available publicly. All submissions should refer to File Number SR–NASDAQ–2009–094 and should be submitted on or before December 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27998 Filed 11–20–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61012; File No. SR–FINRA–2007–006]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment Nos. 1, 2, 3, and 4 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment Nos. 1, 2, 3, and 4, Relating to Historic TRACE Data

November 16, 2009.

I. Introduction

On August 9, 2007, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to provide for public access to historic Trade Reporting and Compliance Engine (''TRACE'') data (''Historic TRACE Data''). The proposal was published for comment in the **Federal Register** on September 10, 2007.[3] The Commission received one comment on the proposal.[4] FINRA responded to the comment letter on October 11, 2007.[5] On December 12, 2007, FINRA filed Amendment No. 1 to the proposed rule change. On December 30, 2008, FINRA filed Amendment No. 2 to the proposed rule change. On October 15, 2009, FINRA filed Amendment No. 3 to the proposed rule change. On November 12, 2009, FINRA filed Amendment No. 4 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on the proposed rule change as modified by Amendment Nos. 1, 2, 3, and 4, and is approving the proposed rule change, as modified by Amendment Nos. 1, 2, 3, and 4, on an accelerated basis.

II. Description of the Proposed Rule Change

FINRA has proposed to make Historic TRACE Data publicly available and to amend FINRA Rule 7730 to establish fees for such data. FINRA currently makes publicly available aggregated data regarding both disseminated and non-disseminated transactions, but in a manner that protects transaction-level non-disseminated data from being ascertained. FINRA stated that many people have expressed interest in reviewing historic transaction-level data and believes it is important to provide access to this data, particularly for research purposes.[7]

Under this proposal, data regarding transactions reported to TRACE since July 1, 2002 (except Rule 144A transactions) will be made publicly available. This data will generally consist of basic transaction information such as the price, the date and time of execution, and the yield. Certain information that will be made available—such as actual trade volumes, rather than capped volume amounts that are disseminated as part of the real-time TRACE data—has not previously been disclosed. Historic TRACE Data will be updated quarterly and provided using quarterly files or reports. FINRA currently intends to release only transaction data that have aged at least 18 months. FINRA may change the disclosed elements to respond to user needs, improve the usefulness of the data, and foster the extensive use of such data in research on the corporate bond markets. FINRA has represented that it would publish any changes to data elements provided in a FINRA Notice.

The proposed amendments to FINRA Rule 7730 would establish fees for obtaining Historic TRACE Data and create different pricing structures for different classes of users. A Professional[8] will be subject to the following fees under proposed FINRA Rule 7730(d)(1)(A): (1) An initial fee of $2,000, which includes development and set-up costs; (2) a fee of $2,000 per calendar year per Data Set[9] for Historic TRACE Data[10]; and (3) a ''bulk re-distribution fee'' of $1 per CUSIP per calendar year (or part thereof) within a single Data Set of Historic TRACE data per each recipient of re-distributed data, with a maximum fee per Data Set of $1,000 per calendar year (or part thereof) per each recipient of re-distributed data.[11]

A Tax-Exempt Organization[12] will be subject to the following fees under proposed FINRA Rule 7730(d)(1)(B): (1) A single, data set-up fee of $1,000, which includes development and set-up costs; and (2) a data and bulk re-distribution fee of $500 per calendar year per Data Set for receipt of Historic TRACE Data.[13] An organization

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 56327 (August 28, 2007), 72 FR 51689 (September 10, 2007) (''Notice'').

[4] *See* letter from Christopher Gilkerson and Gregory Babyak, Co-Chairs, Market Data Subcommittee, Technology and Regulation Committee, Securities Industry and Financial Markets Association (''SIFMA''), to Nancy M. Morris, Secretary, Commission, dated October 3, 2007 (''SIFMA Letter'').

[5] *See* letter from Sharon Zackula, Associate Vice President and Associate General Counsel, FINRA, to Nancy M. Morris, Secretary, Commission, dated October 11, 2007 (''FINRA Response to Comments'').

[6] For information about the four amendments, *see infra* Section III.

