Janet M. Kissane
Senior Vice President – Legal & Corporate Secretary
Office of the General Counsel

20 Broad Street
New York, New York 10005
t 212.656.2039 | f 212.656.8101
jkissane@nyx.com

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VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

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 NYSE Amex LLC ("NYSE Amex") and NYSE Arca, Inc. ("NYSE Arca"), appreciates the opportunity to comment in opposition to the action made by delegated authority regarding approval of the International Securities Exchange, LLC ("ISE") rule change relating to the Qualified Contingent Cross order ("QCC").[1]

NYSE Euronext, as an owner and operator of two options exchanges, is very interested in all option market structure changes. In particular, the approval of the ISE filing for QCC's, has given us pause as we contemplate changes to both rules and technology.

A review of the filing and approval order reveal that QCC's are trades that will print without exposure or any opportunity for market participants to participate unless they have been privy to the private negotiation that resulted in the matched orders that comprise the QCC. This type of trading activity is common in the equities markets that feature dark pools, trade reporting facilities ("TRF's), and other mechanisms that are not used in the options marketplace. The absence of these mechanisms is primarily a result of the long standing efforts of the Securities and Exchange Commission ("SEC" or "Commission") to encourage price discovery through transparency and competitive quoting on the listed options markets. This can be seen in numerous rule approvals that limit participation guarantees[2] and ensure order exposure requirements[3] are being fulfilled. It is fair to say that NYSE Euronext was

1 *See* Exchange Act Release No. 60584 (August 28, 2009), 74 FR 45663 (September 3, 2009) ("ISE QCC Release").

2 For example, *See* NYSE Arca Rules 6.47(b)(5), 6.76A(a)(1)(A)(i), NYSE Amex Rules 934.1NY(4)(C), 964NY(b), and ISE Rules 716(d)(ii), 723(d)(4).

3 *See* NYSE Arca Rule 6.47A, NYSE Amex Rule 935NY, and ISE Rule 717(d).

quite surprised at not only the approval of SR-ISE 2009-35 but the speed in which approval was granted, given that QCC's appear to be in direct contravention to furthering transparency and price discovery. NYSE Euronext is opposed to such a significant change in options market structure that is a direct disincentive to market makers and will likely encourage wider quoted markets. Implementing this functionality would be harmful to the growth prospects, not just for our business, but for the overall options industry. That said, if QCC's ultimately do become part of the options market structure, NYSE Euronext will be forced to file for similar functionality immediately in order to remain competitive.

QCC's are matched orders that resulted from a private negotiation between entities involving at least 500 option contracts and shares of stock as needed for the position to be "fully hedged." Once both the buy side and sell side for the QCC have come to terms and agreed to a net price for the package the option portion of the trade can be clean crossed on the ISE at or within the National Best Bid/Offer ("NBBO") with no exposure. We are alarmed at this significant shift regarding market exposure. It is our understanding that the stock leg of a QCC can then be printed at any price within the day's range for the stock. Consequently the fact that the option leg prints at or within the NBBO is meaningless in terms of ensuring that the QCC net trading price is competitive, since the relationship between the option leg(s) and the stock leg in a QCC is not bound by the currently disseminated price of the underlying. For example, the price of a 50 delta option hedged with $40 stock is very different contrasted with a 50 delta option hedged with $45 stock. Consider the following example of a buy/write – a trade where the customer is looking to purchase 50,000 shares of stock and simultaneously sell 500 call options:

Security	**Size**	**Bid**	**Ask**	**Size**
Stock ABC	300	47.97	48.00	600
Dec 50 Calls	122	.72	.75	344

Given these quoted markets in the stock and option – the market for the buy/write would be $47.22 x $47.28 and this is how it would be presented on a trading floor – a complete package for a net debit or credit. This is a critical difference in comparison with a QCC.

A QCC would only ensure that the option leg prints at or within the NBBO – in this case the option leg would print at or between $.72 and $.75. The stock could then be printed on a TRF at any price within the day's range for the stock. Continuing the above example, means, under the ISE rule, the QCC provision would allow stock to be crossed at $50.00, for example, if that price were within the day's trading range for the underlying. Consider, if the customer were purchasing the buy/write by selling the Dec 50 Calls at $.73 and buying stock for $50, the net debit would be $49.27-- far outside the net price NBBO (shown above) of $47.22 x $47.28. It is therefore meaningless that the option leg is printing inside the NBBO of the series. As these examples illustrate, QCC's assurance that the option leg prints at or within the NBBO does not guarantee the package is competitively priced and afforded any meaningful price discovery when the stock leg can be printed separately and outside the current market prices, and without any exposure that would provide competing participants a chance to bid or offer for the entire package.

