

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61454; File No. SR-Phlx-2010-12)

February 1, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Add Seventy-Five Options Classes to the Penny Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on January 25, 2010 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 is filing with the Commission a proposal to designate seventy-five options classes to be added to the Penny Pilot Program ("Penny Pilot" or "Pilot") on February 1, 2010.³ The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Penny Pilot was established in January 2007 and in October 2009 was expanded and extended through December 31, 2010. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009) (SR-Phlx-2009-91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); and 60966 (November 9, 2009)(SR-Phlx-2009-094)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

⁴ See Rule 1034 regarding the Penny Pilot.

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 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 this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective February 1, 2010.

In the Exchange's immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,⁵ the Exchange proposed expanding the Pilot four times on a quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume ("ADV") for the six months prior to selection, closing under \$200 per share on the Expiration Friday prior to expansion; however, the month immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

⁵ See Securities Exchange Act Release No. 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009)(SR-Phlx-2009-91)(notice of filing and immediate effectiveness).

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on February 1, 2010, based on ADVs for the six months ending December 31, 2009.

| Nat'l Ranking | Symbol | Company Name | Nat'l Ranking | Symbol | Company Name |
|---------------|--------|---------------------------------------|---------------|--------|--|
| 131 | ABT | Abbott Laboratories | 192 | LEAP | Leap Wireless International Inc |
| 169 | AEM | Agnico-Eagle Mines Ltd | 205 | LLY | Eli Lilly & Co |
| 151 | AET | Aetna Inc | 162 | LO | Lorillard Inc |
| 156 | AFL | Aflac Inc | 152 | LOW | Lowe's Cos Inc |
| 181 | AKAM | Akamai Technologies Inc | 176 | M | Macy's Inc |
| 178 | AMAT | Applied Materials Inc | 155 | MCO | Moody's Corp |
| 117 | AMR | AMR Corp | 217 | MET | MetLife Inc |
| 166 | ANF | Abercrombie & Fitch Co | 187 | MMM | 3M Co |
| 172 | APC | Anadarko Petroleum Corp | 140 | MU | Micron Technology Inc |
| 209 | ATVI | Activision Blizzard Inc | 177 | NUE | Nucor Corp |
| 145 | BBD | Banco Bradesco SA | 157 | OXY | Occidental Petroleum Corp |
| 190 | BCRX | BioCryst Pharmaceuticals Inc | 158 | PARD | Ponard Pharmaceuticals Inc |
| 218 | BK | Bank of New York Mellon Corp/The | 150 | PEP | PepsiCo Inc/NC |
| 194 | BRCM | Broadcom Corp | 141 | PM | Philip Morris International Inc |
| 184 | BTU | Peabody Energy Corp | 185 | PNC | PNC Financial Services Group Inc |
| 144 | BX | Blackstone Group LP | 216 | QID | ProShares UltraShort QQQ |
| 200 | CAL | Continental Airlines Inc | 149 | SHLD | Sears Holdings Corp |
| 211 | CF | CF Industries Holdings Inc | 175 | SLM | SLM Corp |
| 142 | CMCSA | Comcast Corp | 212 | SLW | Silver Wheaton Corp |
| 203 | CSX | CSX Corp | 215 | SQNM | Sequenom Inc |
| 143 | CVS | CVS Caremark Corp | 153 | STEC | STEC Inc |
| 174 | CX | Cemex SAB de CV | 219 | STX | Seagate Technology |
| 183 | DD | EI du Pont de Nemours & Co | 202 | SU | Suncor Energy Inc |
| 146 | ERTS | Electronic Arts Inc | 207 | TCK | Teck Resources Ltd |
| 121 | EWJ | iShares MSCI Japan Index Fund | 196 | TEVA | Teva Pharmaceutical Industries Ltd |
| 186 | FDX | FedEx Corp | 135 | TLT | iShares Barclays 20+ Year Treasury Bond Fund |
| 118 | FNM | Federal National Mortgage Association | 214 | TZA | Direxion Daily Small Cap Bear 3X Shares |
| 182 | FRE | Federal Home Loan Mortgage Corp | 168 | UAUA | UAL Corp |
| 179 | GILD | Gilead Sciences Inc | 154 | URE | ProShares Ultra Real Estate |
| 198 | GLW | Corning Inc | 180 | UTX | United Technologies Corp |
| 170 | HBC | HSBC Holdings PLC | 204 | WFR | MEMC Electronic Materials Inc |
| 197 | HES | Hess Corp | 115 | WFT | Weatherford International Ltd |

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|-----|------|-----------------------------|-----|------|-----------------------------------|
| 161 | HL | Hecla Mining Co | 165 | WLP | WellPoint Inc |
| 193 | HOG | Harley-Davidson Inc | 191 | XLB | Materials Select Sector SPDR Fund |
| 206 | HON | Honeywell International Inc | 173 | XRX | Xerox Corp |
| 210 | JOYG | Joy Global Inc | 148 | XTO | XTO Energy Inc |
| 213 | JWN | Nordstrom Inc | 130 | YRCW | YRC Worldwide Inc |
| 137 | KFT | Kraft Foods Inc | | | |

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

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 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

No written comments were either solicited or received.

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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

Pursuant to Section 19(b)(3)(A)(i) of the Act⁸ and Rule 19b-4(f)(1) thereunder,⁹ the Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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. Please include File Number SR-Phlx-2010-12 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-2010-12. 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

⁸ 15 U.S.C. 78s(b)(3)(A)(i).

⁹ 17 C.F.R. 240.19b-4(f)(1).

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 10:00 a.m. and 3:00 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 No. SR-Phlx-2010-12 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

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

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).