

change also supports the principles of Section 11A(a)(1)<sup>13</sup> of the Act in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange stated in the proposal that it believes the current volume and value requirements are too high in light of current market conditions. Recent trends in market activity have driven down both average trade sizes and average stock prices. As a result, the current volume and value requirements are met less frequently than they once were, and there are fewer occasions on which a DMM may use gap quotes to facilitate price discovery and minimize short-term price dislocation. The Exchange stated in its proposal that, based on its analysis of historical market conditions, the proposal to lower the gap quote volume and value requirements will permit an increased use of gap quotes, which it believed would be appropriate for current market conditions. In addition, the Exchange did not believe that lowering the requirements would cause an increase in the use of gap quotes to such a degree that would negatively impact the quality of the Exchange's market. The revised volume and value requirements should provide greater transparency and efficiency and additional reductions in volatility, consistent with the purpose of the Policy.

The Commission believes that the remaining aspects of the proposed rule change set forth in the Notice are either technical or non-substantive in nature, or are clarifications of the existing gap quote policy, and therefore are consistent with the Act.

The Commission notes that the Exchange represented in the Notice that it has reasonable policies and procedures to surveil DMMs' use of gap quotes and to detect the potential misuse of gap quotes in violation of Exchange rules and Federal securities laws. Such surveillance should provide the Exchange with information that will be helpful in assessing the effects of an increased number of gap quotes on the Exchange's market.

In light of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the

proposed rule change (SR–NYSEAmex–2009–82) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61279; File No. SR–ISE–2009–110]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Options on the Brazilian Real

January 4, 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 December 22, 2009, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. 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 proposes to change the modifier for the Brazilian real.

#### 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

Pursuant to Commission approval, ISE began trading options on foreign currency pairs on April 17, 2007.<sup>3</sup> The Brazilian real is one of the 19 underlying currencies that have been approved by the SEC for trading.<sup>4</sup> The purpose of this proposed rule change is to allow the Exchange to use a different modifier for calculating the underlying value of the Brazilian real than the one that was originally assigned. In the FX Options Filing, the Exchange had assigned modifiers of 1, 10 or 100 to calculate the underlying values for each of the 19 underlying currencies,<sup>5</sup> with the Brazilian real being assigned a modifier of 10 based on the exchange rate at that time. Since then, however, the U.S. dollar has declined considerably relative to the Brazilian real. As a result, the Exchange believes a modifier of 100 would be more appropriate. ISE does not currently list options on the Brazilian real but expects to do so shortly.

##### 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>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act's<sup>7</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.

#### 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.

<sup>3</sup> See Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59) (the “FX Options Filing”).

<sup>4</sup> *Id.*

<sup>5</sup> See Exhibit 3 of the FX Options Filing. Modifiers used for creating underlying values are also posted on the Exchange's Web site.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78k–1(a)(1).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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.

*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 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>8</sup> of the Act and Rule 19b-4(f)(6)<sup>9</sup> thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description 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-2009-110 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-ISE-2009-110. 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-2009-110 and should be submitted on or before February 1, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-61277; File No. SR-Phlx-2009-108]**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NASDAQ OMX PHLX, Inc. To Amend the \$1 Strike Program To Allow Low-Strike LEAPS**

January 4, 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 December

18, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 is filing with the Commission a proposal to amend its Rule 1012 (Series of Options Open for Trading) to expand the Exchange's \$1 Strike Price Program ("Program" or "\$1 Strike Program")<sup>3</sup> to allow listing long-term option series ("LEAPS")<sup>4</sup> in \$1 strike price intervals up to \$5 in up to 200 option classes in individual stocks.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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

<sup>3</sup> The \$1 Strike Program was initially approved on June 11, 2003, and thereafter extended several times until June 5, 2008. See Securities Exchange Act Release Nos. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (SR-Phlx-2002-55) (notice of filing and order approving); 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (SR-Phlx-2004-38) (notice of filing and immediate effectiveness); 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005) (SR-Phlx-2005-35) (notice of filing and immediate effectiveness); 53938 (June 5, 2006), 71 FR 34178 (June 13, 2006) (SR-Phlx-2006-36) (notice of filing and immediate effectiveness); and 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR-Phlx-2007-29) (notice of filing and immediate effectiveness). The program was subsequently made permanent and expanded. See Securities Exchange Act Release Nos. 57111 (January 8, 2008), 73 FR 2297 (January 14, 2008) (SR-Phlx-2008-01) (notice of filing and immediate effectiveness); and 59590 (March 17, 2009), 74 FR 12412 (March 24, 2009) (SR-Phlx-2009-21) (notice of filing and immediate effectiveness).

<sup>4</sup> Long-Term Equity Anticipation Securities (LEAPS) are long-term options that generally have up to thirty-nine months from the time they are listed until expiration. Commentary .03 to Rule 1012. Long-term FLEX options and index options are considered separately in Rules 1079(a)(6) and 1101A(b)(iii), respectively.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</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.