

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60021; File No. SR-Phlx-2009-40)

June 1, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Listing and Trading New Currencies

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 May 8, 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 Exchange filed Amendment No. 1 to the proposal on May 29, 2009.³ 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 Phlx rules to: (1) list and trade U.S. dollar-settled foreign currency options on the Brazilian real, Chinese yuan,⁴ Danish krone, New Zealand dollar, Mexican peso, Norwegian krone, Russian ruble, South African rand, South Korean won, and Swedish krona (the listed currencies are together known as the "New Currencies")⁵; (2)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that Amendment No.1 replaces and supersedes the initial filing in its entirety.

⁴ The Chinese yuan may also be known as renminbi (similarly to the British pound and sterling).

⁵ Options on the following U.S. dollar-settled foreign currencies are currently listed and traded on the Exchange: the Australian dollar, the Euro, the British pound, the Canadian dollar, the Swiss franc, and the Japanese yen (together, the "FCOs")(the New Currencies and FCOs are together known as the "Currencies"). The product specifications for the

clarify definitions regarding the Currencies, (3) establish position and exercise limits for the Currencies; (4) clarify the uniform pricing convention (methodology) for all Currencies; and (5) delete obsolete and out of use references regarding foreign currency products and processes.

The Exchange also proposes to amend Phlx Option Floor Procedure Advices (“OFPAs” or “Advices”) to harmonize Exchange Advices and rules.

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.

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 amend Phlx rules⁶ to: expand the Exchange’s current product offering to include options on the New Currencies; clarify certain

U.S. dollar-settled FCOs, which are not altered by or as a result of this filing, may be found at <http://www.nasdaqtrader.com/Micro.aspx?id=phlxwcoproductspecs>.

⁶ Rules 1000 (Applicability, Definitions and References), 1001 (Position Limits), 1002 (Exercise Limits), 1009 (Criteria for Underlying Securities), 1012 (Series of Options Open for Trading), 1014 (Obligations and Restrictions Applicable to Specialists and Registered Options Traders), 1016 (Block Transactions in Physical Delivery Foreign Currency Options), 1027 (Discretionary Accounts), 1033 (Bids and Offers – Premium),

existing Exchange rules relating to Currencies; establish position limits for Currencies; and clarify the uniform pricing convention (methodology) for options on Currencies. In doing so, the Exchange will delete obsolete and out of use references regarding foreign currency products and processes. The purpose is also to conform existing Advices⁷ to the rules as amended.

Background

In January 2007, the Exchange listed and began trading U.S. dollar-settled FCOs on the British pound and the Euro.⁸ In July 2007, the Exchange listed and began trading U.S. dollar-settled FCOs on the Australian dollar, Canadian dollar, Swiss franc, and Japanese yen.⁹ U.S. dollar-settled FCOs continue being traded electronically over the Exchange's options trading

1034 (Minimum Increments), 1044 (Delivery and Payment), 1049 (Communications to Customers), 1057 (U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value), 1063 (Responsibilities of Floor Brokers), 1069 (Customized Foreign Currency Options), 1070 (Customer Complaints), 1079 (FLEX Index, Equity and Currency Options), 1089 (Dealing Directly With Specialist and Registered Option Trader in Foreign Currency Options), and 1092 (Obvious Errors and Catastrophic Errors).

⁷ Option Floor Procedure Advices B-7 (Time Priority of Bids/Offers in Foreign Currency Options (Physical Delivery Foreign Currency Option Only)), C-2 (Options Floor Broker Management System), F-6 (Options Quote Parameters), F-17 (FCO Trades to be Effected in the Pit (Physical Delivery Foreign Currency Option Only)), F-18 (FCO Expiration Months and Strike Prices - Selective Quoting Facility (Physical Delivery Foreign Currency Option Only)), and F-20 (Quoting and Trading Customized Foreign Currency Options (Foreign Currency Option Only)).

⁸ See Securities Exchange Act Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006)(SR-Phlx-2006-34). In approving the listing and trading of U.S. dollar-settled FCOs on the British pound and the Euro, the approval order stated that the listing and trading of additional U.S. dollar-settled FCOs on other foreign currencies will require the Exchange to file additional proposed rule changes on Form 19b-4.