[7] Before submitting the proposal, FINRA (then known as NASD) sought member input about whether FINRA should release standard TRACE transaction-level data to the public; if access should be limited in any way; if the data should be redacted as to certain types of information; and if FINRA should provide access to any portion of the transaction-level historic data that previously had only been reported, but not disseminated. *See* NASD *Notice to Members* 06–32 (June 2006). The sole commenter was The Bond Market Association (''TBMA'') (now known as SIFMA). *See* comment letter from Mary C.M. Kuan, Vice President and Assistant General Counsel, TBMA, to Barbara Z. Sweeney, Office of the Corporate Secretary, NASD, dated August 14, 2006. TBMA supported access to the transaction-level historic data, provided that the data had no member participant identifiers and were sufficiently aged to eliminate any possibility of identifying current positions or trading strategies.

[8] For purposes of FINRA Rule 7730, ''Professional'' means a person who is not a Non-Professional, as defined in FINRA Rule 7730(f), as modified by Amendment No. 3 (formerly in NASD Rule 7730(c)(3)(A)). *See* e-mail from Sharon Zackula, Associate Vice President and Associate General Counsel, FINRA, to Michael Gaw, Assistant Director, and Geoffrey Pemble, Special Counsel, Division of Trading and Markets, Commission, dated December 11, 2008.

[9] In Amendment No. 3, FINRA proposed revisions to Rule 7730 to reflect pricing for multiple ''Data Sets'' as a result of a recent change to Rule 7730 in SR–FINRA–2009–010. *See* Amendment No. 3, *infra* Section III.

[10] The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set. *See* Amendment No. 3.

[11] The data that may be purchased under the data fee would be enabled for internal use and internal and/or external desktop display distribution. Re-distribution would be permitted only if the subscriber paid the bulk re-distribution fee.

[12] ''Tax-Exempt Organization'' as used in proposed Rule 7730 means an organization that is described in Section 501(c) of the Internal Revenue Code (26 U.S.C. 501(c)) and has received recognition of the exemption from federal income taxes from the Internal Revenue Service. *See* proposed FINRA Rule 7730(f)(2).

[13] The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set. *See* Amendment No. 3. Data that may be purchased under the data and bulk re-distribution fee would be enabled for internal use and internal and/or external desktop display distribution. In addition, the right to re-distribute the data in bulk is included

Continued

qualifies for the Tax-Exempt Organization fees if it does not re-distribute Historic TRACE Data in bulk, or if it re-distributes such data in bulk or otherwise at no charge solely to Non-Professionals [14] or other Tax-Exempt Organizations that agree to be subject to the same restrictions.[15]

FINRA also stated that it occasionally receives *ad hoc* requests for Historic TRACE Data from natural persons for non-commercial use. Under the proposal, FINRA may provide Historic TRACE Data to a natural person if the person represents that he or she is a Non-Professional; will receive and use the historic TRACE data solely for personal, non-commercial use; and is not engaged in, and indicates that he or she has no intention to engage in, any re-distribution of all or any portion of the data. FINRA may impose a fee under FINRA Rule 7730(e) to respond to such *ad hoc* requests. If FINRA charges a fee, it would do so to cover the administrative and operational costs of responding to such a request. Specifically, proposed FINRA Rule 7730(d)(2) states that that such a fee would be ''cost-neutral'' and would be ''comprised solely of the cost of the media and the cost of delivery (*e.g.*, U.S. Postal Service or other requested delivery service).'' [16]

FINRA has represented that the effective date of the proposed rule change will be announced in a *Regulatory Notice* to be published no later than 150 days following Commission approval, and the effective date will be no later than one to 30 days following the effective date of SR–FINRA–2009–010.[17]

III. Amendment Nos. 1, 2, 3, and 4

As originally filed, FINRA would have discretion whether to charge a fee for providing Historic TRACE Data to a Non-Professional. If FINRA decided to charge a fee, the fee would have been to recover ''the administrative and operational costs of responding to such a request,'' which referred to miscellaneous costs, such as postage. However, such costs were not specified in the rule text. In Amendment No. 1, FINRA amended proposed FINRA Rule 7730(d)(2) to specify that, when providing Historic TRACE Data to a Non-Professional, FINRA would charge a cost-neutral fee that is comprised solely of the cost of the media (such as a CD) used to store and deliver the data to the Non-Professional and the cost of delivery (such as postage or an express mail fee). In Amendment No. 1, FINRA also corrected certain technical errors.

