

*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-C2-2011-008 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-C2-2011-008. 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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of C2. 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-C2-2011-008 and should be submitted on or before March 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64012; File No. SR-ISE-2011-11]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Market Maker Incentive Plan for Foreign Currency Options

March 2, 2011.

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 February 22, 2011, 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 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 foreign currency ("FX") options. Specifically, ISE proposes to add six currently listed FX options to the incentive plan. 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, on the Commission's Web site at <http://www.sec.gov>, 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 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 in FX options. The Exchange currently has an incentive plan for FX options that was initially adopted on August 3, 2009 for the following three FX options: the New Zealand dollar ("NZD"), the Mexican peso ("PZO"), the Swedish krona ("SKA").<sup>3</sup> The Exchange subsequently added the Brazilian real ("BRB") to the incentive plan.<sup>4</sup> The Exchange now proposes to add the following FX options to the incentive plan: 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>5</sup> Market makers will be able to enter into the incentive plan until March 31, 2011.<sup>6</sup>

Options on AUX, BPX, CDD, EUI, YUK and SFC began trading on the Exchange on April 17, 2007. Until now, the market maker currently appointed to these FX options has been trading these products without the benefit of the privileges afforded by the incentive plan. The Exchange notes that competition between exchanges that trade like products, in this case, the World Currency Options traded on NASDAQ OMX PHLX, Inc., [sic] has intensified. In order to promote the continued growth and trading in these products, the Exchange now proposes to add AUX, BPX, CDD, EUI, YUK and SFC to the incentive plan, effective March 1, 2011.

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 waives the applicable transaction fees for both the Early Adopter FXPMM.<sup>7</sup>

<sup>3</sup> See Securities Exchange Act Release No. 60536 (August 19, 2009) [sic], 74 FR 43204 (August 26, 2009) (SR-ISE-2009-59).

<sup>4</sup> See Securities Exchange Act Release No. 61459 (January 19, 2010), 75 FR 6248 (February 8, 2010) (SR-ISE-2010-07).

<sup>5</sup> The Commission previously approved the trading of options on 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>6</sup> See Securities Exchange Act Release No. 63639 (January 4, 2011), 76 FR 1488 (January 10, 2011) (SR-ISE-2010-121).

<sup>7</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>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>14</sup> 17 CFR 200.30-3(a)(12).

and all Early Adopter FXCMMs<sup>8</sup> that make a market in AUX, BPX, CDD, EUI, YUK and SFC 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 AUX, BPX, CDD, EUI, YUK and SFC and pays 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 are charged regular transaction fees for trades in these products.

The Exchange currently charges an execution fee of \$0.40 per contract for all Public Customer Orders<sup>9</sup> in options on AUX, BPX, CDD, EUI, YUK and SFC.<sup>10</sup> The amount of the execution fee for all Firm Proprietary orders for options on AUX, BPX, CDD, EUI, YUK and SFC is \$0.20 per contract and the execution fee for all non-Early Adopter ISE Market Makers in options on AUX, BPX, CDD, EUI, YUK and SFC is equal to the execution fee currently charged by the Exchange for ISE Market Maker orders in equity options.<sup>11</sup> Finally, the amount of the execution fee for all non-ISE Market Maker orders for options on AUX, BPX, CDD, EUI, YUK and SFC is \$0.45 per contract.<sup>12</sup> The Exchange does not charge a Payment for Order Flow fee for these products.

The Exchange also proposes to waive transaction charges for all Early Adopter Market Makers in AUX, BPX, CDD, EUI, YUK and SFC in order to further encourage trading in these products. The Exchange believes that the revenue generated from customer, firm proprietary and non-ISE market maker transaction charges and increased order flow will offset the transaction fees that would otherwise be applied to market

makers in AUX, BPX, CDD, EUI, YUK and SFC, 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 promoting trading of its FX options through competitive pricing.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>14</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 extending the incentive plan to options on AUX, BPX, CDD, EUI, YUK and SFC will generate additional order flow in these products to the Exchange.

### 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)(A)(ii) of the 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 Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2011-11 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-2011-11. 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 Web site 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 a.m. and 3 p.m. 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-2011-11 and should be submitted on or before March 29, 2011.

<sup>8</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>9</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>10</sup> These fees are will be [sic] charged only to Exchange members.

