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April 7, 2010

**VIA EMAIL AND
OVERNIGHT COURIER**

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File Number SR-ISE-2009-35

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 comment on the above referenced filing of the International Securities Exchange Inc. ("ISE") concerning Qualified Contingent Cross Orders ("QCC"). NYSE Euronext is concerned that ISE's QCC proposal would: (i) unnecessarily eliminate order exposure requirements, (ii) lessen marketplace transparency, (iii) limit price discovery opportunities, (iv) erode quote quality, (v) decrease market reliability, and (vi) raise customer protection concerns. For these reasons, discussed in greater detail below, NYSE Euronext submits this letter in opposition to the Commission's approval, made by delegated authority, of SR-ISE-2009-35 and requests that the Commission disapprove ISE's QCC filing.

Background

Previously, in a letter dated December 3, 2009, NYSE Euronext expressed strong reservations regarding the introduction of QCCs in the listed options marketplace. Since then, several other market participants have submitted letters and/or analyses, including letters submitted to the Commission by the ISE (dated December 3, 2009, December 16, 2009, and March 1, 2010), as well as an analysis conducted by the Securities and Exchange Commission's Division of Risk, Strategy, and Financial Innovation ("Division"). We are specifically responding to certain statements and observations set forth in these documents.

ISE's QCC Is Not Equivalent to Open Outcry Crossing Transactions

The ISE compares the operation of its proposed QCC to contingency orders currently available for execution on floor-based exchanges. The ISE specifically notes: "QCC will have no impact on the options market, as these large-size contingency orders are being executed on the floor-based exchanges today in a manner that is very similar to the QCC proposal."[1]

This statement is incorrect. Each of the floor based exchanges[2] has rules specific to crossing transactions, including facilitation or solicitation trades. Unlike the ISE's QCC proposal, those rules require the disclosure of all terms of the trade, including any and all contingencies, such as the existence and price of a stock leg as well as protection for customer orders and competing market maker interest. ISE's QCC are not exposed at all but rather are negotiated off-exchange and crossed immediately on ISE upon entry and ahead of customer interest. Without the exposure required for floor-based transactions, ISE's QCC do not offer any transparency or potential for price improvement and are thus not comparable to floor-based crossing transactions.

Floor-based Transactions Are Systematized, Exposed, and Transparent, Unlike QCC

ISE argues that QCCs fosters fair competition amongst electronic exchanges on the one hand and floor-based exchanges on the other. In part to justify eliminating the exposure requirement, the ISE suggests that relatively few traders are present to hear "announced" orders and that open outcry orders are not disseminated electronically to market participants. This argument is off the mark and fails to address the requirements currently in place at NYSE Arca and NYSE Amex. In particular, both NYSE Amex and NYSE Arca have Trading Officials who oversee trading in open outcry. Trading Officials do several things, including ensuring that (i) the broker has a systematized order prior to representation in the trading crowd, (ii) the broker announces the order, including all terms and contingencies, in a manner that can be heard by the trading crowd, and (iii) the broker is aware of any customer interest in the book prior to permitting a trade to be effected. On NYSE Amex, upon execution, any customer interest in the book at the execution price is automatically executed. On NYSE Arca, all interest in the book at the execution price is automatically executed. An audit trail of entry time, execution time (with BBO and NBBO parameters), and print time are recorded electronically, showing that the open outcry transaction was properly systematized,

[1] *See* Letter dated December 3, 2009 from Michael J. Simon, Secretary and General Counsel, ISE, to Elizabeth M. Murphy, Secretary, U.S. Securities Exchange Commission.

[2] See CBOE Rule 6.74(b)(i), Nasdaq PHLX Rule 1064(b)(i), NYSE Amex Rule 934.1NY(1) and NYSE Arca Rule 6.47(b)(2).

vocalized, and integrated with the electronic market at time of execution. This market structure is considerably more transparent than what ISE proposes with QCC.

The ISE's QCC Proposal Will Increase Off-Exchange Transactions and Erode Transparency

The ISE argues that QCCs will not generate greater off-exchange transactions since the marketplace already permits these types of transactions. Although trades are being negotiated off-exchange today, when such trades are communicated on a trading floor or entered into an electronic crossing mechanism, all components of the order must be exposed prior to execution. By eliminating this exposure requirement, ISE's QCC will result in more of these transactions being negotiated off-exchange. Off-exchange transactions, without any exposure requirement will negatively impact the markets' and trading community's ability to reach a consensus regarding fair value. With less consensus regarding fair value, liquidity providers will likely submit less aggressive quotes (or refrain from quoting altogether) while devoting more resources to establish themselves as off-exchange liquidity providers. This is not a market structure that benefits investors.

NYSE Euronext notes the findings of the Division regarding single or multiple contras on various order sizes. Attached are findings for NYSE Amex and NYSE Arca for the same time frames used in the Division study, with analysis on the same basis as the Division. While the results are mixed in terms of highest percentage of executions against a single contra, at no time were 100% of orders crossed with only 1 contra. It must also be pointed out that 100 % of the NYSE Arca and NYSE Amex transactions were exposed to the marketplace, and therefore bound by the quoted markets. The crossing of two orders on or within the BBO of the options market, with no interference from other participants despite exposure to the market, indicates that the cross was fairly priced as part of the off-exchange negotiation. Without exposure, there is no such comfort that the best possible price was obtained.

