

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55575; File No. SR-ISE-2006-59]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Amendment No. 2 to and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto Relating to Foreign Currency Options

April 3, 2007.

#### I. Introduction

On September 29, 2006, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to adopt rules for the listing and trading of cash-settled rate-modified foreign currency options ("FCOs").<sup>3</sup> On February 23, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on March 1, 2007.<sup>5</sup> The Commission received no comments on the proposal. On April 3, 2007, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>6</sup> This order provides notice of Amendment No. 2 to the proposed rule change and approves the proposed rule change, as modified

by Amendment Nos. 1 and 2, on an accelerated basis.

#### II. Description of the Proposal

##### A. Product Specifications

The Exchange proposes to adopt rules for the listing and trading of FCOs<sup>7</sup> on the following currencies: The euro, the British pound, the Australian dollar, the New Zealand dollar, the Japanese yen, the Canadian dollar, the Swiss franc, the Chinese renminbi, the Mexican peso, the Swedish krona, the Russian ruble, the South African rand, the Brazilian real, the Israeli shekel, the Norwegian krone, the Polish zloty, the Hungarian forint, the Czech koruna and the Korean won (individually, a "Currency" and collectively, the "Currencies").<sup>8</sup> The Exchange proposes to list and trade FCOs that include the U.S. Dollar on one side of the underlying currency pair, as well as certain cross-rate FCOs that include two of the aforementioned Currencies in the underlying currency pair ("cross-rate FCOs").<sup>9</sup>

The Exchange proposes to list and trade FCOs based on the Reuters Composite Currency Rate<sup>10</sup> as modified by ISE in a way that permits the underlying price of the FCO contract to resemble a price level similar to that of an index option.<sup>11</sup> The Exchange proposes to use fixed, pre-assigned modifiers of 1, 10, or 100 depending on the exchange rate level of the underlying foreign currency.<sup>12</sup> The Exchange would disseminate the current modified exchange rate<sup>13</sup> at least once every fifteen seconds through the Options Price Reporting Authority ("OPRA") or one or more major market data vendors during the time FCOs are

traded on the Exchange.<sup>14</sup> FCOs would be quoted in U.S. Dollars and would be European-style exercise.

FCOs listed by the Exchange would be cleared by The Options Clearing Corporation ("OCC"),<sup>15</sup> and holders of options contracts would receive U.S. Dollars representing the difference between the modified exchange rate and the exercise price<sup>16</sup> of the option, which would be multiplied by 100. Specifically, upon exercise of an in-the-money FCO call option, the holder would receive from OCC, U.S. Dollars representing the difference between the exercise price and the closing settlement value of the FCO contract multiplied by 100. Upon exercise of an in-the-money FCO put option, the holder would receive from OCC, U.S. Dollars representing the excess of the exercise price over the closing settlement value of the cash-settled FCO contract multiplied by 100. Additionally, FCOs that are in-the-money by any amount on the expiration date would be exercised automatically by OCC, while FCOs that are out-of-the-money on the expiration date would expire worthless.

**Minimum Increments.** The interval between exercise prices of series of FCOs would be no less than \$0.10.<sup>17</sup> Additionally, under the Exchange's current rules, the minimum trading increment for a FCO contract trading at less than \$3.00 would be \$0.05, and for a FCO contract trading at \$3.00 or higher, the minimum trading increment would be \$0.10.

**Expirations.** The Exchange proposes to permit FCOs to be listed with expirations that are the same as the expirations permitted for index options,<sup>18</sup> except that FCOs would be permitted to have expirations only up to 36 months.<sup>19</sup> Accordingly, after a class of options contracts involving any of the Currencies has been approved for listing and trading, the Exchange could open for trading series of FCOs that expire in consecutive monthly intervals, that expire in three or "cycle" month

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

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

<sup>3</sup> The Commission notes that the cash-settled FCOs that ISE proposes to list and trade pursuant to this proposed rule change are rate-modified. Cash-settled foreign currency options that trade on the Philadelphia Stock Exchange ("Phlx") are not rate-modified. See Securities Exchange Act Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR-PHLX-2006-34). See also Phlx Rules 1000-1093. Accordingly, the term "FCO" used throughout this Order refers only to ISE's proposed cash-settled rate-modified foreign currency options. FCOs listed and traded by ISE pursuant to this proposed rule change will not be fungible with those listed and traded by Phlx.

