

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60486; File No. SR-Phlx-2009-68)

August 12, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Settlement of FLEX Currency Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 6, 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, 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 Exchange proposes to clarify Phlx Rule 1079 (FLEX Index, Equity and Currency Options) regarding settlement of FLEX currency options<sup>3</sup> in U.S. dollars. The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

<sup>3</sup> FLEX currency options are long-term U.S. dollar-settled foreign currency options ("FCOs") that are up to three years in length. See Rule 1079(a)(6). FCOs are also known as World Currency Options ("WCOs"). See also Rule 1012 (Exchange may list FCOs having up to three years from the time they are listed until expiration).

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 Exchange 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 the proposed rule change is to clarify Phlx Rule 1079 regarding settlement of FLEX currency options in U.S. dollars.

In 2007, the Exchange listed and began trading six U.S. dollar-settled FCOs.<sup>4</sup> In July 2009, the Commission approved the Exchange's filing to list and trade ten additional U.S. dollar-settled FCOs (the "New Currencies").<sup>5</sup> The Exchange's 2009 filing, in addition to providing the capability to list and trade the New Currencies, among other things established position limits and spelled out a uniform pricing convention (methodology) for all U.S. dollar-settled FCOs.

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<sup>4</sup> See Securities Exchange Act Release Nos. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006)(SR-Phlx-2006-34)(approval order regarding the listing and trading of U.S. dollar-settled FCOs on the British pound and the Euro); and 56034 (July 10, 2007), 72 FR 38853 (July 16, 2007)(SR-Phlx-2007-34)(approval order regarding the listing and trading of U.S. dollar-settled FCOs on the Australian dollar, the Canadian dollar, the Swiss franc, and the Japanese yen).

<sup>5</sup> See Securities Exchange Act Release No. 60196 (June 24, 2009), 74 FR 31782 (July 2, 2009)(approval order regarding the listing and trading of the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, and the Swedish krona).

Currently, sixteen FCOs are listed and traded on the Exchange. The defining characteristic of all FCOs is that they are all U.S. dollar-settled, that is, they do not require delivery of an underlying foreign currency and settle only in U.S. dollars.<sup>6</sup> Each of these FCOs can be traded as long-term FLEX currency options. FLEX currency options, which are U.S. dollar-settled FCOs that have long expiration dates up to three years in length, also settle in U.S. dollars.<sup>7</sup>

This filing clarifies Rule 1079 indicating that FLEX currency options settle in U.S. dollars.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed 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, by clarifying the settlement of FLEX currency options in U.S. dollars.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>6</sup> In contrast, physical delivery foreign currency options, so named because settlement could involve delivery of the underlying currency, were listed and traded on the exchange through early 2007; all open interest in physical delivery options was traded out or expired by the end of March 2007.

<sup>7</sup> See Rule 1079(a)(9)(B).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and Rule 19b-4(f)(6)(iii) thereunder<sup>11</sup> because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

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.

The Exchange has asked the Commission to waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii). The Commission believes investors will be best served by clarifying without delay that FLEX currency options settle in U.S. dollars on the Exchange. The Commission also notes that the proposed rule change presents no novel issues. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.<sup>12</sup>

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

#### 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-Phlx-2009-68 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-Phlx-2009-68. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-Phlx-2009-68, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).