

and its regulatory responsibilities with respect to BIDS.<sup>17</sup> Because these same limitations and conditions will continue to be applicable during the extension of the pilot period, other than the ending date of the pilot period and the recently approved small increase in the ceiling on the Exchange's equity interest in BIDS, the Exchange believes that the exception from NYSE Rule 2B described above will continue to be consistent with the Act during that extension.

#### *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 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*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder because it does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>18</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because the proposal would preserve the benefits of the Exchange's pilot program without interruption as the Exchange and the Commission monitor and assess whether any adverse consequences have resulted from the exceptions to NYSE Rule 2B and if the exceptions continue to be appropriate.

<sup>17</sup> *Id.* at 5019.

<sup>18</sup> In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

Therefore, the Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.<sup>19</sup>

At any time within 60 days of the filing of the 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2010-04 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-NYSE-2010-04. 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.

<sup>19</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Copies of the filing will also 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-NYSE-2010-04 and should be submitted on or before February 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-1850 Filed 1-28-10; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61411; File No. SR-ISE-2010-05]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Market Maker Trading Licenses for Foreign Currency Options**

January 22, 2010.

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 14, 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 Exchange. The Exchange has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Rule 2213 regarding market maker trading licenses for the Exchange's foreign currency options. The text of the

<sup>20</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> 15 U.S.C. 78s(b)(3)(A).

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

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

ISE proposes to amend its rules regarding Foreign Currency Options ("FX Options")<sup>5</sup> traded on the Exchange. Specifically, ISE proposes to amend its Rule 2213 regarding market maker trading licenses for the Exchange's FX Options.

Under the Exchange's current rules, FX Primary Market Makers ("FXPMMs") are required to purchase, through a sealed bid auction, a trading license in order to serve as a market maker in a particular foreign currency pair. FXPMMs must also provide market quality commitments regarding (i) the average quotation size it will disseminate in the foreign currency option, and (ii) the maximum quotation spread it will disseminate in such product at least ninety percent of the time. At the end of each auction, the Exchange determines the winning bidder for an FXPMM trading license based on bid amount and market quality commitment. There is only one FXPMM per currency pair. The minimum price for a FXPMM trading license is currently \$5,000.

The Exchange also sells FX Competitive Marker Maker ("FXCMM") trading licenses. Pursuant to Exchange rules, FXCMM trading licenses are sold pursuant to a "Dutch" auction.<sup>6</sup> FXCMMs are not required to submit any market quality commitments. The

Exchange sells up to 10 FXCMM trading licenses per currency pair. The minimum price for a FXCMM trading license is currently \$500.

The Exchange now proposes to eliminate the minimum bid requirement for both FXPMM and FXCMM trading licenses. ISE believes doing so will promote competition among market makers by allowing smaller firms to compete without the additional burden of a minimum fee. Further, some currency pairs are more popular than others so a minimum bid requirement for some of the lesser popular currency pairs invites less interest from potential market makers. While the minimum bid amounts do not amount to a large capital outlay, firms that are contemplating entry into the FX options business will be further incentivized to do so because their start-up costs will be reduced. FXPMMs will still be required to submit a monetary bid and market quality commitments and FXCMMs will still be required to submit only a monetary bid, to compete for a trading license to serve as a market maker in FX Options listed by the Exchange in the future.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act's<sup>8</sup> requirements that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change will allow smaller firms to compete for a trading license without the additional burden of a minimum fee.

### 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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and Rule 19b-4(f)(6)<sup>10</sup> thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

At any time within 60 days of the filing of the 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2010-05 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission,

<sup>5</sup> ISE began trading FX options on April 17, 2007 pursuant to Commission approval. See Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR-ISE-2006-59).

<sup>6</sup> See ISE Rule 2213(g).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2010-05. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also 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-2010-05 and should be submitted on or before February 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61397; File No. SR-Phlx-2010-07]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Deleting Obsolete Provisions Relating to the Opening

January 22, 2010.

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 January 14, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or the "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 prepared by the Exchange. Phlx has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to amend Rule 1017, Openings in Options, to delete the portions of the rule that pertain to the Phlx XL trading system, which has since been replaced by the Phlx XL II trading system. Accordingly, all of the commentary (.01 through .03) as well as paragraphs (a)-(g) will be deleted, with the exception of the last sentence of paragraph (a) defining a Phlx XL II participant and subparagraph (iii) of paragraph (c), which will continue to state that to be considered in the determination of the opening price and to participate in the opening trade, orders represented by Floor Brokers must be entered onto the book electronically. Paragraphs (h) and (i) are proposed to be amended by deleting references to the old trading system, Phlx XL.

The Exchange also proposes to delete Options Floor Procedure Advice ("Advice") A-12, Opening Rotations, and Advice A-14, Equity Option And Index Option Opening Parameters, which are also outdated.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 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 update various rules pertaining to the opening by deleting outdated language. In July 2009, the Exchange fully rolled out its new options trading system, Phlx XL II.<sup>4</sup> Accordingly, many portions of Rule 1017, which pertained to the old trading system, Phlx XL, no longer apply. A few of the provisions applied to both Phlx XL and Phlx XL II; those are being amended to delete reference to Phlx XL, such that they remain applicable to Phlx XL II.

Similarly, the Exchange is proposing to delete two Options Floor Procedure Advices ("Advices"). Historically, Advices replicated the provisions of the Exchange's rules that were most pertinent for the trading floor community to keep handy, in lieu of the large, unwieldy rulebook; the Exchange adopted, for many years, both rules and advices that contained nearly identical language where the rule/advice was the subject of a fine schedule under the Exchange's minor rule plan in order for the trading floor to have easy access to these provisions (which the Exchange printed and distributed) and in order for those persons who administered fines to have easy access to consult the applicable fine schedules.<sup>5</sup>

The first Advice proposed to be deleted is Advice A-12, which pertains principally to Phlx XL and is therefore obsolete; the portions that refer to Phlx XL II merely cross-reference Rule 1017 and state that the opening is conducted automatically. Accordingly, Advice A-12, which is merely descriptive, is no longer needed because there is no behavior to which to apply the fine schedule.<sup>6</sup> Similarly, Advice A-14 is also proposed to be deleted, because it is merely explanatory and cannot be violated; it was updated to reflect Phlx XL II processes, but should instead have been deleted. Specifically, it describes

<sup>4</sup> Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

<sup>5</sup> At the time, such fines were administered by "Floor Officials," who have since been replaced by "Options Exchange Officials."

<sup>6</sup> Advices are administered as part of the Exchange's minor rule plan; the Exchange proposes to remove Advices A-12 and A-14 from the minor rule plan.

<sup>11</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> 17 CFR 240.19b-4(f)(6).