<sup>11</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.

<sup>12</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>13</sup> 15 U.S.C. 78f(b).

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

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

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011-5186 Filed 3-7-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64010; File No. SR-Phlx-2011-26]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Inactive Nominee Fee

March 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 22, 2011, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, 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 Exchange proposes to amend its Fee Schedule to memorialize its Inactive Nominee<sup>3</sup> Fee. The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, on the Commission’s Web site at <http://www.sec.gov>, 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 Exchange 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 Exchange 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 the proposed rule change is to memorialize the Inactive Nominee Fee in the Exchange’s Fee Schedule.

The Exchange currently assesses a member organization an Inactive Nominee Fee of \$500 to maintain an individual’s inactive nominee status for a six month period, as provided for in Exchange By-Law Article XII, Section 12-10.<sup>4</sup> The member organization is required to pay a fee for the privilege of maintaining the inactive nominee status of an individual.<sup>5</sup> An inactive nominee’s status terminates after six months unless it has been reaffirmed in writing by the Member Organization or is terminated sooner.<sup>6</sup> An inactive nominee is assessed the \$500 fee every time the status is reaffirmed.<sup>7</sup>

<sup>4</sup> Pursuant to Exchange By-Law Article XII, Section 12-10, a member organization may designate an individual as an inactive nominee. To be eligible to be an inactive nominee an individual must be approved as eligible to hold a permit in accordance with the Exchange’s By-Laws and Rules. An inactive nominee has no rights and privileges of a permit holder until the inactive nominee becomes an effective permit holder and all applicable Exchange fees are paid. See By-Law Article XII, Section 12-10.

<sup>5</sup> See Securities Exchange Act Release No. 39851 (April 10, 1998), 63 FR 19282 (April 17, 1998) (SR-Phlx-97-35) (a rule change which subjected inactive nominees to the membership application process, including fees, including a fee for the privilege of maintaining an inactive nominee status).

<sup>6</sup> See By-Law Article XII, Section 12-10.

<sup>7</sup> An inactive nominee is also assessed the Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in the inactive nominee’s membership status. However, an inactive nominee would not be assessed the Application and Initiation Fees if such inactive nominee applied for membership without a lapse in that individual’s association with a particular member organization. See Securities Exchange Act Release No. 63780 (January 26, 2011), 76 FR 5846 (February 2, 2011)

The Exchange has assessed the Inactive Nominee Fee of \$500 since the inception of the inactive nominee category.<sup>8</sup> This fee was administered pursuant to By-Law Article XII, Section 12-10, and never appeared in the Exchange’s Fee Schedule. In recent years, the Exchange has memorialized additional fees within the Fee Schedule to create a centralized location for fees. The Exchange desires to memorialize this fee in the Fee Schedule and to make clear which membership fees an Inactive Nominee Fee [sic] would be assessed and when an inactive nominee would be assessed such fees by adding explanatory text to the Fee Schedule.

###### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to memorialize the Inactive Nominee Fee on the Exchange’s Fee Schedule so the fee is transparent to all members. While the Exchange has been assessing the Inactive Nominee Fee since 1998, the fee was administered pursuant to By-Law Article XII, Section 12-10 and was not located on the Fee Schedule. The Exchange believes that placing the fee on the Fee Schedule would summarize all the membership fees in one location and clarify all the fees an individual is subject to for the privilege of maintain [sic] an inactive nominee status.

The Exchange believes that it is equitable to place the Inactive Nominee Fee on the Fee Schedule because it uniformly impacts all inactive nominees as they are all subject to the Inactive Nominee Fee.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(SR-Phlx-2011-07). See also By-Law Article XII, Section 12-10.

<sup>8</sup> Originally, the inactive nominee was defined in Exchange Rule 21, but the definition was later moved to the definitions section in Rule 1.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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

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

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

<sup>3</sup> The term “inactive nominee” means a natural person associated with and designated as such by a member organization and who has been approved for such status and is registered as such with the Membership Department. An inactive nominee shall have no rights or privileges under a permit unless and until said inactive nominee becomes admitted as a member of the Exchange pursuant to the By-Laws and Rules of the Exchange. An inactive nominee merely stands ready to exercise rights under a permit upon notice by the member organization to the Membership Department on an expedited basis. See Exchange Rule 1(i).