<sup>4</sup> Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>5</sup> See Securities Exchange Act Release No. 55336 (February 23, 2007), 72 FR 09364 ("Notice").

<sup>6</sup> The text of Amendment No. 2 is available at the Exchange, on the Exchange's Web site (<http://www.iseoptions.com>), and at the Commission's Public Reference Room. In Amendment No. 2, ISE clarified its plans to list cross-rate FCOs by specifying the cross-rate pairs it intends to offer as well as the applicable modifier and position limits for each proposed cross-rate pair. ISE also made a non-substantive change to the title of the proposed rule text and to the text of proposed ISE Rule 2200.

<sup>7</sup> The Commission notes that ISE refers to these FCO products in its marketing literature as "FX Options™."

<sup>8</sup> The Exchange's existing rules and procedures would also be applicable to FCOs, unless such rules are specifically replaced or are supplanted by the proposed new rules governing FCOs. See Proposed ISE Rule 2200. The Commission notes that futures contracts, and options on such futures contracts, are currently traded by the Chicago Mercantile Exchange ("CME") on all of the Currencies.

<sup>9</sup> See Amendment No. 2. In other words, a cross-rate FCO would not involve the U.S. Dollar on one side of the underlying currency pair (e.g., EUR/GBP).

<sup>10</sup> The Reuters data is based on an amalgamation of midpoint dealer quotes on its foreign exchange dealing system.

<sup>11</sup> See Proposed ISE Rule 2201(8) (defining "modified exchange rate").

<sup>12</sup> For example, if one U.S. Dollar buys .84177 euros, a modifier of 100 would be used so that the modified exchange rate would become 84.18. Modifiers used for creating underlying values will be posted on the Exchange's Web site no later than the first day on which FCOs begin trading on ISE. Once a modifier has been assigned to a currency pair, it can only be changed upon a filing of a proposed rule change with the Commission.

<sup>13</sup> See Proposed ISE Rule 2201(8).

<sup>14</sup> See Proposed ISE Rule 2207. The Exchange will also disseminate FCO quotes and trades through OPRA.

<sup>15</sup> See File No. SR-OCC-2007-02 (proposing to amend OCC's by-laws and rules to accommodate the clearance and settlement of ISE's FCOs).

<sup>16</sup> See Proposed ISE Rule 2201(3) (defining "exercise price").

<sup>17</sup> See Proposed ISE Rule 2206(a)(4).

<sup>18</sup> See ISE Rules 2000 and 2001.

<sup>19</sup> See Proposed ISE Rule 2205. While the proposed rules would permit the Exchange to list FCOs that have up to 36 months to expiration, the Exchange has stated that it does not anticipate listing these long-term series initially.

intervals,<sup>20</sup> or that have up to 36 months to expiration.<sup>21</sup> The expiration date for the consecutive and cycle month options would be 11:59 p.m. Eastern Time on the Saturday immediately following the third Friday of the expiration month.

**Settlement Value.** The closing settlement value would be based on the Noon Buying Rate (to the extent it is maintained for the applicable Currency), as determined by the Federal Reserve Bank of New York, on the last trading day during expiration week,<sup>22</sup> and would be modified using the applicable modifier that is used in calculating the respective modified exchange rate.<sup>23</sup> If the Noon Buying Rate is not announced by 2 p.m. Eastern Time, the closing settlement value would be the most recently announced Noon Buying Rate, as modified by the applicable modifier, unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances.<sup>24</sup> In the event that the Noon Buying Rate is not published for an underlying Currency, the Exchange proposes to apply the WM/Reuters Closing Spot rate to determine the closing settlement value.<sup>25</sup> Like the Noon Buying Rate, in determining the closing settlement value, the WM/Reuters Closing spot rate would be modified using the applicable modifier that is used in calculating the respective modified exchange rate. The Exchange proposes to post closing settlement values on its Web site, but such values would not be disseminated through OPRA.<sup>26</sup>

<sup>20</sup> Consecutive month and cycle month expirations of a given series will never overlap. See Proposed ISE Rule 2205(a)(1).

<sup>21</sup> See Proposed ISE Rule 2205; see also Notice, *supra* note 5 (describing the proposed provisions governing the listing and trading of series of FCOs).