In Amendment No. 2, FINRA amended the proposed rule change to reflect the renumbering of NASD Rule 7030 as FINRA Rule 7730 pursuant to the adoption of certain sections of the FINRA Consolidated Rulebook, as described below. In addition, FINRA made two non-substantive rule text amendments to reflect changes in FINRA style convention.

On September 25, 2008, the Commission approved proposed rule change SR–FINRA–2008–021, in which FINRA proposed, among other things, to adopt the NASD Marketplace Rules (the NASD Rule 4000 through 7000 Series) as the FINRA Rule 6000 through 7000 Series in the Consolidated FINRA Rulebook. The rule change became effective December 15, 2008, and NASD Rule 7030 was transferred to the Consolidated FINRA Rulebook as FINRA Rule 7730.[18]

In SR–FINRA–2008–021, FINRA made non-material changes to NASD Rule 7030 to: renumber the rule as Rule 7730 and changing all internal references to the rule number accordingly; change references to the ''Rule 6200 Series'' to the FINRA ''Rule 6700 Series,'' which is the renumbered TRACE rule series; delete references to ''NASD'' and replace them with ''FINRA;'' change ''as of'' to ''as/of''; and change ''Commission'' to ''SEC''.

After FINRA filed Amendment No. 2, the Commission approved proposed rule change SR–FINRA–2009–010,[19] which included amendments to Rule 7730. Among other changes, FINRA proposed to distinguish TRACE transaction data as two data bases (''Data Sets''), one comprised solely of corporate bond transaction information (the ''Corporate Bonds Data Set'') and a second data set comprised solely of Agency debt securities transaction information (''Agency Data Set''). Prior to SR–FINRA–2009–010, TRACE data was organized in a single corporate bond transaction database. As proposed in SR–FINRA–2009–010, each new Data Set would include the relevant transaction data, including primary transactions if applicable, and relevant fees would be charged per Data Set. Consequently, FINRA filed Amendment No. 3 to incorporate changes to the rule text of Rule 7730 approved in SR–FINRA–2009–010, including Rule 7730's application to these two Data Sets. Although the proposed amendments will require a person desiring to receive Historic TRACE Data to pay only one set-up fee, all other fees for Historic TRACE Data will be assessed per Data Set.[20] In addition, FINRA has proposed to renumber the three defined terms in Rule 7730(c)(3)(A), (B), and (C) as Rule 7730(f)(1), (2), and (3), and the proposed definition of ''Historic TRACE Data,'' as Rule 7730(f)(4). FINRA also proposes to incorporate minor amendments to the definition of ''Tax-Exempt Organization'' to delete the conditions regarding re-distribution of data that a Tax-Exempt Organization must adhere to in order to receive data under the reduced fee provisions for such organizations, and to restate such conditions in other parts of Rule 7730, where appropriate (The conditions regarding re-distribution were not substantively amended).

Also, in Amendment No. 3, FINRA provided additional information regarding the business, technical, administrative, data recovery, quality assurance, and other processes involved in creating, offering, and supporting proposed Historic TRACE Data on an ongoing basis, and an assessment of the potential demand for such data. According to FINRA, the creation of data products, such as Historic TRACE Data products,[21] involves a series of functions including: creation of business requirements, technical specifications, coding, code testing, quality assurance, and data retention/storage. The added technical processes

in the non-professional data and bulk re-distribution fee.

[14] A ''Non-Professional'' as used in FINRA Rule 7730 is a natural person who uses TRACE transaction data solely for his or her personal, non-commercial use. A Non-Professional subscriber must agree to certain terms of use of the TRACE data, including that he or she receive and use the TRACE transaction data solely for his or her personal, non-commercial use. *See* proposed FINRA Rule 7730(f)(1).

