

which enables them to compete with Non-Customers who are registered broker-dealers—the same transaction fees that it charges to such Non-Customers.

*C. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2*

Pursuant to Section 19(b)(2) of the Act,<sup>106</sup> the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**.<sup>107</sup> The Commission notes that the proposal, as modified by Amendment No. 1, was published for comment in the **Federal Register** on February 7, 2008. The revisions made to the proposal in Amendment No. 2 deleted proposed changes to ISE Rules 715 and ISE Rule 723(d)(2). These revisions appropriately clarify that the proposed rule change would not limit a Public Customer's access to the Exchange's PIM. Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>108</sup> the Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2, 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 Number SR-ISE-2006-26 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-2006-26. 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 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 a.m. and 3 p.m. Copies of such 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-2006-26 and should be submitted on or before February 20, 2009.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>109</sup> that the proposed rule change (SR-ISE-2006-26), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

By the Commission.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-1979 Filed 1-29-09; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59288; File No. SR-ISE-2009-03]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

January 23, 2009.

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 15, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange 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 Schedule of Fees to establish fees for transactions in options on 4 Premium Products.<sup>3</sup> 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.

#### 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 Exchange is proposing to amend its Schedule of Fees

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

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

<sup>3</sup> Premium Products is defined in the Schedule of Fees as the products enumerated therein.

<sup>106</sup> 15 U.S.C. 78s(b)(2).

<sup>107</sup> See *supra* note 3.

<sup>108</sup> 15 U.S.C. 78s(b)(2).

<sup>109</sup> 15 U.S.C. 78s(b)(2).

to establish fees for transactions in options on the Short QQQ ProShares ("PSQ"),<sup>4</sup> the Short S&P500 ProShares ("SH"),<sup>5</sup> the UltraShort Lehman 20+ Year Treasury ProShares ("TBT"),<sup>6</sup> and the PowerShares DB U.S. Dollar Bearish Fund ("UDN").<sup>7</sup> The Exchange

<sup>4</sup> "NASDAQ-100 Index" is a trademark of the NASDAQ Stock Markets, Inc. ("NASDAQ") and has been licensed for use for certain purposes by ProShares Trust. All other trademarks and service marks are the property of their respective owners. The Short QQQ ProShares ("PSQ") is not sponsored, endorsed, sold or promoted by NASDAQ. NASDAQ has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on PSQ or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on PSQ or with making disclosures concerning options on PSQ under any applicable federal or state laws, rules or regulations. NASDAQ does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>5</sup> "Standard & Poor's," "S&P," "S&P 500," "Standard & Poor's 500," "500" are trademarks of The McGraw-Hill Companies, Inc. ("McGraw-Hill") and have been licensed for use for certain purposes by ProShares Trust. All other trademarks and service marks are the property of their respective owners. The Short S&P500 ProShares ("SH") is not sponsored, endorsed, sold or promoted by Standard & Poor's, ("S&P"), a division of McGraw-Hill. S&P has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on SH or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on SH or with making disclosures concerning options on SH under any applicable federal or state laws, rules or regulations. S&P does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>6</sup> "Lehman Brothers" and "Lehman Brothers Inc." are trademarks of Lehman Brothers Inc. ("Lehman") and have been licensed for use for certain purposes by ProShares Trust. All other trademarks and service marks are the property of their respective owners. The UltraShort Lehman 20+ Year Treasury ProShares ("TBT") is not sponsored, endorsed, sold or promoted by Lehman. Lehman has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on TBT or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on TBT or with making disclosures concerning options on TBT under any applicable federal or state laws, rules or regulations. Lehman does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>7</sup> The PowerShares DB U.S. Dollar Bearish Fund ("UDN") is based on the Deutsche Bank Short U.S. Dollar Index (USD<sub>X</sub>) Futures Index™ ("DB Short USD Futures Index"). The sponsor of the DB Short USD Futures Index is Deutsche Bank AG, London ("DB AG"). UDN is managed by DB Commodity Services LLC. U.S. Dollar Index® and USD<sub>X</sub>® are registered service marks of IntercontinentalExchange, Inc. PowerShares® is a registered service mark of PowerShares Capital Management LLC ("PowerShares"). UDN is not sponsored, endorsed, sold or promoted by DB AG, and DB AG makes no representation regarding the advisability of investing in UDN. Neither DB AG nor PowerShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a

