

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63639; File No. SR-ISE-2010-121]

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

January 4, 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 December 28, 2010, 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 and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to extend an incentive plan for market makers in four foreign currency options ("FX Options"). 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 an incentive plan for market makers in options on the New Zealand dollar ("NZD"), the Mexican peso ("PZO"), the Swedish krona ("SKA") and the Brazilian real ("BRB").<sup>3</sup> On August 3, 2009, the Exchange adopted an incentive plan applicable to market makers in NZD, PZO and SKA,<sup>4</sup> and on January 19, 2010, added BRB to the incentive plan.<sup>5</sup> The Exchange has since extended the date by which market makers may join the incentive plan<sup>6</sup> and now proposes to do so again.

In order to promote trading in these FX Options, the Exchange has an incentive plan pursuant to which the Exchange waives the transaction fees for the Early Adopter<sup>7</sup> FXPMM<sup>8</sup> and all Early Adopter FXCMMs<sup>9</sup> that make a market in NZD, PZO SKA and BRB for as long as the incentive plan is in effect. Further, pursuant to a revenue sharing agreement entered into between an Early Adopter Market Maker and ISE, the Exchange pays the Early Adopter FXPMM forty percent (40%) of the transaction fees collected on any customer trade in NZD, PZO SKA and BRB and pays up to ten (10) Early Adopter FXCMMs that participate in the incentive plan twenty percent (20%) of the transaction fees collected for trades between a customer and that FXCMM. Market makers that do not participate in the incentive plan are charged regular transaction fees for trades in these products. In order to participate in the incentive plan, market makers are

<sup>3</sup> The Commission previously approved the trading of options on NZD, PZO, SKA and BRB. See Exchange Act Release No. 34-55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR-ISE-2006-59).

<sup>4</sup> See Exchange Act Release No. 34-60536 (August 19, 2009), 74 FR 43204 (August 26, 2009) (SR-ISE-2009-59).

<sup>5</sup> See Exchange Act Release No. 34-61459 (February 1, 2010), 75 FR 6248 (February 8, 2010) (SR-ISE-2010-07).

<sup>6</sup> See Exchange Act Release Nos. 34-60810 (October 9, 2009), 74 FR 53527 (October 19, 2009) (SR-ISE-2009-80), 34-61334 (January 12, 2010), 75 FR 2913 (January 19, 2010) (SR-ISE-2009-115), 61851 (April 6, 2010), 75 FR 18565 (April 12, 2010) (SR-ISE-2010-27), 34-62503 (July 15, 2010), 75 FR 42812 (July 22, 2010) (SR-ISE-2010-71) and 34-36045 (October 5, 2010), 75 FR 62900 (October 13, 2010) (SR-ISE-2010-100).

<sup>7</sup> Participants in the incentive plan are known on the Exchange's Schedule of Fees as Early Adopter Market Makers.

<sup>8</sup> A FXPMM is a primary market maker selected by the Exchange that trades and quotes in FX Options only. See ISE Rule 2213.

<sup>9</sup> A FXCMM is a competitive market maker selected by the Exchange that trades and quotes in FX Options only. See ISE Rule 2213.

currently required to enter into the incentive plan no later than December 31, 2010. The Exchange now proposes to extend the date by which market makers may enter into the incentive plan to March 31, 2011.

##### 2. Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>11</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 will permit additional market makers to join the incentive plan which in turn will generate additional order flow to the Exchange by creating incentives to trade these FX Options as well as defray operational costs for Early Adopter Market Makers.

#### 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>12</sup> At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

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

#### 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-2010-121 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-2010-121. 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 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 Number SR-ISE-2010-121 and should be submitted by January 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-63635; File No. SR-NYSEArca-2010-103]**

#### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the Jefferies S&P 500® VIX Short-Term Futures ETF**

January 3, 2011.

#### **I. Introduction**

On November 9, 2010, NYSE Arca, Inc. ("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 list and trade shares ("Shares") of the Jefferies S&P 500® VIX Short-Term Futures ETF ("Fund") of the ProShares Trust II ("Trust") under NYSE Arca Equities Rule 8.200, Commentary .02. The proposed rule change was published for comment in the **Federal Register** on November 29, 2010.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

#### **II. Description of the Proposal**

The Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Equities Rule 8.200, Commentary .02.<sup>4</sup> The Fund, which is a commodity pool and a Delaware statutory trust,<sup>5</sup> seeks to track changes, whether positive or negative, in the level of the S&P 500 VIX Short-Term

Futures™ Index ER ("VIX Futures Index" or "Index") over time.<sup>6</sup> The Fund will pursue its investment objective primarily by maintaining long futures positions corresponding to the futures contracts underlying the VIX Futures Index ("VIX Futures Contracts") which trade on the CBOE Futures Exchange ("CFE"), with an aggregate notional amount equal to the Fund's total capital. In certain circumstances, as described below, the Fund may invest in one or more forward agreements or swaps ("Futures-Linked Investments"). The Fund is also intended to reflect the excess, if any, of its interest income from its investment in U.S. Treasury bills, generally with a maturity of less than one year, and other high credit quality short-term fixed-income securities, over its expenses.

Jefferies Commodity Investment Services, LLC, a Delaware limited liability company, is the Fund's promoter, and will serve as Managing Owner of the Fund. The Managing Owner will serve as the commodity pool operator and commodity trading advisor of the Fund. The Managing Owner is registered as a commodity pool operator and commodity trading advisor with the Commodity Futures Trading Commission and is a member of the National Futures Association. The Bank of New York Mellon ("Administrator") will be the administrator, custodian and transfer agent of the Fund.

The Index is designed to provide an exposure to one or more maturities of futures contracts on the CBOE Volatility Index ("Volatility Index"), which reflect implied volatility in the S&P 500® Index at various points along the volatility forward curve.<sup>7</sup> The Volatility Index is calculated based on the prices of put and call options on the S&P 500® Index. The VIX Futures Index is intended to reflect the returns that are potentially

<sup>6</sup> The VIX Futures Index, which is the excess return version of the S&P 500 VIX Short-Term Futures™ Index, was created by Standard & Poor's Financial Services, LLC ("Index Sponsor").

<sup>7</sup> The Volatility Index is a benchmark index designed to estimate expected volatility in large cap U.S. stocks over 30 days in the future by averaging the weighted prices of certain put and call options on the S&P 500® Index. During periods of market instability, the implied level of volatility of the S&P 500® Index typically increases and, consequently, the prices of options linked to the S&P 500® Index typically increase (assuming all other relevant factors remain constant or have negligible changes). This, in turn, causes the level of the Volatility Index to increase. Because the Volatility Index may increase in times of uncertainty, the Volatility Index is commonly known as the "fear gauge" of the broad U.S. equities market. The Volatility Index has historically had negative correlations to the S&P 500® Index. The Exchange states that the Fund is not linked to the Volatility Index, and the value of the Index and the Shares may diverge significantly from the Volatility Index.

<sup>13</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> See Securities Exchange Act Release No. 63349 (November 19, 2010), 75 FR 73145 ("Notice").

<sup>4</sup> Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

<sup>5</sup> The Fund has filed a Pre-Effective Amendment No. 3 to its Registration Statement on Form S-1 under the Securities Act of 1933, dated August 17, 2010 (File No. 333-166283) ("Registration Statement").