[15] *See* Amendment No. 4.

[16] Amendment No. 1.

[17] *See* Amendment No. 4.

[18] *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR–FINRA–2008–021, SR–FINRA–2008–022, SR–FINRA–2008–026, SR–FINRA–2008–028, and SR–FINRA–2008–029).

[19] *See* Securities Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991 (October 2, 2009) (Order Approving SR–FINRA–2009–010); *see also Regulatory Notice* 09–57 (SEC Approves Amendments Expanding TRACE to Include Agency Debt Securities and Primary Market Transactions) (September 2009).

[20] Because transactions in Agency Debt Securities will not begin to be reported until March 1, 2010, the Historic Agency Data Set will not be populated with transaction data until that time. Also, as stated in proposed Rule 7730(f)(4), Historic TRACE Data will not become available until the transaction data have aged at least 18 months. Therefore, although the Historic Agency Data Set is incorporated in this proposed rule change, there will not be any Historic Agency Data to purchase until at least 18 to 24 months after March 1, 2010, the date when transaction data begins to be reported and the Historic Agency Data Set begins to be populated.

[21] TRACE Enhanced Historical Time & Sales data is a data product in development using Historic TRACE Data.

need to be incorporated into routines such as documentation libraries, disaster recovery procedures, and escalation procedures. FINRA costs include those associated with the drafting of legal subscription agreements, product description materials (*i.e.*, user manuals), the creation of accounts, and billing. FINRA has stated that, on an ongoing basis, it will need to support the product with regards to general and specific product inquiries, administration of subscriber agreements, customer tracking, billing, and, as the data will be delivered on password protected CDs, the physical creation and mailing of CDs.

FINRA estimates that the actual number of entities interested in purchasing this product, including professional organizations (*e.g.*, market data vendors, banks) and Tax-Exempt Organizations (primarily academic institutions), is limited to approximately eight to 12 entities in the first year, and that the revenue collected from the sale of Historic TRACE Data will be a small fraction of total revenue. The estimated initial demand for the product is anticipated to offset the development costs outlined above. Beyond the initial sale of Historic TRACE Data, the annual subscription renewals are estimated to cover the ongoing administrative costs of supporting the product.

In Amendment No. 4, FINRA proposed to clarify the limits on the restrictions that a Tax Exempt Organization is subject to regarding the re-distribution of Historic TRACE Data under proposed Rule 7730(d)(1)(B)(ii). Specifically, FINRA proposed to correct an inadvertent cross-reference to paragraph ''(b)(1)(B)'' to read ''(d)(1)(B).''

In addition, in Amendment No. 4, FINRA proposed to amend the proposed rule change regarding the announcement and the timing of the effective date to link the effective date of the proposed rule change to the effective date of SR–FINRA–2009–010. The proposed rule change as originally filed provides that FINRA would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval, and the effective date would be no later than 90 days following publication of such *Regulatory Notice*.[22] In Amendment No. 4, FINRA proposed that the effective date of the proposed rule change will be announced in a *Regulatory Notice* to be published no later than 150 days following Commission approval, and the effective date will be no later than one to 30 days following the effective date of SR–FINRA–2009–010.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[23] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act,[24] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

The Commission received one comment on the proposed rule change.[25] The commenter generally was in favor of the fee approach proposed by FINRA, noting that fees proposed for Historic TRACE Data were ''substantially lower than those for other market data products of similar type and complexity.''[26] The commenter also supported FINRA's proposed *ad hoc* treatment of Non-Professionals' requests for Historic TRACE Data.[27] The commenter expressed some reservations, however, about certain aspects of the proposal. In particular, the commenter was concerned that it was unable to verify the fairness of the fees and determine if they would be reasonably related to FINRA costs.[28] FINRA responded that the proposed fees were appropriate for the reasons it set forth in the proposed rule change and that their fairness is not dependent upon the commenter's ability to verify FINRA's costs.[29] FINRA also stated that costs are not necessarily determinative of fees' reasonableness.[30] In Amendment No. 3, however, FINRA provided additional information regarding the FINRA business, technical, administrative, data recovery, quality assurance, and other processes involved in creating, offering, and supporting proposed Historic TRACE Data on an ongoing basis, and an assessment of the potential demand for such data.