⁹ See Securities Exchange Act Release No. 56034 (July 10, 2007), 72 FR 38853 (July 16, 2007)(SR-Phlx-2007-34).

platform, Phlx XL.¹⁰ Additionally, through the spring of 2007 the Exchange traded, through open outcry, physical delivery options on foreign currencies.¹¹

The Exchange proposes to amend Phlx rules and Advices to enable it to list and trade, over Phlx XL, options on ten New Currencies: 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.¹² These New Currencies will be listed and traded similarly to U.S. dollar-settled FCOs that are currently traded on the Exchange, and will use existing Exchange rules and processes subject to the rule changes proposed herein.

The changes proposed herein regarding the methodology or convention of pricing options on foreign currencies reflect pricing that is similar in nature to what is being used by other markets that trade currency options.¹³

¹⁰ See Securities Exchange Act Release No. 49832 (June 8, 2004), 69 FR 33442 (June 15, 2004)(SR-Phlx-2003-59)(approving Phlx XL). See also Release No. 59995 (May 28, 2009) SR-Phlx-2009-32 (approving Phlx XL II). The Exchange is rolling out a new trading platform.

¹¹ Physical delivery options, so named because settlement could involve delivery of the underlying currency (as opposed to cash for U.S. dollar-settled FCOs), have traded on the Exchange since 1982 but are no longer listed and traded. All open interest in physical delivery options was traded out or expired by the end of March 2007 and only U.S. dollar-settled FCOs now trade on the Exchange.

¹² CME Group Inc. (“CME”), formerly Chicago Mercantile Exchange Holdings Inc., lists and trades futures contracts on many of the New Currencies that are proposed to be listed and traded by the Exchange (e.g. the Mexican peso, the New Zealand dollar, the Norwegian krone, the Russian ruble, the Swedish krona, the Brazilian real, the Chinese renminbi, the South African rand, and the South Korean won).

¹³ The International Securities Exchange, LLC (“ISE”), for example, also lists and trades options on certain foreign currencies (including the Australian dollar, the Euro, the British pound, the Canadian dollar, the Swiss franc, and the Japanese yen) that are not fungible with Phlx’s U.S. dollar-settled FCOs. See Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007)(SR-ISE-2006-59). ISE, like Phlx, applies

Definitions

The Exchange proposes to clarify in its Rule 1000 several definitions in respect of foreign currencies. First, the Exchange proposes to add ten New Currencies to the six that are currently listed in Sections 13 (Foreign Currency) and 15 (Unit of Underlying Foreign Currency) of Rule 1000.¹⁴

Second, the Exchange proposes to clarify the definition of spot price in Section 16 (Spot Price) of Rule 1000 by renaming it Exchange Spot Price and indicating that, to establish the Exchange Spot Price, the Exchange will apply an appropriate multiplier to the cash market spot price that it receives from a price quotation dissemination system chosen by the Exchange.¹⁵

The multipliers will be applied by the Exchange so that Exchange Spot Prices would look similar to index option prices.¹⁶ Up-front application of appropriate multipliers to cash market spot

multipliers to currency spot prices so that ISE's currency prices tend to look like the prices of index and other options.

¹⁴ The Exchange will similarly add the New Currencies throughout its rules. See, e.g., Rules 1009, 1057, and 1079.

¹⁵ See Securities Exchange Act Release No. 58915 (November 6, 2008), 73 FR 67916 (November 17, 2008)(indicating, among other things, that Quote Media, Inc. provides spot prices to The NASDAQ OMX Group, Inc. ("NASDAQ OMX")). Proposed section 16 of Rule 1000 defines Exchange Spot Price as follows: The term "Exchange Spot Price" in respect of an option contract on a foreign currency means the cash market spot price, for the sale of one foreign currency for another, quoted by various foreign exchange participants for the sale of a single unit of such foreign currency for immediate delivery that is calculated from the foreign currency price quotation reported by the foreign currency price quotation dissemination system selected by the Exchange, to which an appropriate multiplier is applied. The multiplier(s) will be: 100 for the British pound, the Euro, the Swiss Franc, the Canadian dollar, the Australian dollar, the Brazilian real, and the New Zealand dollar; 1,000 for the Chinese yuan, the Danish krone, the Mexican peso, the Norwegian krone, the South African rand, and the Swedish krona; 10,000 for the Japanese yen and the Russian ruble; and 100,000 for the South Korean won.