ISE's QCC Is Not Equivalent to Electronic Complex Orders

The ISE also compares the operation of its QCC to electronic complex orders. However, executions at exchanges which support an electronic complex order book are subject to similar rules[3] requiring exposure, as well as parameters that yield priority to customer orders on the options legs of such orders and/or to the entire volume on the options legs. These rules are in effect whether there is an equity or ETF ("stock") leg associated with the complex order. Further, an auction has been required to be made available to clients prior to any exchange transacting a complex execution at prices less than a Minimum Price Variation

[3] See NASDAQ OMX PHLX Rule 1080(c)(ii)(C)(1), NYSE Arca Rule 6.47A, NYSE Amex Rule 935NY, ISE Rule 717.

("MPV") for the option legs, regardless of the presence of a stock leg.[4] None of these requirements, which facilitate transparency and price improvement opportunities, are part of the ISE's QCC proposal. Instead, ISE argues that the presence of a stock leg somehow obviates the need for transparency and exposure. The ISE insists that since the price of a stock-options complex order is a net price, derived from the price of the options and stock legs, and since the options leg of the QCC is bound by the NBBO, it is reasonable for any potential price improvement to originate from the stock leg. However, there is nothing new or novel about stock-option orders that should preclude the exposure requirement and obtaining the best net price is dependent on the pricing of all components of the order, not just the options legs.

Current Exemption for Qualified Contingent Trades Is Appropriately Narrow

The original Order (SEC, 2006) granting an exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS notes that "the exemption was narrowly drawn to encompass only those trades most in need of relief to remain part of a viable trading strategy and where execution of the NMS stock component at a trade-through price is reasonably necessary to effect the contingent trade." The Commission further noted that "Contingent trades therefore are one example of a wide variety of trades that contribute to the efficient functioning of the securities markets and the price discovery process." Finally, the Commission advised that "a material change in the nature or frequency of such trades could cause the Commission to reconsider the terms of the exemption." NYSE Euronext is concerned that approval of ISE's QCC proposal will significantly increase the frequency of such un-exposed transactions, and would therefore expand the exemption beyond its current limits to being narrowly drawn to a widely used order type. Exempt from exposure, as proposed, the ISE's QCC will fail to pass the Commission's standards established in its limited exemption by lessening transparency and limiting price discovery opportunities. By its own terms, the ISE's QCC proposal should fail.

If a market maker is asked to price an order, based on a given stock price, whether it is a buy write, a spread, or other combination, the net price will reflect the relationship between all components of the trade. However, because the individual option quotes reflect a net price for the order based on the current market in the underlying, the market maker's calculation of fair value will change, and in the case of high delta options, drastically change, if the underlying price moves beyond the current NBBO of the equity. Because the QCC Order exempts the stock price from liability for trading through the NBBO, this has an impact on the net price of the combination order. It is disingenuous to claim that no exposure is necessary because of the stock component. It is precisely because the stock leg may trade at a range with no relation to the currently quoted NBBO market that the need for price discovery in the options

[4] *See e.g.* Securities Exchange Act Release No. 34-54135 (July 12, 2006), 71 FR 41287 (July 20, 2006)(Order approving SR-CBOE-2005-65 and Amendment Nos. 1 and 2 thereto, relating to the processing of Complex Orders in the Hybrid Trading System).

marketplace is so critical. The markets are efficient, and the derivative relationship between the underlying price and the fair-value price of the option components of the order will be maintained only where price discovery exists.

Only when an order is exposed and multiple participants are given the opportunity to respond with their best price and size, can price discovery occur. Even rules regarding solicitation crosses with a 500 contract threshold for an All-Or-None contingency recognize that, in aggregate or alone, respondents may be willing to both price improve and meet the size requirements of the order being exposed.

In contrast, if such trades occur in a vacuum, with no exposure and without all terms of the contract exposed, the exact opposite will occur. Erosion of quote quality and displayed liquidity, coupled with customer orders displayed at the best price that are not entitled to participate in ISE's proposed private transactions will result in a de-stabilized, chaotic market, at the expense of transparency and investor confidence.

ISE's QCC Raises Customer Protection Concerns

Eliminating exposure requirements that should otherwise apply to QCC eliminates any opportunity for price improvement, and thus cannot ensure the order is competitively priced. In so doing, ISE's QCC proposal fails to offer any customer protection. In addition, by eliminating exposure to the market, the ISE's QCC proposal fosters a disincentive to those who continuously quote or post liquidity, which further erodes the reliability and quality of the national market system.

For the reasons stated above, NYSE Euronext respectfully requests that the Commission disapprove the ISE's QCC filing.

Sincerely,

Pia K. Bennett

cc: Elizabeth King
Heather Seidel