After carefully considering the proposal and the comment submitted, the Commission believes that it is reasonable and consistent with the Act for FINRA to make Historic TRACE Data available to the public in the manner set forth in this proposal. Market participants and academics will be able to study more effectively the effects of TRACE implementation, while the conditions governing the provision of such information appear reasonably designed to prevent public disclosure of any market participant's current positions or strategy. FINRA has stated that the proposed fees are designed ''to offset the costs of developing and maintaining the new Historic TRACE Data database and providing such data to vendors, members, and other users,'' with reduced fees for qualifying Tax-Exempt Organizations.[31] In addition, the proposed fee for a natural person who makes an *ad hoc* request for historic TRACE data is designed ''to cover the administrative and operational costs of responding to such a request''[32] and would be ''comprised solely of the cost of the media and the cost of delivery (e.g., U.S. Postal Service or other requested delivery service).''[33] The Commission believes that the fees proposed herein by FINRA are consistent with the Act. However, market data fees with other bases could potentially be consistent with the Act. The Commission notes that it recently approved a proposal from another self-regulatory organization to charge a market data fee on a basis other than cost.[34]

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1, 2, 3, and 4 thereto, before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Accelerating approval of this proposal should benefit investors by facilitating their prompt access to Historic TRACE Data, and none of the amendments appear to raise any novel or significant regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposal, as modified by Amendment Nos. 1, 2, 3, and 4, on an accelerated basis.

[22] Statements regarding the timing of FINRA's publication of a *Regulatory Notice* to announce the Commission's approval of the proposed rule change and the date of effectiveness are found at pages 11, 17 and 35 in the original rule filing.

[23] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78o–3(b)(5).

[25] *See supra* note 4.

[26] SIFMA Letter at 1.

[27] *See id.* at 3.

[28] *See id.* at 2.

[29] *See* FINRA Response to Comments at 2.

[30] *See id.*

[31] Notice, 72 FR at 51690.

[32] *Id.*

[33] *See* Amendment No. 1.

[34] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data).

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, 3, and 4, including whether Amendment Nos. 1, 2, 3, and 4 are 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*. Please include File No. SR–FINRA–2007–006 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–FINRA–2007–006. 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. Copies of such 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–FINRA–2007–006 and should be submitted on or before December 14, 2009.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change (File No. SR–FINRA–2007–006), as modified by Amendment Nos. 1, 2, 3, and 4 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant delegated authority.[36]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–28000 Filed 11–20–09; 8:45 am]

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[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61009; File No. SR–ISE–2009–97]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Closing Settlement Value for the Brazilian Real

November 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 10, 2009, 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[3] and Rule 19b–4(f)(6) thereunder.[4] 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 2212 regarding the closing settlement value for the Brazilian real. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

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 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'')[5] traded on the Exchange. Specifically, ISE proposes to amend its Rule 2213 regarding the closing settlement value for options on the Brazilian real. The Brazilian real is one of the 19 underlying currencies that have been approved for trading by the SEC.[6] Pursuant to the FX Options Filing, the Exchange currently lists options on 9 currency pairs and anticipates listing additional FX Options shortly, including options on the Brazilian real.

Currently, ISE's rule for determining the closing settlement value for FX Options, including the Brazilian real, states that the closing settlement value shall be shall be determined by using the WM/Reuters Intraday Spot rate on the last trading day during expiration week. However, based on conversations with market participants, the Exchange understands that the Brazilian real is a non-deliverable currency as a result of capital controls established by Brazil's central bank. And although Brazil has a very active domestic foreign currency futures market, there are strict controls related to obtaining the physical currency. Further, FX market participants worldwide prefer to use the official exchange rate, known as the PTAX, established by the Central Bank of Brazil (BACEN) for valuing derivative transactions involving the Brazilian real. The PTAX, which is calculated daily, has been published by BACEN since February 1, 1999. The PTAX has thus

[5] 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) (the ''FX Options Filing'').

[6] *Id.*