¹⁶ Exchange Spot Prices will generally have two decimal places. As an example, the Exchange Spot Price for the Japanese yen, with up-front application of a multiplier of 10,000, may be 80.22 – which reflects how index (and other) options are operationally

prices to get Exchange Spot Prices more accurately reflects how options on foreign currencies are actually priced by exchanges that list and trade such products (currently ISE and Phlx).¹⁷

The Exchange will continue to disseminate Exchange Spot Prices and other FCO-related data such as, for example, U.S. dollar-settled FCO settlement values and prices (Exchange Spot Prices) over the facilities of a major public data vendor, such as NASDAQ OMX or one or more other (NASDAQ OMX-owned or unrelated) major market data vendors.¹⁸

Pricing of Options

Consistent with application by the Exchange of appropriate multipliers to each currency Exchange Spot Price, the Exchange proposes to amend Rules 1012, 1014, 1033, 1034, and 1092, and OFPA F-6 to clarify the uniform foreign currency option pricing convention and thereby greatly simplify the pricing of such options. The uniform pricing convention will carry through all of the Exchange's rules relating to foreign currency options.

Rule 1012, Commentary .06 currently states that, assuming certain spot price levels, the Exchange may initially list exercise strike prices of the Euro in the range of \$.9500 (expressed as \$95) to \$1.0550 (expressed as \$105.50). That is, options on foreign currencies are currently priced in Commentary .06 without application of a multiplier and are followed by an "expressed

priced by the Exchange, ISE, and other markets that trade options on foreign currencies. In contrast, using the old pricing methodology (without up-front application of a multiplier) the above-noted spot price for the Japanese yen would be .008022 (expressed as 80.22). Moreover, Exchange Spot Prices and what are known as modified spot prices (that is, spot prices that do not incorporate modifiers but add them at a later time) are the same values. See Securities Exchange Act Release No. 57575 (March 28, 2008), 73 FR 18310 (April 3, 2008)(SR-Phlx-2008-06)(describing, among other things, modified spot prices).

¹⁷ NYSE Arca also trades options on certain foreign currencies that are listed on ISE.

¹⁸ See note 10 of Securities Exchange Act Release No. 59611 (March 20, 2009), 74 FR 13498 (March 27, 2009) (SR-Phlx-2009-22) (notice of filing and immediate effectiveness).

as” price. The Exchange proposes to clarify Commentary .06 to reflect how options are actually priced by applying an appropriate modifier up-front to the price. As such, there would be no need for the Exchange to follow FCO prices of several decimal places with “expressed as” prices, and the above-noted example in Commentary .06 would state that the Exchange may initially list exercise strike prices of the Euro in the range of \$95 to \$105.50.

The Exchange proposes to modify Rule 1012 such that Exchange Strike Prices may be listed within a 40 percent band (20 percent above and 20 percent below) around Exchange Spot Prices at fifty cent (\$.50) intervals. This would result in no more than eighty-one strike prices available for trading.¹⁹ Regarding long-term options, the Exchange proposes to clarify that the Exchange may list up to ten options series having up to thirty-six months from the time they are listed until expiration.²⁰ The Exchange proposes to establish that FLEX currency options will similarly have expiration dates of up to three years.²¹

¹⁹ The Exchange may initially list exercise strike prices for each expiration of U.S. dollar-settled options on currencies within a 40 percent band around the current Exchange Spot Price at fifty cent (\$.50) intervals. Thus, if the Exchange Spot Price of the Euro were at \$100.00, the Exchange would list strikes in \$.50 intervals up to \$120.00 and down to \$80, for a total of eighty-one strike prices available for trading. As the Exchange Spot Price for U.S. dollar-settled FCOs moves, the Exchange will list new strike prices that, at the time of listing, do not exceed the Exchange Spot Price by more than 20 percent and are not less than the Exchange Spot Price by more than 20 percent. For example, if at the time of initial listing, the Exchange Spot Price of the Euro is at \$100.00, the strike prices the Exchange will list will be \$80.00 to \$120.00. If the Exchange Spot Price then moves to \$105.00, the Exchange may list additional strikes at the following prices: \$105.50 to \$126.00. Proposed Commentary .06 to Rule 1012.

²⁰ Long-Term Series. The Exchange may list, with respect to any U.S. dollar-settled foreign currencies, options having up to three years from the time they are listed until expiration. There may be up to ten options series, options having up to thirty-six months from the time they are listed until expiration. There may be up to six additional expiration months. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine months. Proposed Rule 1012(a)(iii)(C).

²¹ See proposed Rule 1079(a)(6).

