

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61459; File No. SR-ISE-2010-07)

February 1, 2010

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Foreign Currency Options

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> notice is hereby given that on January 19, 2010, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change, as described in Items I, II, and III 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 ISE is proposing to amend its incentive plan for market makers in a newly listed foreign currency option and to establish fees for transactions in the newly listed foreign currency option. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.ise.com>), on the Commission’s Web site at <http://www.sec.gov>, 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

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

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

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

1. Purpose

The purpose of this proposed rule change is to amend the Exchange's incentive plan for market makers on a newly listed foreign currency option, specifically, the Brazilian real ("BRB")<sup>3</sup> and to establish fees for transactions in options on BRB. Options on BRB began trading on the Exchange on January 19, 2010. As such, this proposed fee change will be operative and effective on January 19, 2010.

In order to promote trading in options on BRB, the Exchange proposes to add BRB to the incentive plan the Exchange currently has in place for market makers in options on the New Zealand dollar ("NZD"), the Mexican peso ("PZO") and the Swedish krona ("SKA").<sup>4</sup> Market makers will be able to enter into the incentive plan until March 31, 2010.<sup>5</sup> Participants in the incentive plan are known on the Exchange's Schedule of Fees as Early Adopter Market Makers. Under the incentive plan, the Exchange will waive the applicable transaction fees for both the Early Adopter FXPMM<sup>6</sup> and all Early Adopter FXCMMs<sup>7</sup> that make a market in BRB for as

<sup>3</sup> The Commission previously approved the trading of options on BRB. See Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR-ISE-2006-59).

<sup>4</sup> See Securities Exchange Act Release No. 60536 (August 19, 2009), 74 FR 43204 (August 26, 2009) (SR-ISE-2009-59).

<sup>5</sup> See Securities Exchange Act Release No. 61334 (January 12, 2010) (SR-ISE-2009-115).

<sup>6</sup> A FXPMM is a primary market maker selected by the Exchange that trades and quotes in FX Options only. See ISE Rule 2213.

<sup>7</sup> A FXCMM is a competitive market maker selected by the Exchange that trades and quotes in FX Options only. See ISE Rule 2213.

long as the incentive plan is in effect. Further, pursuant to a revenue sharing agreement entered into between an Early Adopter Market Maker and ISE, the Exchange will pay the Early Adopter FXPMM forty percent (40%) of the transaction fees collected on any customer trade in BRB and will pay up to ten (10) Early Adopter FXCMMs that participate in the incentive plan twenty percent (20%) of the transaction fees collected for trades between a customer and that FXCMM. Market makers that do not participate in the incentive plan, i.e., market makers that begin to quote and trade in BRB after March 31, 2010, will be charged regular transaction fees for trades in this product.

The Exchange is proposing to adopt an execution fee of \$0.40 per contract for all Public Customer Orders<sup>8</sup> in options on BRB.<sup>9</sup> The amount of the execution fee for all Firm Proprietary orders for options on BRB will be \$0.20 per contract and the execution fee for all non-Early Adopter ISE Market Makers in options on BRB shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker orders in equity options.<sup>10</sup> Finally, the amount

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<sup>8</sup> Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

<sup>9</sup> These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2010, these fees will also be charged to Linkage Principal Orders (“Linkage P Orders”) and Linkage Principal Acting as Agent Orders (“Linkage P/A Orders”). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is \$0.27 per contract side and \$0.18 per contract side, respectively. See Securities Exchange Act Release No. 60175 (June 25, 2009), 74 FR 32026 (July 6, 2009) (SR-ISE-2009-36).

<sup>10</sup> The Exchange applies a sliding scale, between \$0.01 and \$0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

of the execution fee for all non-ISE Market Maker orders for options on BRB shall be \$0.45 per contract.<sup>11</sup> The Exchange will not charge a Payment for Order Flow fee for this product.

The Exchange also proposes to waive transaction charges for all Early Adopter Market Makers in BRB in order to further encourage trading in this product. The Exchange believes that the revenue generated from customer, firm proprietary and non-ISE market maker transaction charges and increased order flow would offset the transaction fees that would otherwise be applied to market makers in BRB, thereby allowing the Exchange to recoup those fees while increasing order flow and generating increased revenues.

The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

Finally, as a housekeeping matter, the Exchange proposes to make a non-substantive clarifying change to its Schedule of Fees. Specifically, the Exchange proposes to insert the words "options on" in certain existing fee line items to clarify that the subject fee is applicable to options transactions.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>13</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the

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<sup>11</sup> The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms and for Orders entered into the Price Improvement Mechanism by the member initiating the price improvement order is \$0.20 per contract.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

incentive plan will generate additional order flow to the Exchange by creating incentives to trade options on BRB as well as defray operational costs for Early Adopter Market Makers.

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) of the Act<sup>14</sup> and Rule 19b-4(f)(2)<sup>15</sup> thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2010-07 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 No. SR-ISE-2010-07. 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 changes 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 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of 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 No. SR-ISE-2010-07 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>16</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).