

Underlying Funds also may be affiliated persons by virtue of a Top-Tier Fund's ownership of more than 5% of the outstanding voting securities of an Underlying Fund. Consequently, the Special Servicing Agreement could be deemed to be a joint transaction among the Top-Tier Funds, the Underlying Funds and Advisors.

2. Rule 17d-1 under the Act provides that, in passing upon a joint arrangement under the rule, the Commission will consider whether participation of the investment company in the joint enterprise or joint arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

3. Applicants request an order under section 17(d) and rule 17d-1 to permit the proposed expense sharing arrangements. Applicants state that participation by the Top-Tier Funds, the Underlying Funds and Advisors in the proposed expense sharing arrangements is consistent with the provisions, policies and purposes of the Act, and that the terms of the Special Servicing Agreement and the conditions set forth below will ensure that no participant will participate on a basis less advantageous than that of other participants.

#### **Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. No Fund will enter into a Special Servicing Agreement unless the Special Servicing Agreement: (a) Precisely describes the services provided to the Top-Tier Funds and the Underlying Fund Payments; (b) provides that no affiliated person of the Top-Tier Funds, or affiliated person of such person, will receive, directly or indirectly, any portion of the Underlying Fund Payments; (c) provides that the Underlying Fund Payments may not exceed the amount of actual expenses incurred by the Top-Tier Funds; (d) provides that no Underlying Fund will reimburse transfer agent expenses of a Top-Tier Fund, including out-of-pocket expenses and other expenses, at a rate in excess of the average per account transfer agent expenses of the Underlying Fund, including out-of-pocket expenses and other expenses, expressed as a basis point charge (for purposes of calculating the Underlying Fund's average per account transfer agent expense, the Top-Tier Fund's investment in the Underlying Fund will be excluded); and (e) has been approved

by the Fund's Board, including a majority of the Independent Trustees, as being in the best interests of the Fund and its shareholders and not involving overreaching on the part of any person concerned.

2. In approving a Special Servicing Agreement, the Board of an Underlying Fund will consider, without limitation: (a) The reasons for the Underlying Fund's entering into the Special Servicing Agreement; (b) information quantifying the Underlying Fund Benefits; (c) the extent to which investors in the Top-Tier Fund could have purchased shares of the Underlying Fund; (d) the extent to which an investment in the Top-Tier Fund represents or would represent a consolidation of accounts in the Underlying Funds, through exchanges or otherwise, or a reduction in the rate of increase in the number of accounts in the Underlying Funds; (e) the extent to which the expense ratio of the Underlying Fund was reduced following investment in the Underlying Fund by the Top-Tier Fund and the reasonably foreseeable effects of the investment by the Top-Tier Fund on the Underlying Fund's expense ratio; (f) the reasonably foreseeable effects of participation in the Special Servicing Agreement on the Underlying Fund's expense ratio; and (g) any conflicts of interest that Advisors, any affiliated person of Advisors, or any other affiliated person of the Underlying Fund may have relating to the Underlying Fund's participation in the Special Servicing Agreement.

3. Prior to approving a Special Servicing Agreement on behalf of an Underlying Fund, the Board of the Underlying Fund, including a majority of the Independent Trustees, will determine that: (a) The Underlying Fund Payments under the Special Servicing Agreement are expenses that the Underlying Fund would have incurred if the shareholders of the Top-Tier Fund had instead purchased shares of the Underlying Fund through the same broker-dealer or other financial intermediary; (b) the amount of the Underlying Fund Payments is less than the amount of Underlying Fund Benefits; and (c) by entering into the Special Servicing Agreement, the Underlying Fund is not engaging, directly or indirectly, in financing any activity which is primarily intended to result in the sale of shares issued by the Underlying Fund.

4. In approving a Special Servicing Agreement, the Board of a Fund will request and evaluate, and Advisors will furnish, such information as may reasonably be necessary to evaluate the

terms of the Special Servicing Agreement and the factors set forth in condition 2 above, and make the determinations set forth in conditions 1 and 3 above.

5. Approval by the Fund's Board, including a majority of the Independent Trustees, in accordance with conditions 1 through 4 above, will be required at least annually after the Fund's entering into a Special Servicing Agreement and prior to any material amendment to a Special Servicing Agreement.

6. To the extent Underlying Fund Payments are treated, in whole or in part, as a class expense of an Underlying Fund, or are used to pay a class-based expense of a Top-Tier Fund, conditions 1 through 5 above must be met with respect to each class of a Fund as well as the Fund as a whole.

