

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67035; File No. SR-ISE-2012-37)

May 21, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Terminate a Pilot Program Related to an Incentive Plan for Certain Foreign Currency Options Traded on the Exchange and to Make a Technical Change to the Schedule of Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 8, 2012, 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 and II below, which Items have been prepared by the Exchange. 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 terminate a pilot program related to an incentive plan for certain Foreign Currency (“FX”) options traded on the Exchange and to make a technical change to its Schedule of Fees. The text of the proposed rule change is available on the Exchange’s website (<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

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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 Exchange proposes to terminate a pilot program related to an incentive plan for certain FX options traded on the Exchange and to make a technical change to its Schedule of Fees. First, the Exchange currently trades a number of FX options, including options on the New Zealand dollar ("NZD"), the Mexican peso ("PZO"), the Swedish krona ("SKA"), the Brazilian real ("BRB"), the Australian dollar ("AUX"), the British pound ("BPX"), the Canadian dollar ("CDD"), the euro ("EUI"), the Japanese yen ("YUK") and the Swiss franc ("SFC").<sup>3</sup> On August 3, 2009, the Exchange adopted an incentive plan applicable to market makers in NZD, PZO and SKA,<sup>4</sup> and on January 19, 2010, added BRB to the incentive plan,<sup>5</sup> and on March 1, 2011, added AUX, BPX, CDD, EUI, YUK and SFC to the incentive plan.<sup>6</sup>

The Exchange adopted the incentive plan to promote trading in NZD, PZO SKA, BRB, AUX, BPX, CDD, EUI, YUK and SFC ("Incentive Plan Symbols"). Pursuant to the incentive

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<sup>3</sup> The Commission previously approved the trading of options on NZD, PZO, SKA, BRB, AUX, BPX, CDD, EUI, YUK and SFC. 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. 61459 (February 1, 2010), 75 FR 6248 (February 8, 2010) (SR-ISE-2010-07).

<sup>6</sup> See Securities Exchange Act Release No. 64012 (March 2, 2011), 76 FR 12778 (March 8, 2011) (SR-ISE-2011-11).

plan, the Exchange waives the transaction fees for the Early Adopter<sup>7</sup> FXPMM<sup>8</sup> and all Early Adopter FXCMMs<sup>9</sup> that make a market in the Incentive Plan Symbols 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 pays the Early Adopter FXPMM forty percent (40%) of the transaction fees collected on any customer trade in the Incentive Plan Symbols and pays up to ten (10) Early Adopter FXCMMs twenty percent (20%) of the transaction fees collected for trades between a customer and that FXCMM in the Incentive Plan Symbols.

Market makers interested in the [sic] participating in the incentive plan are required to enroll by a certain date. Since the inception of the incentive plan, the Exchange has continuously extended the date by which market makers may join the incentive plan,<sup>10</sup> with the most recent extension expiring on March 30, 2012.<sup>11</sup> The Exchange notes that the incentive plan has not achieved its intended objective of attracting more market makers and therefore, the Exchange has

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<sup>7</sup> Participants in the incentive plan are known on the Exchange's Schedule of Fees as Early Adopter Market Makers.

<sup>8</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>9</sup> A FXCMM is a competitive market maker selected by the Exchange that trades and quotes in FX Options only. See ISE Rule 2213.

<sup>10</sup> See Securities Exchange Act Release Nos. 60810 (October 9, 2009), 74 FR 53527 (October 19, 2009) (SR-ISE-2009-80), 61334 (January 12, 2010), 75 FR 2913 (January 19, 2010) (SR-ISE-2009-115), 61851 (April 6, 2010), 75 FR 18565 (April 12, 2010) (SR-ISE-2010-27), 62503 (July 15, 2010), 75 FR 42812 (July 22, 2010) (SR-ISE-2010-71), 36045 (October 5, 2010), 75 FR 62900 (October 13, 2010) (SR-ISE-2010-100), 63639 (January 4, 2011), 76 FR 1488 (January 10, 2011) (SR-ISE-2010-121), 64202 (April 6, 2011), 76 FR 20431 (April 12, 2011) (SR-ISE-2011-16), 64861 (July 12, 2011), 76 FR 42145 (July 18, 2011) (SR-ISE-2011-38); and 65530 (October 11, 2011), 76 FR 64136 (October 17, 2011) (SR-ISE-2011-66).

<sup>11</sup> See Securities Exchange Act Release No. 66103 (January 5, 2012), 77 FR 1757 (January 11, 2012) (SR-ISE-2011-85).

decided to no longer extend the date by which market makers may join the incentive plan. With this proposed rule change, the Exchange is essentially closing the window for market makers to join the incentive plan. The Exchange notes that while market makers will no longer be able to enroll in the incentive plan, those market makers that enrolled in the incentive plan on or before March 30, 2012 will continue to participate in the incentive plan. The Exchange proposes to reflect this change on its Schedule of Fees by amending the text that reflects the incentive plan. Second, the Exchange recently filed a proposed rule change to amend an existing fee cap program and a related service fee (“Fee Cap Filing”).<sup>12</sup> In the Fee Cap Filing, the Exchange deleted what was previously footnote 2 on page 17 of the Schedule of Fees and renumbered what was previously footnote 3 to be footnote 2. The previous footnote 3, which is now footnote 2, references a discount available to subscribers of the Exchange’s various market data products. In the Fee Cap Filing, the Exchange failed to renumber footnote 3 in the body of the Schedule of Fees as footnote 2. The Exchange proposes to make that change with this filing.

## 2. Statutory Basis

The Exchange believes that its proposal to clarify its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the “Exchange Act”)<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. In particular, the Exchange believes that because the incentive plan has not achieved its intended objective of attracting more market makers, it is reasonable for

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<sup>12</sup> See Securities Exchange Act Release No. 66793 (April 12, 2012), 77 FR 23313 (April 18, 2012) (SR-ISE-2012-27).

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

<sup>14</sup> 15 U.S.C. 78f(b)(4).

ISE to no longer permit market makers to enroll in the incentive plan. The Exchange believes the proposed rule change is also reasonable because it corrects a footnoting error and thereby provides greater transparency to the Exchange's Schedule of Fees. The Exchange notes that the proposed rule change is also equitably allocated and not unfairly discriminatory in that it treats similarly situated market participants in the same manner, i.e., all Exchange market makers are now excluded from enrolling in the incentive plan.

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 Exchange 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)(ii) of the Exchange Act.<sup>15</sup> At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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 Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

#### 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 Exchange 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-2012-37 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-2012-37. 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 website (<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 website 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 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-2012-37 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>

Kevin M. O'Neill  
Deputy Secretary

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