<sup>22</sup> If Friday is an Exchange holiday, the settlement value for FCOs would be determined on the preceding trading day, which will also be the last trading day for the expiring option.

<sup>23</sup> See Proposed ISE Rule 2212; see also *supra* note 12 and accompanying text (discussing rate modifiers).

<sup>24</sup> In such cases, the Exchange has stated that it may use the WM/Reuters Closing Spot rate.

<sup>25</sup> See Notice, *supra* note 5 (providing a detailed discussion of how the WM/Reuters Closing Spot rate is calculated and providing a list of the Currencies for which the Federal Reserve Bank of New York does not currently publish a Noon Buying Rate). In the event the Federal Reserve Bank of New York begins to publish a Noon Buying Rate for any of the Currencies for which it currently does not publish a Noon Buying Rate, the Exchange would resort to the Noon Buying Rate in place of the WM/Reuters Composite Spot rate to determine the closing settlement value for the applicable FCO.

<sup>26</sup> The Commission notes that, as discussed above, modified exchange rates will be disseminated through OPRA, as will FCO quotes and trades, while closing settlement values will only be posted on the Exchange's Web site.

**Position Limits.** The Exchange proposes to impose the following position limits for FCOs involving the U.S. Dollar on the same side of the market: 1,200,000 contracts for the euro; 600,000 contracts for the Australian dollar, the British pound, the Canadian dollar, the Israeli shekel, the Japanese yen, the Swedish krona and the Swiss franc; 300,000 contracts for the remaining Currencies.<sup>27</sup> Position limits for each of the proposed cross-rate FCOs are specified in proposed ISE Rule 2008.<sup>28</sup> Exercise limits for FCOs over any five consecutive business days would be equivalent to the position limits prescribed to that FCO.<sup>29</sup>

**Hours of Trading.** The Exchange proposes to permit trading of FCOs on the Exchange between the hours of 9:30 a.m. and 4:15 p.m. Eastern Time, except that on the last trading day of the week during which a FCO is set to expire, trading would cease at 12 p.m. Eastern Time.<sup>30</sup> The opening rotation for FCOs would be held at or as soon as practicable after the Exchange's market opens, unless an Exchange official determines to delay the opening rotation in the interest of maintaining a fair and orderly market.<sup>31</sup> Trading in FCOs would follow the holiday schedule of the U.S. equity markets.

#### B. Market Makers

The Exchange proposes to create two new classes of market makers on the Exchange that may quote and trade FCOs: FXPMMs (*i.e.*, primary market makers) and FXCMMs (*i.e.*, competitive market makers).<sup>32</sup> The Exchange states that such market makers would have similar obligations to the PMMs and CMMs on the Exchange's equity and index markets. The proposed rule sets forth the rules and the obligations of such market makers and the procedures under which an FXPMM and/or FXCMM would be able to purchase a trading license from the Exchange.<sup>33</sup>

Investors should consult these values when trading FCOs.

<sup>27</sup> See Proposed ISE Rule 2208. For the purpose of determining which positions are on the same side of the market, long call positions would be aggregated with short put positions and short call positions would be aggregated with long put positions.

<sup>28</sup> See Amendment No. 2 and proposed ISE Rule 2208(a).

<sup>29</sup> See Proposed ISE Rule 2209.

<sup>30</sup> See Proposed ISE Rule 2210(a).

<sup>31</sup> See Proposed ISE Rule 2210(b); see also Notice, *supra* note 5 (providing further details regarding trading rotations and instituting halts and suspensions in the trading of an FCO).

<sup>32</sup> See Proposed ISE Rule 2213.

<sup>33</sup> See Proposed ISE Rule 2213; see also Notice, *supra* note 5 (providing a detailed discussion of rules governing market maker trading licenses). Under the proposed rules, a firm would not be

Market maker trading licenses for a calendar year would be sold annually through an auction conducted during the fourth quarter of the preceding year.<sup>34</sup>

**FXPMM.** The Exchange proposes to offer one FXPMM trading license per currency pair by a sealed bid auction, and prospective FXPMMs would be required to submit a bid amount with a market quality commitment using parameters similar to those currently used by the Exchange for ETF and index options.<sup>35</sup> An FXPMM's trading license would have a three year term,<sup>36</sup> and at the end of the three year term, the incumbent FXPMM would have the right of first refusal to match the highest bid and market quality commitment from another bidding firm. An FXPMM that continuously fails to meet its stated market quality commitments would have its trading license terminated.

