

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60536; File No. SR-ISE-2009-59)

August 19, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes and an Incentive Plan for Three Foreign Currency Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 3, 2009, 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. ISE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 initiate an incentive plan for market makers in three newly listed foreign currency options (“FX Options”) and to establish fees for transactions in these FX Options. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.ise.com>), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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

1. Purpose

The purpose of this proposed rule change is to initiate an incentive plan for market makers on three newly listed FX Options, specifically, the New Zealand dollar ("NZD"), the Mexican peso ("PZO") and the Swedish krona ("SKA")⁵ and to establish fees for transactions in these products. Options on NZD, PZO and SKA began trading on the Exchange on August 3, 2009. As such, this proposed fee change will be operative and effective on August 3, 2009.

In order to promote trading in these new FX Options, the Exchange proposes to initiate an incentive plan for market makers in NZD, PZO and SKA. Market makers will be able to enter into the incentive plan until October 5, 2009. 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 FXPMM⁶

⁵ The Commission previously approved the trading of options on NZD, PZO and SKA. See Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (Order approving the listing and trading of FX Options).

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

and all Early Adopter FXCMMs⁷ that make a market in NZD, PZO and SKA for as 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 NZD, PZO and SKA 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 NZD, PZO and SKA after October 5, 2009, will be charged regular transaction fees for trades in these products.

The Exchange is proposing to adopt an execution fee of \$0.40 per contract for all Public Customer transactions in options on NZD, PZO and SKA.⁸ The amount of the execution fee for all Firm Proprietary transactions will be \$0.20 per contract and the execution fee for all non-Early Adopter ISE Market Makers in NZD, PZO and SKA shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.⁹ Finally, the amount of the execution fee for all non-ISE Market Maker transactions in these

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

⁸ 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).

⁹ 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.

products shall be \$0.45 per contract.¹⁰ The Exchange will not charge a Payment for Order Flow fee for these products.

The Exchange also [sic] proposes to waive transaction charges for all Early Adopter Market Makers in NZD, PZO and SKA in order to further encourage the trading of these FX Options. 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 NZD, PZO and SKA, 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.

2. Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4),¹² 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 proposed incentive plan will generate additional order flow to the Exchange by creating incentives to trade these FX Options as well as defray operational costs for Early Adopter Market Makers.

¹⁰ The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is \$0.20 per contract.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

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 Act¹³ and Rule 19b-4(f)(2)¹⁴ 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 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 email to rule-comments@sec.gov. Please include File Number SR-ISE-2009-59 on the subject line.

¹³ 15 U.S.C. 78s(b)(3)(A). [sic]

¹⁴ 17 CFR 240.19b-4(f)(2).

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-2009-59. This file number should be included on the subject line if email 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 10:00 am and 3:00 pm. Copies of the 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-2009-59 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).