

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60150; File No. SR-Phlx-2009-35)

June 19, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify the Definition of “Narrow-Based Index”

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 June 16, 2009, NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Phlx has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 file a proposed rule change to add a commentary to Rule 1000A(b)(12) to clarify that this rule, which defines the term “narrow-based index” to mean “to be representative of a particular industry or a group of related industries” to also accommodate an index the constituents of which are all headquartered within a single country to be listed as a narrow-based index pursuant to Exchange rules.

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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> 17 CFR 240.19b-4(f)(6).

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

Phlx is filing the proposed rule change to add a commentary to clarify that Phlx Rule 1000A(b)(12), which defines the term "narrow-based index" (or "industry index") to mean "to be representative of a particular industry or a group of related industries" to also accommodate an index the constituents of which are all headquartered within a single country to be listed as a narrow-based index pursuant to Exchange rules. This would enable options based on an index, including companies all headquartered within a single country, to be rightfully considered as a generic narrow-based index for purposes of listing on the Exchange and trading.

The listing and trading of index options on the Exchange is generally conditioned on the ability to meet the rule requirements for narrow-based and broad based indexes.<sup>4</sup> More particularly regarding narrow-based indexes, Phlx Rule 1009A(b) rule states that the Exchange

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<sup>4</sup> Broad-based indexes (or market indexes), which are not at issue in this filing, are defined in Phlx Rule 1000A(b)(11).

may trade options on an underlying index pursuant to Rule 19b-4(e) of the Act<sup>5</sup> where all of the noted conditions noted are satisfied.<sup>6</sup> Indeed, the Exchange has, and continues to, list and trade options on narrow-based indexes based on industries or a group of related industries that are located within various countries. These options are traded pursuant to the Exchange's index option trading rules.<sup>7</sup>

With the Exchange's interpretation of Phlx Rule 1000A(b)(12) as discussed herein, the Exchange intends to list and trade options, pursuant to Phlx Rule 1009A(b), on an index(es) that includes industries all headquartered within a single country. The Exchange represents that, in all other material aspects, these options will meet the requirements for generic listing and trading pursuant to Rule 1009A(b). The proposed rule change simply seeks to clarify that the generic listing and trading standards would cover an index that otherwise qualifies as a "narrow-based index," with the exception that the constituents of the index are all headquartered within a single country.

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<sup>5</sup> The Chicago Board Options Exchange and International Securities Exchange have the same ability pursuant to their own rules.

<sup>6</sup> These include the index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted, and consists of ten or more component securities; each component security has a market capitalization of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index; the market capitalization is at least \$50 million; and trading volume of each component security has been at least one million shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume has been at least 500,000 shares for each of the last six months. See Phlx Rule 1009A(b)(1) - (12) for all of the conditions.

<sup>7</sup> See Phlx Rules 1000A et seq. (index options trading rules). See also Phlx Rules 1000 et seq. (general options trading rules).

For example, the proposed rule change would allow the Exchange to list and trade options on the NASDAQ China Index (the “Index”) pursuant to generic listing standards. Options on the Index would not otherwise qualify for listing on the Exchange because the Index does not currently fit within the definition of a narrow-based index under Phlx Rule 1000A(b)(12). In all other respects the Index meets the applicable generic listing standards under Rule 1009A(b). The Exchange intends to list and trade options on the Index pursuant to Rule 1009A(b) almost immediately upon operation of the changes in the proposed commentary to Phlx Rule 1000A(b)(12).

Moreover, like the presently traded narrow-based index options, these narrow-based options will be traded pursuant to the Exchange’s trading rules.<sup>8</sup> The Exchange represents that its existing surveillance procedures applicable to trading in options will be adequate to properly monitor the trading in options on these narrow-based indexes.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</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 term “narrow-based index” also accommodates an index the constituents of which are all headquartered within a single country.

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<sup>8</sup> Id. The trading rules include, among other things, position limits, exercise limits, and terms of options contracts (Phlx Rules 1001A, 1002A, and 1101A, respectively). See also Securities and Exchange Release No. 42132 (November 12, 1999), 64 FR 63837 (November 22, 1999) (SR-Phlx-98-99) (order approving narrow-based options position limit increase to 18,000, 24,000, and 31,500 contracts).

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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.

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

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>13</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>14</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that its proposal become operative immediately so that Phlx may list and trade options on the NASDAQ China Index immediately pursuant to its generic listing standards for narrow based indexes. The Commission believes that waiving the 30-day operative delay to make the product available without delay is consistent

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Phlx has satisfied this requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.<sup>15</sup>

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 Number SR-Phlx-2009-35 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-2009-35. 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

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

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 publicly available. All submissions should refer to File Number SR-Phlx-2009-35 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>16</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).