**FXCMM.** The Exchange proposes to initially sell ten FXCMM trading licenses per currency pair, with each trading license having a term of one year.<sup>37</sup> The Exchange proposes to conduct a "Dutch" auction to sell FXCMM trading licenses.<sup>38</sup> An FXCMM would have the ability to terminate its trading license prior to its scheduled expiration, so long as the FXCMM provides the requisite written notice and pays a termination fee.<sup>39</sup>

#### C. Margin

The Exchange is also proposing to amend its existing margin requirements

permitted to hold more than four FXPMM trading licenses across all currencies or more than one FXCMM trading license per currency pair. Additionally, market makers would not be permitted to hold and act as both a FXPMM and FXCMM in the same currency pair. Market maker trading licenses would generally not be able to be leased or transferred, although they would be permitted to be transferred to an affiliated Member, or to another qualified Member which continues substantially the same business as the Member that currently holds the market maker trading license.

<sup>34</sup> See Proposed ISE Rule 2213; see also Notice, *supra* note 5 (describing the rules governing the auction processes). The Exchange proposes to assess market maker trading licenses that are sold between annual auctions a premium of ten percent of the price at which the market maker trading license was sold during the preceding auction.

<sup>35</sup> See Proposed ISE Rule 2213(f).

<sup>36</sup> The proposed rule provides that an FXPMM generally would not be permitted to terminate its trading license. In the event a FXPMM is unable to fulfill its obligations, a backup FXPMM would be designated by the Exchange; however, the FXPMM would be required to continue to pay its trading license price until the license expires. See Proposed ISE Rule 2213(f)(6).

<sup>37</sup> See Proposed ISE Rule 2213(g). Based on market demand, the Exchange may increase the number of FXCMM trading licenses available at the next regularly scheduled auction.

<sup>38</sup> See Proposed ISE Rule 2213(g)(2) (setting forth the manner in which the Exchange will conduct the "Dutch" auction).

<sup>39</sup> See Proposed ISE Rule 2213(g)(4).

by adopting a provision for FCOs that is substantially similar to the Phlx's margin rules for foreign currency options.<sup>40</sup> Accordingly, FCOs would have the same customer margin requirements as are provided in Phlx Rule 722, "Margin Accounts," Commentary .16.<sup>41</sup> The Exchange would inform Members and the public of the margin levels for each currency option immediately following the quarterly reviews described in the proposed rule.

#### *D. Customer Protection and Surveillance*

The Exchange's existing rules designed to protect public customer trading would apply to trading in FCOs. Specifically, ISE Rules 608(a) and (b) prohibit Members from accepting a customer order to purchase or write an option unless such customer's account has been approved in writing by a designated Options Principal of the Member. Additionally, ISE Rule 610 regarding suitability provides that options should only be sold to customers capable of evaluating and bearing the risks associated with trading in this instrument. Further, ISE Rule 611 permits members to exercise discretionary power with respect to trading options in a customer's account only if the Member has received prior written authorization from the customer and the account had been accepted in

writing by a designated Options Principal. ISE Rule 611 also requires designated Options Principals or Representatives of a Member to approve and initial each discretionary order on the day the discretionary order is entered. These customer protection rules, as well as ISE Rule 609, "Supervision of Accounts," ISE Rule 612, "Confirmation to Customers," and ISE Rule 616, "Delivery of Current Options Disclosure Documents and Prospectus,"<sup>42</sup> would apply to trading in FCOs.

FCOs would be covered under the ISE's existing surveillance program. Specifically, the Exchange has represented that it has an adequate surveillance program in place for FCOs, and intends to apply the same program procedures that it applies to the Exchange's index options.<sup>43</sup> The Exchange has also noted that it is a member of the Intermarket Surveillance Group ("ISG") and may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG.<sup>44</sup>

### **III. Discussion**

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,<sup>45</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>46</sup>

The Commission believes that FCOs may provide investors with additional strategic investment and hedging tools. As such, the Commission believes that the availability of FCOs may provide investors with greater flexibility in meeting their investment objectives. The Commission notes that, while ISE's FCOs differ in some respects from other foreign currency option products, the

Commission has recently approved the trading of cash-settled foreign currency options on another national securities exchange.<sup>47</sup> As discussed further below, the Commission believes that ISE's proposed rules adequately address any concerns raised by the listing and trading of FCOs (e.g., transparency, customer protection, surveillance) and provide for adequate and proper regulation of the listing and trading of FCOs on ISE.