7. Each Fund will maintain and preserve the Board's findings and determinations set forth in conditions 1 and 3 above, and the information and considerations on which they were based, for the duration of the Special Servicing Agreement, and for a period not less than six years thereafter, the first two years in an easily accessible place.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Cathy H. Ahn,**  
*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 3464743; File No. SR-ISE-2011-35]

#### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Fee Discount Pilot Program for Large-Sized Foreign Currency Options**

June 24, 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 June 21, 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

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

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

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 extend for an additional year the fee discount for large-sized foreign currency ("FX") option orders. 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 purpose of this proposed rule change is to extend for an additional year the fee discount for large-sized FX option orders. The Exchange initially adopted the fee discount for large-sized FX option orders in 2008.<sup>3</sup> The fee discount pilot program was subsequently extended<sup>4</sup> and is now set to expire on June 30, 2011.<sup>5</sup> The fee discount applies to orders of 250 contracts or more and waives fees on incremental volume above 250 contracts. Contracts at or under the threshold are charged the constituent's prescribed execution fee. The fee discount applies to all Customer<sup>6</sup>

orders, Firm Proprietary orders, Market Maker orders and Non-ISE Market Maker orders in FX options traded on the Exchange. ISE adopted this fee discount to encourage members to execute large-sized FX option orders on the Exchange in a manner that is cost effective. The Exchange now proposes to extend this fee discount through June 30, 2012 in a continuing effort to attract more activity in large-sized FX options.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>8</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 the proposed rule change is reasonable and equitable as it would extend a current fee discount, thus effectively maintaining low fees for all market participants that trade in large-sized FX options on 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>9</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

for its own beneficial account(s). A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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

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-2011-35 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-2011-35. 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 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-2011-35 and should be submitted on or before July 21, 2011.

<sup>3</sup> See Securities Exchange Act Release No. 58139 (July 10, 2008), 73 FR 41142 (July 17, 2008) (SR-ISE-2008-54).

<sup>4</sup> See Securities Exchange Act Release No. 60192 (June 30, 2009), 74 FR 32211 (July 7, 2009) (SR-ISE-2009-42).

<sup>5</sup> See Securities Exchange Act Release No. 62506 (July 15, 2010), 75 FR 42801 (July 22, 2010) (SR-ISE-2010-67).

<sup>6</sup> The fee discount applies to both Professional and Priority Customer orders. A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Cathy H. Ahn,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64742; File No. SR-NYSEAmex-2011-18]

### Self-Regulatory Organizations; NYSE Amex LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Formation of a Joint Venture Between the Exchange, Its Ultimate Parent NYSE Euronext, and Seven Other Entities To Operate an Electronic Trading Facility for Options Contracts

June 24, 2011.

#### I. Introduction

On March 23, 2011, NYSE Amex LLC (“NYSE Amex”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change, 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> in connection with the formation of a joint venture between NYSE Amex, its ultimate parent NYSE Euronext, a Delaware corporation, and the following entities (each, a “Founding Firm”): Citadel Securities LLC (“Citadel”); Goldman, Sachs & Co. (“Goldman Sachs”); Banc of America Strategic Investments Corporation (“BAML”); Citigroup Financial Strategies, Inc. (“Citigroup”); Datek Online Management Corp. (“TD Ameritrade”); UBS Americas Inc. (“UBS”); and Barclays Electronic Commerce Holdings Inc. (“Barclays”), to operate an electronic trading facility (“Options Facility”) that will engage in the business of listing for trading options contracts permitted to be listed on a national securities exchange (or facility thereof) and related activities. The proposed rule change was published for comment in the **Federal Register** on April 4, 2011.<sup>3</sup> The Commission received three comment letters on the proposal.<sup>4</sup> The

Commission subsequently extended to July 1, 2011, the time period in which to either approve the proposed rule change, or to institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On June 15, 2011, NYSE Amex filed Amendment No. 1 to the proposed rule change.<sup>6</sup> This order approves the proposed rule change, as modified by Amendment No. 1.

#### II. Overview

NYSE Amex proposes to establish NYSE Amex Options LLC (“Company”), a Delaware limited liability company formed by NYSE Euronext, NYSE Amex, and the Founding Firms, and jointly owned by NYSE Amex and the Founding Firms, to operate the Options Facility. Pursuant to the proposal, the Options Facility will be operated as a facility<sup>7</sup> of NYSE Amex, which will act as the self-regulatory organization (“SRO”) for the Options Facility and as such have regulatory responsibility for the activities of the Options Facility.<sup>8</sup>

With this proposed rule change, NYSE Amex seeks the Commission’s approval of the proposed governance structure of the Company as reflected in the proposed Limited Liability Company Agreement (“LLC Agreement”) for the Company and a proposed Members Agreement of the Company setting forth certain additional provisions (“Members Agreement”) relating to the proposed governance

dated April 14, 2011 (“Rothlein Letter”); Letter from Benjamin Kerensa, dated April 25, 2011 (“Kerensa Letter”); and Letter from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq OMX Group, Inc. (“NASDAQ”), to Elizabeth M. Murphy, Secretary, Commission, dated April 29, 2011 (“NASDAQ Letter”).