market for trading, marketing, and promotion of options on UDN or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on UDN or with making disclosures concerning options on UDN under any applicable federal or state laws, rules or regulations. DB AG and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

represents that PSQ, SH, TBT and UDN are eligible for options trading because they constitute "Exchange-Traded Fund Shares," as defined by ISE Rule 502(h). All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee for all transactions in options on PSQ, SH, TBT and UDN.<sup>8</sup> The amount of the execution fee for products covered by this filing shall be \$0.18 per contract for all Public Customer Orders<sup>9</sup> and \$0.20 per contract for all Firm Proprietary orders. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.<sup>10</sup> Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be \$0.45 per contract.<sup>11</sup> Further, since options on PSQ, SH, TBT and UDN are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all these products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

(b) *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

market for trading, marketing, and promotion of options on UDN or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on UDN or with making disclosures concerning options on UDN under any applicable federal or state laws, rules or regulations. DB AG and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

<sup>8</sup> These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, 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 \$0.24 per contract side and \$0.15 per contract side, respectively. See Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR-ISE-2008-52).

<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> 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>11</sup> The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is \$0.19 per contract.

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

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

provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

#### *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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2009-03 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-2009-03. This file number should be included on the subject line

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

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

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 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2009-03 and should be submitted on or before February 20, 2009.

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

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-2061 Filed 1-29-09; 8:45 am]  
BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59283; File No. SR-Phlx-2009-01]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Margin Requirements for Foreign Currency Options

January 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on January 15, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") 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 substantially prepared by the Exchange. Phlx has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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 Exchange, pursuant to Section 19(b)(1) of the Act<sup>5</sup> and Rule 19b-4 thereunder,<sup>6</sup> proposes to amend Phlx Rule 721, Proper and Adequate Margin, to add margin requirements for U.S. dollar-settled foreign currency options ("FCOs").<sup>7</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>.

#### 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 add margin requirements for U.S. dollar-settled FCOs ("FCO margin requirements" or "FCO margin") in Phlx Rule 721(c).

The FCO margin requirements proposed are substantially similar to prior Commentary .16 to Phlx Rule 722, which was removed in a recent filing to

simplify Phlx's margin rules.<sup>8</sup> The FCO margin requirements are also substantially similar to current ISE Rule 1202(d).

Accordingly, under proposed Phlx Rule 721(c), the Exchange will calculate the margin requirement for customers that assume short FCO positions by adding a percentage of the current market value of the underlying foreign currency contract to the option premium price less an adjustment for the out-of-the-money amount of the option contract. On a quarterly calendar basis, the Exchange will review five-day price changes over the preceding three-year period for each underlying currency and set the add-on percentage at a level which would have covered those price changes at least 97.5% of the time (the "confidence level").

If the results of subsequent reviews show that the current margin level provides a confidence level below 97%, the Exchange will increase the margin requirement for that individual currency up to a 98% confidence level. If the confidence level is between 97% and 97.5%, the margin level will remain the same but will be subject to monthly follow-up reviews until the confidence level exceeds 97.5% for two consecutive months. If, during the course of the monthly follow-up reviews, the confidence level drops below 97%, the margin level will be increased to a 98% level and if it exceeds 97.5% for two consecutive months, the currency will be taken off monthly reviews and will be put back on the quarterly review cycle. If the currency exceeds 98.5%, the margin level will be reduced to a 98% confidence level during the most recent 3 year period.

Finally, in order to account for large price movements outside the established margin level, if the quarterly review shows that the currency had a price movement, either positive or negative, greater than two times the margin level during the most recent 3 year period, the margin requirement will be set at a level to meet a 99% confidence level ("Extreme Outlier Test").<sup>9</sup> These parameters are identical to prior Commentary .16 to Phlx Rule 722.

<sup>8</sup> See Exchange Act Release No. 58340 (August 11, 2008), 73 FR 48268 (August 18, 2008) (SR-Phlx-2007-33). Pursuant to this filing, Rule 721 was amended to add subsection (b) requiring Exchange members to make an election to be bound by either CBOE or NYSE margin rules, and Phlx Rule 722 was shortened.

<sup>9</sup> The Exchange will inform its members and the public of the margin levels for each currency option immediately following the quarterly reviews described in Rule 721(c).

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> 15 U.S.C. 78s(b)(1).

<sup>6</sup> 17 CFR 240.19b-4.

<sup>7</sup> FCOs are currently traded on the Exchange under the name World Currency Options.

<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.