#### *A. Dissemination of Information*

The Commission notes that the underlying value of ISE's proposed FCOs are intended to "look and feel" like index options. To achieve this, ISE will base each FCO on a modified exchange rate (*i.e.*, ISE will multiply the Reuters Composite Currency Rate by a pre-determined, fixed amount of 1, 10, or 100).<sup>48</sup> The purpose of the modifier is to bring the underlying value of an FCO up to a level that more closely resembles the value an investor would customarily see for an index option. Accordingly, dissemination of the modified exchange rates by ISE is essential to inform investors' trading of FCOs. In this respect, ISE will disseminate current modified exchange rates for each FCO at least once every fifteen seconds over OPRA or one or more major market data vendors for all the currency rates on which it intends to list options.<sup>49</sup>

With respect to the underlying components that make up an FCO, the Commission notes that an investor can access a list of the modifiers that are used in creating each of the modified exchange rates upon which the FCOs are based by consulting ISE's Web site. Further, the Commission believes that sufficient venues exist for obtaining reliable information on the Currencies so that investors in FCOs can monitor the underlying spot market in the Currencies. These foreign exchange rates are widely available via public Web sites, broker Web sites, as well as in print publications.<sup>50</sup>

<sup>40</sup> See Proposed ISE Rule 1202(d).

<sup>41</sup> Similar to Phlx Rule 722, Commentary .16, the Exchange would 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, ISE would 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%, ISE would 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 would 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 would be increased to a 98% level and if it exceeds 97.5% for two consecutive months, the currency would be taken off monthly reviews and will be put back on the quarterly review cycle. If the currency exceeds 98.5%, the margin level would 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 would be set at a level to meet a 99% confidence level ("Extreme Outlier Test").

<sup>42</sup> The OCC, together with the Exchange, has prepared an amendment to the Options Disclosure Document ("ODD"), to include characteristics of the Exchange's FCOs and trading examples.

<sup>43</sup> See Notice, *supra* note 5, at 72 FR 9368.

<sup>44</sup> See *id.*

<sup>45</sup> 15 U.S.C. 78f(b)(5).

<sup>46</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>47</sup> See Securities Exchange Act Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR-PHLX-2006-34); see also Phlx Rules 1000-1093. As noted above, ISE's FCOs will be rate-modified, whereas Phlx lists and trades cash-settled foreign currency options that are not rate-modified.

<sup>48</sup> See *supra* note 12 and accompanying text (discussing the use of rate modifiers).

<sup>49</sup> See Proposed ISE Rule 2207. The Exchange will also disseminate FCO quotes and trades over OPRA.

<sup>50</sup> For example, Web sites such as Bloomberg.com, Reuters.com, Yahoo! Finance, CNBC.com, OANDA.com, and Nasdaq.com provide free currency data. In addition, Investors Business Daily, Wall Street Journal, and the New York Times all provide currency data as part of their daily coverage.

The Commission also notes that investors can readily obtain information regarding futures trading on the Currencies, as the Exchange proposes to trade FCOs only on those Currencies whose futures contracts, and options on such futures contracts, are currently traded on the CME.

#### B. Settlement Value

An FCO's closing settlement value will be the Noon Buying Rate or the WM/Reuters Closing Spot rate, as applicable,<sup>51</sup> on the trading day prior to expiration,<sup>52</sup> as modified by the applicable modifier. Settlement values will be posted on the Exchange's Web site, and will be publicly available to all visitors to the ISE's Web site. The Commission believes that the Exchange's procedures and the competitive nature of the spot market for the Currencies should help to ensure that the settlement values for FCO contracts will accurately reflect the spot price for foreign currencies.

