule change number SR-ISE-2009-35, be, and it hereby is, set aside; and

It is further ORDERED that the petition for review, filed by the Chicago Board Options Exchange on September 14, 2009, of the August 28, 2009 order approving by delegated authority ISE's proposed rule change number SR-ISE-2009-35 be, and it hereby is, DISMISSED.

By the Commission.

Elizabeth M. Murphy
Secretary

⁵ See Securities Exchange Act Release No. 61722.

⁶ See Securities Exchange Act Release No. 62523 (July 16, 2010), 75 FR 43211 (July 23, 2010).

⁷ See letter from Michael J. Simon, Secretary and General Counsel, ISE, to Elizabeth M. Murphy, Secretary, Commission, dated July 14, 2010.

⁸ 17 C.F.R. § 201.431(a).

⁹ The Commission has this day issued a separate order approving SR-ISE-2010-73.