<sup>5</sup> See Securities Exchange Act Release No. 64511 (May 18, 2011), 76 FR 29809 (May 23, 2011).

<sup>6</sup> See Amendment No. 1 dated June 15, 2011 (“Amendment No. 1”). Amendment No. 1 deletes an erroneous reference in Section 16.1(f) of the LLC Agreement; clarifies those Founding Firms that are NYSE Amex members or their affiliates; clarifies the availability of information noted “To Come” on certain Schedules to the LLC Agreement; and confirms the applicability of Section 4.9 of the LLC Agreement to a NYSE Amex member that is an affiliate of NYSE Amex. Amendment No. 1 is a technical amendment and is not subject to notice and comment.

<sup>7</sup> Pursuant to Section 3(a)(2) of the Act, 15 U.S.C. 78c(a)(2), the term “facility” when used with respect to a national securities exchange, includes “its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.”

<sup>8</sup> NYSE Amex represented that it has adequate funds to discharge all regulatory functions related to the Options Facility. See Notice, *supra* note 3, 76 FR 18592.

structure of the Company.<sup>9</sup> NYSE Amex is not proposing any changes to its listing and trading rules in connection with establishment of the Company and operation of the Options Facility.

As a limited liability company, ownership of the Company is represented by limited liability company interests in the Company (“Interests”).<sup>10</sup> The holders of Interests are referred to as the members of the Company (“Members”).<sup>11</sup> The Interests represent equity interests in the Company and entitle the holders thereof to participate in the Company’s allocations and distributions. Initially, NYSE Amex will own 100% of the preferred non-voting Interests (“Preferred Interests”) and 47.2% of the Common Interests,<sup>12</sup> as Class A Common Interests. The Founding Firms will own the remaining 52.8% of the Common Interests, as Class B Common Interests, and no single Founding Firm (including its affiliates) will own Class B Common Interests comprising more than 19.9% of the issued and outstanding Common Interests. The 52.8% ownership of Class B Common Interests will initially be allocated as follows: 14.95% to each of Citadel and Goldman Sachs; 5.0% to each of BAML, Citigroup and TD Ameritrade; 4.9% to UBS; and 3.0% to Barclays.<sup>13</sup>

<sup>9</sup> Certain portions of the Members Agreement are not considered part of the proposed rule change. See *infra* note 13.

<sup>10</sup> “Interest” means the limited liability company interest in the Company owned by each Member including any and all benefits to which such Member may be entitled as provided in the LLC Agreement or required by the Act, together with all obligations of such Member to comply with the terms and provisions of the LLC Agreement. See Section 1.1 of the LLC Agreement. See *infra* note 11 for the definition of Member.

<sup>11</sup> “Member” means each Person who is a signatory to this Agreement (other than NYSE Euronext) or who has been admitted to the Company as a Member in accordance with this Agreement and has not ceased to be a Member in accordance with this Agreement or for any other reason. See Section 1.1 of the LLC Agreement. See *infra* note 78 for definition of Person.

<sup>12</sup> Common Interests consist of Class A Common Interests and Class B Common Interests. See Section 1.1 of the LLC Agreement. “Class A Common Interests” means the Interests in the form of shares owned by NYSE Amex, as specified in Schedule A of the LLC Agreement, having the rights and obligations specified in the LLC Agreement. See *id.* “Class B Common Interests” means the Interests in the form of shares owned by each Founding Firm, as specified in Schedule A of the LLC Agreement, having the rights and obligations specified in the LLC Agreement. See *id.* Schedule A of the LLC Agreement sets forth the Interest allocations of each Member.

<sup>13</sup> Following the effective date of the proposed rule change, additional Class B Common Interests will be issued to the Founding Firms based, in part, on each Founding Firm’s contribution to the annual volume of the Options Facility from October 1, 2009 to December 31, 2010 (*i.e.*, the “Volume-Based Equity Plan”). See Notice, *supra* note 3, 76 FR at

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 64144 (March 29, 2011), 76 FR 18591 (“Notice”).

<sup>4</sup> See Letter from Andrew Rothlein, to Hon. Mary L. Schapiro, Chairman, and Hon. Kathleen L. Casey, Hon. Elisse B. Walter, Hon. Luis A. Aguilar, and Hon. Troy A. Paredes, Commissioners, Commission,