#### C. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as ISE's proposed FCOs, can commence trading on a national securities exchange. The Commission believes that this goal has been satisfied by the application of ISE's existing customer protection rules to FCOs.<sup>53</sup> As noted above, the Exchange's customer protection rules regarding customer suitability, discretionary accounts, supervision of accounts, confirmation to customers, and delivery of the ODD, among others, will extend to the trading of FCOs. The Commission also notes that the ODD is being amended to include characteristics and trading examples of the Exchange's FCOs and that the Exchange plans to deliver a circular to its members describing the specific risks associated with FCOs. Accordingly, the

Commission believes that ISE has provided adequate safeguards to help ensure the protection of investors in FCOs.

#### D. Surveillance

The Commission notes that ISE will integrate FCOs into its existing market surveillance program and that it intends to apply the same program procedures to FCOs that it applies to the Exchange's index options. Further, ISE will have the ability to obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG.<sup>54</sup> In addition, the major futures exchanges are affiliate members of the ISG, which will allow ISE to obtain surveillance information regarding potential intermarket trading abuses from futures exchanges (such as the CME). Therefore, the Commission believes that ISE should have the tools necessary to allow it to adequately surveil trading in FCOs.

#### E. Position and Exercise Limits and Margin Requirements

The Commission believes that the position and exercise limits proposed by the Exchange for FCOs are reasonably designed to protect the options and related markets from disruptions or manipulation.<sup>55</sup> At the same time, the Commission believes that such position and exercise limits should not hamper the depth and liquidity of the market for FCOs. The Commission also notes that the margin requirements that ISE proposes to adopt for FCOs are substantially similar to Phlx's margin requirements for foreign currency options, which has been approved by the Commission.<sup>56</sup> Accordingly, the Commission believes that the proposed position and exercise limits and margin requirements are appropriate and consistent with the Act.

#### F. Market Maker Trading Licenses

The Commission believes that the provisions governing the two new classes of market makers that will be permitted to trade FCOs on the Exchange, FXPMMs and FXCMMs, are consistent with the Act. The Commission notes that FXPMMs and FXCMMs will be bound by similar obligations as the PMMs and CMMs of the Exchange's equity markets.<sup>57</sup> In addition, the Commission notes that, in order to obtain a trading license, FXPMMs will be required provide the Exchange with market quality

commitments along with a bid.<sup>58</sup> If an FXPMM continuously fails to meet its stated market quality comments, it will have its trading license terminated by the Exchange.<sup>59</sup>

The Commission believes that the procedures under which the Exchange proposes to offer market maker trading licenses are reasonably calculated to provide fair access to the Exchange. Specifically, the Commission believes that the provisions governing the Dutch auction, by which FXCMM trading licenses will be sold, are designed to ensure that market maker trading licenses are widely available.<sup>60</sup> For example, the proposed rule permits the Exchange to increase the number of FXCMM trading licenses available at the next regularly scheduled auction based on market demand; specifies a reasonable minimum Reserve Price; limits the number of market maker trading licenses that may be bid by a single Member; and gives the Exchange the ability to sell additional unsold market maker trading licenses during the year at a 10% premium.<sup>61</sup> In addition, the Commission believes that the proposed sealed bid auction for FXPMM trading licenses is reasonably calculated to award trading licenses in a fair and reasonable manner and provide fair access to the Exchange.<sup>62</sup> The requirement that bidders provide a quality market commitment in addition to their bid will allow the Exchange to grant FXPMM trading licenses in an objective manner without awarding a trading license solely based on the highest bid.

#### G. Other Rules

The Commission believes that the other rule changes proposed by ISE to accommodate the trading of FCOs also are consistent with the Act. Further, the Commission notes that the Exchange has represented that it has the necessary systems capacity to support the additional quotations and messages that will result from listing and trading of FCOs.<sup>63</sup>

In particular, the Commission believes that it is reasonable and consistent with the Act for the Exchange to apply its current minimum trading increment requirements to FCOs, so that the minimum trading increment for an FCO trading at less than \$3.00 will be \$0.05 and the minimum trading

<sup>51</sup> See Proposed ISE Rule 2212. As noted above, in the event that the Federal Reserve Bank of New York does not maintain or publish a Noon Buying Rate for an underlying Currency, the Exchange will apply the WM/Reuters Closing Spot rate to determine the closing settlement value for a particular FCO.

