

All submissions should refer to File Number SR-ISE-2008-90. 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 that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. 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-2008-90 and should be submitted on or before January 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>4</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59066; File No. SR-ISE-2008-78]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Relating to Quoting Obligations for Competitive Market Makers

December 8, 2008.

#### I. Introduction

On October 21, 2008, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section

19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the Exchange's quoting obligations for Competitive Market Makers ("CMMs"). The proposed rule change was published for comment in the **Federal Register** on November 3, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to amend ISE Rules 713, 804 and 805 to change the quoting obligation for the Exchange's CMMs. ISE currently requires CMMs to participate in the opening and maintain continuous quotations in all of the series of at least 60 per cent of the options classes in the bin or 60 classes, whichever is less. In addition, if a CMM chooses to quote any series of an options class above and beyond this minimum requirement, it must then maintain continuous quotations in all of the series of that class throughout that trading day. In September 2007, the Exchange initiated a pilot to reduce the quoting obligations for CMMs in 20 options classes.<sup>4</sup> Under the Pilot, CMMs were required to maintain quotations in only 60 per cent of the series of an options class overlying the pilot program securities. The Pilot recently expired and the Exchange now proposes to change the quoting requirements for CMMs on a permanent basis.

The Exchange does not believe that the reduced quoting obligations adopted as part of the Pilot have had any negative effect on the quality of its markets.<sup>5</sup> Therefore, ISE proposes to adopt the 60 per cent standard for all options series on a permanent basis, except for CMMs that receive preferenced order flow. The Exchange proposes that a CMM will be required to maintain continuous quotations in at least 90% of the series of any option class in which it receives preferenced orders.

The Exchange also proposes to lower the minimum number of options classes that a CMM is required to quote from 60

to 40. The Exchange believes that lowering the requirement will attract additional market making participants on the ISE.

Finally, the Exchange proposes to amend Rule 805 (Market Maker Orders) regarding the percentage of volume a CMM may execute in options to which it is not appointed. Specifically, Rule 805 currently provides that a CMM may execute up to 25% of its volume in options classes to which it is not appointed. Because the Exchange is lowering the number of appointed classes in which a CMM is required to quote, the Exchange believes it is appropriate to base the 25% allowance on volume that is executed while a CMM is actually fulfilling its market maker quotation obligations.

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>7</sup> which requires that an exchange have rules designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, which is intended to reduce the number of options quotations required to be submitted without adversely affecting the quality of the Exchange's markets, is consistent with the Act. The Commission notes that the Exchange has operated a one-year Pilot program that reduced the quoting obligations for CMMs and during the Pilot period the Exchange did not observe any adverse effect on its market.<sup>8</sup> The Commission believes it is appropriate to adopt the modified quotation obligations for CMMs on a permanent basis. In addition, the Commission believes that it is appropriate to reduce the quoting obligations of a CMM because the percentage of volume a CMM may

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 58861 (October 27, 2008), 73 FR 65432 (the "Notice").

<sup>4</sup> See Securities Exchange Act Release No. 56444 (September 14, 2007), 72 FR 54089 (September 21, 2007) (Order Granting Approval of SR-ISE-2007-45 Relating to a Quote Mitigation Plan for Competitive Market Makers) (the "Pilot").

<sup>5</sup> According to the Exchange, in practice, market makers simply widen their quotations when they do not want to trade in a particular series, so requiring them to maintain continuous quotations in all series merely increases capacity requirements for the market makers.

<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> The Commission notes that it has already approved internal quote mitigation strategies on other exchanges that relieve some market makers of the obligation to quote every series of every class to which they are appointed. See Phlx Rule 1014(b)(ii)(D)(1) and Amex Rule 994(c)(iv).

<sup>4</sup> 17 CFR 200.30-3(a)(12).

execute in options classes to which it is not appointed will be based on volume that is executed in those options classes in which a CMM maintains continuous quotes in fulfillment of its obligations as a market maker.