Rule 1014, like Rule 1012, is proposed to be amended to reflect uniform FCO pricing that no longer requires indicating bid/ask prices with many decimal places that are also expressed as different, index option-like values after appropriate multipliers are applied.²²

Rule 1033, which applies to all Currencies, is proposed to be amended to clarify that premiums on all U.S. dollar-settled FCOs will be calculated in the same way for all options. The Exchange proposes to delete unnecessary rule text that indicates that the first two decimal places will be omitted for bid and offer quotations for the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, and the Euro, and the first four decimal places will be omitted from bid and offer quotations for the Japanese yen. The Exchange also proposes to provide a clear example of how premiums will be calculated on foreign exchange options: E.g., a bid of "3.25" for a premium on a \$170 strike price option on the British pound shall represent a bid to pay \$325 per option contract.²³

²² Options on U.S. dollar-settled FCO. With respect to all U.S. dollar-settled FCO bidding and/or offering so as to create differences of no more than \$.25 between the bid and the offer for each option contract for which the prevailing bid is less than \$2.00; no more than \$.40 where the prevailing bid is \$2.00 or more but less than \$5.00; no more than \$.50 where the prevailing bid is \$5.00 or more but less than \$10.00; no more than \$.80 where the prevailing bid is \$10.00 or more but less than \$20.00; and no more than \$1.00 where the prevailing bid is \$20.00 or more. Proposed 1014(c)(i)(A). The Exchange proposes similar changes to OFPA F-6.

²³ Rule 1033 currently states that the first two decimal places shall be omitted from all bid and offer quotations for the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, and the Euro, and the first four decimal places shall be omitted from all bid and offer quotations for the Japanese yen (e.g., a bid of "9.2" for an option contract on the British pound shall represent a bid to pay \$.0920 per unit of underlying foreign currency—i.e., a premium of \$2,875—for an option contract having a unit of trading of 31,250 pounds; a bid of .44 for an option contract on the Euro shall represent a bid to pay .0044 per unit of underlying foreign currency—i.e. a premium of \$275—for an option contract having a unit of trading of 62,500 Euros; a bid of "1.6" for an option contract on the Japanese yen shall represent a bid to pay \$.000160 per unit of underlying foreign currency—i.e., a premium of \$1,000—for an option contract having a unit of trading of 6,250,000 yen).

Rule 1034 currently prescribes the minimum trading increments for all U.S. dollar-settled FCOs.²⁴ This rule, which will apply to the New Currencies as well, is proposed to be amended to clarify that minimum price increments for all currencies will remain at \$.01, but without the need to indicate different minimum price increments for different currencies that are thereafter each “expressed as \$.01”.²⁵

Rule 1092 and OFPA F-6 are likewise proposed to be amended to clarify that option prices will no longer be indicated in terms of several decimal places that are then expressed as different values.²⁶

Position Limits

Rule 1001 establishes position limits for FCOs at 200,000 on the same side of the market relating to the same underlying currency.²⁷ The Exchange proposes to amend Rule 1001 to

²⁴ Rule 1034 currently states that the minimum increments for options on various currencies using “expressed as” pricing (e.g. \$.0001 (expressed as \$.01) for the British pound and \$.000001 (expressed as \$.01) for the Japanese yen).

²⁵ All options on foreign currencies where the underlying foreign currency is not the U.S. dollar shall have a minimum increment of \$.01. Proposed Rule 1034.

²⁶ Proposed Rule 1092(a)(i) indicates, for example:

Theoretical price	Minimum amount
Below \$2	\$.25

Whereas, current Rule 1092(a)(i) indicates:

Theoretical price	Minimum amount
Below \$.02 (expressed as 2)	\$.0025 (expressed as .25)

²⁷ Rule 1001 currently also indicates position limits of 100,000 contracts for options on the Mexican peso traded as a customized option per Rule 1069. Because Rule 1069 and other references to customized options, among them options on the Mexican peso, are deleted in this filing, the 100,000 contract position limit on the Mexican peso will be deleted.

establish three levels of position limits for FCOs. Specifically, the Exchange proposes the following position limits:

- 1) 300,000 contracts for options on: the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, the Swedish krona;
- 2) 600,000 contracts for options on: the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the Japanese yen, and the New Zealand dollar; and
- 3) 1,200,000 contracts for options on the Euro.²⁸

The position limits proposed by the Exchange are similar to those used by other markets that trade foreign currency options.²⁹

The Exchange also proposes to eliminate from Rules 1001 and 1079 the practice of fractional counting of U.S. dollar-settled foreign currency option contracts for position limit purposes. Fractional counting was needed to establish position limit equivalency between the Exchange's physical delivery option contracts and U.S. dollar-settled option contracts, which had different sized contracts on the same underlying currencies.³⁰ Because physical delivery foreign currency options are no longer traded on the Exchange, however, it is no longer necessary to have fractional counting differentiations in Rule 1001 and they are being eliminated.

