

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62216; File No. SR-ISE-2010-51)

June 3, 2010

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Permit Listing Options Series that are Restricted to Closing Transactions if Such Series are Listed and Restricted to Closing Transactions on Another National Securities Exchange and to Permit Opening Transactions by Market Makers to Accommodate Closing Transactions of Other Market Participants in Option Series Where the Underlying Security Does Not Meet the Then Current Requirements for Continuance of Such Approval

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 May 21, 2010, the International Securities Exchange, LLC (“Exchange” or “ISE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Exchange has filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 ISE proposes to amend Rule 503 to permit the Exchange to list series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange. The text of the proposed rule change is available on the Exchange’s Web site

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<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)(6).

[www.ise.com](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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose – The purpose of the proposed rule change is to amend ISE Rule 503 to permit the Exchange to list option series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange.

This filing is based on filings previously submitted by the Chicago Board Options Exchange ("CBOE"),<sup>5</sup> NASDAQ OMX PHLX ("PHLX")<sup>6</sup> and NASDAQ Options Market ("NOM").<sup>7</sup> The impetus for the CBOE filing, as CBOE noted, was a customer request for it to list a series of options that was previously delisted by the filing exchange but was listed on another exchange and restricted to closing transactions, a situation that may equally occur on ISE as well as other options exchanges.

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<sup>5</sup> See Securities Exchange Act Release No. 60625 (September 4, 2009), 74 FR 46825 (September 11, 2009) (SR-CBOE-2009-066).

<sup>6</sup> See Securities Exchange Act Release No. 60879 (October 26, 2009), 74 FR 56252 (October 30, 2009) (SR-PHLX-2009-90).

<sup>7</sup> See Securities Exchange Act Release No. 60880 (October 26, 2009), 74 FR 56677 (November 2, 2009) (SR-NASDAQ-2009-090).

Rule 502 (Criteria for Underlying Securities) sets forth the requirements or criteria that underlying securities must meet before the Exchange may initially list options on such securities. Rule 503 sets forth listing maintenance and delisting criteria in respect of securities underlying options listed on the Exchange that are used by the Exchange to determine whether such listing status should be continued. These rules do not have provisions for listing option series that are restricted to closing transactions where such series are listed on another exchange.

ISE proposes to add new Supplementary Material .01 Rule 503 to provide that if an option series is listed but restricted to closing transactions on another national securities exchange, the Exchange may list such series (even if such series would not otherwise be eligible for listing under the Exchange's rules), which shall also be restricted to closing transactions on the Exchange.<sup>8</sup>

Similar to series that no longer meet the Exchange's criteria for continued listing, opening transactions by market makers executed to accommodate closing transactions of other market participants will be permitted in any restricted series listed pursuant to proposed Supplementary Material .01 Rule 503. No restrictions will be in place with respect to the exercise of any restricted series. Additionally, the Exchange is making changes in Rule 503 to propose an exception for these opening transactions by market makers to accommodate closing transactions of other market participants. This proposed change is to conform Rule 503 to similar provisions in listing rules of other options exchanges.<sup>9</sup>

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<sup>8</sup> The parenthetical text in proposed Rule 503 Supplementary .01 is being proposed to eliminate ambiguity about the Exchange's ability to list a restricted series in the event other Exchange Rules would otherwise prohibit the listing of that series.

<sup>9</sup> See Securities Exchange Act Release Nos. 48142 (July 9, 2003), 68 FR 42150 (July 16, 2003) (SR-CBOE-2002-36); and 60879 (October 26, 2009), 74 FR 56252 (October 30, 2009) (SR-PHLX-2009-90).

The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are listed and traded on other exchanges.

(b) Basis – The basis under the Securities Exchange Act of 1934 (“Exchange Act”) for this proposed rule change is the requirement under Section 6(b)(5) 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 general, to protect investors and the public interest. In particular, the proposed rule change will permit the Exchange to accommodate possible customer requests and allow execution of trades on the Exchange and will encourage competition and not harm investors or the public interest.

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 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of 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.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>13</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 has requested that the Commission waive the 30-day operative delay period.

The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. In particular, the Exchange would be permitted to list the restricted series solely for the purpose of closing transactions as long as the restricted series is listed and restricted to closing transactions on another national securities exchange. Further, the proposal would allow an exception for opening transactions by market makers to accommodate closing transactions of other market participants. The Commission notes that the proposed rule change is substantially similar to the rules of other options exchanges.<sup>14</sup> The Commission therefore designates the proposal operative upon filing.<sup>15</sup>

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<sup>12</sup> The Exchange has satisfied the five-day pre-filing notice requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> See CBOE Rule 5.4.12; NOM Chapter IV, Section 4; and Phlx Rule 1010.

<sup>15</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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.<sup>16</sup>

#### 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-2010-51 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-2010-51. 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, 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

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(C).

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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2010-51 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).