<sup>52</sup> If the Noon Buying Rate is not announced by 2 p.m. Eastern Time, the closing settlement value would be the most recently announced Noon Buying Rate, as modified by the applicable modifier, unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances. The WM/Reuters Closing Spot rate would be one of the alternative closing settlement values available to ISE for use in such a situation.

<sup>53</sup> See *supra* Section II.D (Customer Protection and Surveillance).

<sup>54</sup> The members of the ISG include all of the U.S. registered stock and options markets.

<sup>55</sup> See Proposed ISE Rules 2208 and 2209.

<sup>56</sup> See *supra* notes 40 and 41 and accompanying text (discussing the proposed margin requirements).

<sup>57</sup> See Notice, *supra* note 5.

<sup>58</sup> See Proposed ISE Rule 2213(f)(2).

<sup>59</sup> See Proposed ISE rule 2213(f)(4).

<sup>60</sup> See Proposed ISE Rule 2213(g).

<sup>61</sup> *Id.*

<sup>62</sup> See Proposal ISE Rule 2213(f).

<sup>63</sup> See Letter from Michael Simon, General Counsel, ISE, to John Roeser, Assistant Director, Commission, dated February 23, 2007.

increment for an FCO trading at \$3.00 or higher will be \$0.10.<sup>64</sup> In addition, the Commission believes that it is reasonable for the Exchange to list exercise prices of series at intervals no less than \$0.10.<sup>65</sup> Further, the Exchange believes that it is appropriate for the Exchange to list FCOs with expirations that are the same as the expirations currently permitted for index options, with the exception that FCO long-term series will only have expirations up to 36 months.<sup>66</sup>

The Commission also notes that, consistent with the Act, the proposed rules provide that the Exchange will have the ability to withdraw approval of the trading of a FCO if advisable in the public interest or for the protection of investors,<sup>67</sup> and an Exchange official will have the authority to halt or suspend trading in an FCO under certain circumstances in the interest of a fair and orderly market.<sup>68</sup>

#### H. Accelerated Approval

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publishing notice of Amendment No. 2 in the **Federal Register**. The Commission notes that the proposal, as modified by Amendment No. 1, was published for notice and comment,<sup>69</sup> and that the Commission received no comment letters on the proposal. Amendment No. 2 proposes to amend the proposed rules to specify the 47 cross-rate FCOs that ISE proposes to list and trade, as well as specify the position and exercise limits and the applicable rate modifiers for each proposed cross-rate FCO. The Commission notes that the Exchange expressed its intention to list cross-rate FCOs in its Exhibit 3 to the original proposed rule change, and that Amendment No. 2 provided the additional clarification necessary to allow the Exchange to do so. The Commission also notes that the proposed cross-rate FCOs are based on the same Currencies set forth in the original proposal, as modified by Amendment No. 1 and published in the **Federal Register**, and they are subject to the same rules and requirements as other FCOs. As such, the Commission believes that Amendment No. 2 does not raise any new or novel issues. Accordingly, the Commission finds good cause, consistent with Section

19(b)(2) of the Act,<sup>70</sup> to approve the proposal, 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 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-2006-59 on the subject line.

##### Paper Comments

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

All submissions should refer to File Number SR-ISE-2006-59. 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. 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-2006-59 and should be submitted on or before May 1, 2007.

<sup>70</sup> 15 U.S.C. 78s(b)(2).

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>71</sup> that the proposed rule change (SR-ISE-2006-59), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>72</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-6655 Filed 4-9-07; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55571; File No. SR-ISE-2007-21]

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

April 3, 2007.

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 March 26, 2007, the International Securities Exchange, LLC ("ISE" 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 ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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 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 seven Premium Products.<sup>5</sup> The text of the proposed rule change is available on the ISE's Web site (<http://www.ise.com>).

<sup>71</sup> 15 U.S.C. 78s(b)(2).

<sup>72</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)(ii).

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

<sup>5</sup> "Premium Products" is defined in the Schedule of Fees as the products enumerated therein.

<sup>64</sup> See ISE Rule 710.

<sup>65</sup> See Proposed ISE Rule 2206(a)(4).

<sup>66</sup> See Proposed ISE Rule 2205.

<sup>67</sup> See Proposed ISE Rule 2204.

<sup>68</sup> See Proposed ISE Rule 2210.

<sup>69</sup> See Notice, *supra* note 5.