²⁸ See proposed Commentary .05(b) to Rule 1001.

²⁹ See, e.g., Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007)(SR-ISE-2006-59)(order approving, among other things, proposal to establish 1,200,000, 600,000, and 300,000 contract position limits for foreign currency options).

³⁰ U.S. dollar-settled option contracts generally were smaller than physically traded option contracts.

Rule 1057 currently provides for the determination of closing settlement values for options on the six foreign currency options that trade on the Exchange. Rule 1079 currently provides for the similar determination of closing settlement values for FLEX foreign currency options that trade on the Exchange. In both rules, the closing settlement price for U.S. dollar-settled FCOs is the Spot Price at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration.³¹ Rules 1057 and 1079 are updated commensurate with the clarification of the pricing convention in this filing. In particular, Rules 1057 and 1079 are proposed to be amended to add the New Currencies and reflect that the Exchange Spot Price per Rule 1000(b)16 will be the settlement price.³² The Exchange believes that these modifications would reflect the proper methodologies for calculating closing settlement values for options on its foreign currency products. The rules will continue to permit the Exchange to apply alternative closing settlement values as a result of extraordinary circumstances.

In addition to the specific proposed rule changes, options on the New Currencies would be subject to the same rules and processes that now apply to existing options on foreign currencies.

³¹ The closing settlement value was changed from the Noon Buying Rate received from the Federal Reserve Bank of New York to the spot price at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration. See Securities Exchange Act Release No. 58915 (November 6, 2008), 73 FR 67916 (November 17, 2008)(SR-Phlx-2008-68)(notice of filing and immediate effectiveness).

³² The closing settlement value for the U.S. dollar-settled FCO on the Australian dollar, the Euro, the British pound, the Canadian dollar, the Swiss franc, the Japanese yen, 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 shall be the Exchange Spot Price at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances. Proposed Rule 1057. See also proposed Rule 1079.

Systems Capacity and Surveillance

The Exchange represents that it has the necessary systems capacity to support new options series that will result from the introduction of options on the New Currencies. The Exchange represents that it has an adequate surveillance program in place for trading U.S. dollar-settled FCOs. The Exchange will apply the same surveillance program to the New Currencies.³³

Housekeeping Changes

Finally, the Exchange proposes technical, housekeeping rule changes to delete obsolete and out of use references, rules and Advices regarding foreign currency products and processes. These include references to cross-rate, physical delivery, and customized foreign currency options; currency and currency index warrants; currency products that are no longer traded; and Regulatory Services Post, which no longer exist.³⁴

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act³⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act³⁶ in particular, in that it is

³³ The Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement, dated June 20, 1994, and may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG. The members of the ISG include all of the U.S. registered stock and options markets. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

³⁴ See, e.g., Rules 1000 Sections 14, 15, 21, 38, and 40; 1001, 1002, 1009, 1034 and 1069 (cross-rate foreign currency options); 1012, 1014, 1016, 1034, 1044 and 1063 (physical delivery foreign currency options); 1001, 1009, 1033, 1034, 1063, 1069 and 1079 (customized foreign currency options); 1049, 1070 and 1089 (currency warrants); and 1079 (Regulatory Services Post). See also OFPAs B-7, F-17 and F-18 (physical delivery foreign currency options); and C-2 and F-20 (customized foreign currency options). See also Rule 1014 correcting typographical errors.

³⁵ 15 U.S.C. 78f(b).

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 offering investors the ability to invest in options on the New Currencies and by clarifying and simplifying existing rules relating to the pricing of currency options including expression of strike, bid and ask, spot, and settlement prices.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

³⁶ 15 U.S.C. 78f(b)(5).

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-2009-40 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-2009-40. 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 10:00 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-2009-40 and should be submitted on or before [insert date 15 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Florence E. Harmon
Deputy Secretary

³⁷ 17 CFR 200.30-3(a)(12).