Finally, the Commission believes that it is appropriate to impose a higher continuous quoting requirement on CMMs who receive preferred order flow because such CMMs receive the benefit of enhanced allocation rights and therefore should assume an increased obligation to provide continuous quotations. The Commission notes that a similar quotation standard for preferred market makers was previously adopted on another exchange.<sup>9</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-ISE-2008-78) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59069; File No. SR-NYSE-2008-124]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending for Three Months to March 31, 2009 the Moratorium Related to the Qualification and Registration of Registered Competitive Market Makers Pursuant to NYSE Rule 107A and Competitive Traders Pursuant to NYSE Rule 110

December 8, 2008.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 2, 2008, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange

Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 Exchange proposes to extend for three months to March 31, 2009 the moratorium related to the qualification and registration of Registered Competitive Market Makers ("RCMMs") pursuant to NYSE Rule 107A and Competitive Traders ("CTs") pursuant to NYSE Rule 110. The text of the proposed rule change is available at [www.nyse.com](http://www.nyse.com), the NYSE, and 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

##### 1. Purpose

The Exchange proposes to extend for three months to March 31, 2009 the moratorium related to the qualification and registration of RCMMs pursuant to NYSE Rule 107A and CTs pursuant to NYSE Rule 110.

On September 22, 2005, the Exchange filed SR-NYSE-2005-63 <sup>4</sup> with the Securities and Exchange Commission ("Commission") proposing to implement a moratorium on the qualification and registration of new RCMMs and CTs ("Moratorium"). The purpose of the Moratorium was to allow the Exchange an opportunity to review the viability of RCMMs and CTs in the

NYSE HYBRID MARKET<sup>SM</sup> ("Hybrid Market").<sup>5</sup>

During each phase of the Hybrid Market, the NYSE implemented new system functionality that generated additional data to review. As a result, the Exchange was unable to make an informed decision as to the viability of RCMMs and CTs in the Hybrid Market. The phasing in implementation of the Hybrid Market required the Exchange to extend the Moratorium an additional six times over a twenty-four (24) month period.<sup>6</sup>

On October 24, 2008, the Commission approved the Exchange's new market model filing ("New Model").<sup>7</sup> The New Model filing: (i) Provided market participants with additional abilities to post hidden liquidity on Exchange systems; (ii) created a Designated Market Maker ("DMM"), and phased out the NYSE specialist; and (iii) enhanced the speed of execution through technological enhancements and a reduction in message traffic between Exchange systems and its DMMs. In light of the implementation of the New Model, the Exchange requested an extension of the Moratorium to evaluate the viability of the RCMMs and CTs in the proposed New Model two times over a six (6) month period.<sup>8</sup>

The Exchange is currently implementing the second phase ("Phase 2") of technology required for the operation of the New Model. Upon completion of the installation of the Phase 2 technology,<sup>9</sup> the New Model will operate as a pilot scheduled to end on October 1, 2009. Accordingly, the Exchange seeks to have the ability to review data that will be generated as a

<sup>5</sup> See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05) (establishing the NYSE HYBRID MARKET<sup>SM</sup>).

<sup>6</sup> See e-mail from Jennifer Kim, Counsel, NYSE to Sara Gillis, Special Counsel, Division of Trading and Markets, Commission, dated December 4, 2008; See Securities Exchange Act Release Numbers 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR-NYSE-2006-48); 54985 (December 21, 2006), 72 FR 171 (January 3, 2007) (SR-NYSE-2006-113); 55992 (June 29, 2007), 72 FR 37289 (July 9, 2007) (SR-NYSE-2007-57); 56556 (September 27, 2007), 72 FR 56421 (October 3, 2007) (SR-NYSE-2007-86); 57072 (December 31, 2007), 73 FR 1252 (January 7, 2008) (SR-NYSE-2007-125); 57601 (April 2, 2008), 73 FR 19123 (April 8, 2008) (SR-NYSE-2008-22).

<sup>7</sup> See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46).

<sup>8</sup> See e-mail from Jennifer Kim, Counsel, NYSE to Sara Gillis, Special Counsel, Division of Trading and Markets, Commission, dated December 4, 2008; See Securities Exchange Act Release Numbers 58033 (June 26, 2008), 73 FR 38265 (July 3, 2008) (SR-NYSE-2008-49); 58713 (October 2, 2008), 73 FR 59024 (October 8, 2008) (SR-NYSE-2008-96).

<sup>9</sup> Phase 2 is scheduled to be completed no later than January 2, 2009.

<sup>9</sup> See CBOE Rule 8.13(b)(iii) (requiring a preferred market-maker to provide continuous electronic quotes in at least 90% of the series of each class for which it receives preferred market-maker orders).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR-NYSE-2005-63).