Based on this understanding of how QCC's would work, NYSE Euronext questions how QCCs "can benefit the market as a whole and contribute to the efficient functioning of the securities markets and the price discovery process."[4] Indeed, allowing QCC's to rely on the option's market NBBO solely for price discovery of the options leg(s), while preventing those who established the NBBO from participating in the trade, creates disincentives for competitive quoting within the option's marketplace. It cannot be stressed enough that since the participant(s) quoting at the NBBO never has the opportunity to bid or offer for any part of the order – either the stock and/or option leg – there is no price discovery taking place. The market makers who are prevented from participating in trades occurring at their quoted prices will eventually spread their quotes wider to increase their profit margins in compensation for the lower volume of trading in which they participate. Eventually market makers may very well question the wisdom of committing capital to make firm markets, available to all options market participants, in the thousands of options series in which they have continuous quoting obligations. When the alternative involves selectively responding to requests to enter into private negotiations that result in a 100% participation guarantee, compared to the 40% participation guarantee a Lead Market Maker or Specialist receives for transparently quoting 90% of the series in their assignment, the incentive to quote competitively evaporates.[5]

This mechanism will foster a two tiered market wherein market participants will display one market to the public via their quotes or orders seen on OPRA and another market to those privileged individuals that have access to their liquidity via private negotiation. Market

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[4] *See* Securities and Exchange Act Release No. 57620 (April 4, 2008) 73 FR 19271 (April 9, 2008) ("QCC Release").

[5] Quoting Obligations for LMMs and Specialists and their equivalents are defined in NYSE Arca Rule 6.37(b), NYSE Amex Rule 925.1NY(b), Chicago Board Options Exchange Rule 8.85(1), NASDAQ OMX PHLX ("PHLX") Rule 1014(b)(ii)(D), and ISE rule 904(e)1 and (e)(2). (ISE and PHLX have a higher standard for Specialists/PMMs).

Makers will be bypassed completely if they are not part of the elite group included in the negotiations. In light of recent statements by the Commission and the ongoing review of dark pools and other forms of trading that lack market transparency,[6] NYSE Euronext believes QCC's should be banned.

If the Commission feels that QCC's do somehow serve the marketplace, NYSE Euronext would then have additional concerns and would require clarification about certain aspects of a QCC as defined in ISE Rule 715 Supplementary Material .01. Sub-paragraph (f) of the Supplementary Material requires the QCC to be "fully hedged," but does not define that term other than to note in the Purpose Statement "…that the member demonstrate that the transaction is fully hedged using reasonable risk-valuation methodologies".[7] The lack of definition is in marked contrast to the minimum 8-to-1 ratio required for other stock/option trades.[8] NYSE Euronext believes that the undefined term, "fully hedged" is problematic and can have multiple meanings. For example, the number of shares of stock required to fully hedge an options position varies depending on whether options delta or some other measure is used. Further, the underlying price may have a wide trading range over the course of a day which will significantly impact an at-the-money option. Without further clarification this undefined term creates ambiguity for the options marketplace.

NYSE Euronext also takes issue with ISE's statement related to stock-options transactions that claims a subset of the options industry "enjoys a significant competitive advantage by virtue of floor-based trading practices that allow these types of crosses to be executed with little or no intervention on the floor."[9] ISE apparently is of the belief that exchanges with floors, such as NYSE Arca and NYSE Amex, allow our permit holders to attempt to cross the option portion of a stock/option trade without disclosing to the trading crowd the existence of the stock leg. This claim is contrary to the approved rules; a broker attempting to do so would be exposed to substantial regulatory risk. Furthermore, even if it were permissible for a broker to attempt to cross the option leg of a stock option order without disclosing the

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[6] See Chairman Mary L. Shapiro's Statement Before the SEC Open Meeting on Flash Orders: "I would note that other market practices may have similar opaque features. As such, the Commission is continuing to review other forms of dark trading that lack market transparency and I expect that initiatives in this area will be considered in the near future." (September 17, 2009).

[7] *See* Exchange Act Release No. 60147 (June 19, 2009), 74 FR 30651 (June 26,2009).

[8] ISE Rule 722(a)(2).

[9] *See* Reply in Support of ISE's Motion to Lift the Commission Rule 431(e) Automatic Stay of Delegated Action (September 22, 2009).

existence of the stock leg, no broker would accept the financial risk of having the option cross unconsummated while exposed in a long or short stock position. Because the open outcry order is being presented for potential price improvement, the broker cannot know they will execute all of the order as a cross (in contrast to the 100% QCC guarantee).

The ISE proposed the QCC provision because the Order Protection and Locked/Cross Market Plan ("Current Plan") did not carry over the limited Trade Through exemption for "Block Trades" found in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Old Plan"). ISE apparently permitted their members to cross the option leg of a stock/option order without disclosure of the stock leg, utilizing the Block Trade Exemption that previously existed. While Stock/Option orders are also exempted from the Trade Through rules both under the Old Plan and the Current Plan, under ISE rules such exemption would only exist if executed in the ISE "Complex Order Mechanism." NYSE Euronext does not understand how this practice, if it was indeed permitted, in any way contributes to the functioning of a fair and orderly marketplace that emphasizes transparency and price discovery.

In conclusion, NYSE Euronext feels that QCC's do not contribute to transparency and price discovery and in fact serve to reduce both while fostering a two tiered market. We urge the Commission to overturn the approval issued under delegated authority.

Very truly yours,

Janet M Kissane

cc: The Hon. Mary Schapiro, Chairman
The Hon. Luis Aguilar, Commissioner
The Hon. Kathleen Casey, Commissioner
The Hon. Troy Paredes, Commissioner
The Hon. Elisse Walter, Commissioner
Mr. Robert W. Cook, Director of Trading and Markets
Ms. Elizabeth King, Associate Director of Trading and Markets