

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60392; File No. SR-Phlx-2009-57)

July 28, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to a Pilot Program for U.S. Dollar-Settled Foreign Currency Options

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 July 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 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 initiate a Pilot Program, for a period beginning July 13, 2009 and ending December 31, 2009, applicable to specialists and Registered Options Traders (“ROTs”)³ trading certain U.S. dollar-settled foreign currency options (“FCOs”), specifically the Mexican peso, Swedish krona, South African rand or the New Zealand dollar (“Pilot FCOs”).⁴ The Pilot Program would allow the Exchange to waive the applicable specialist and ROT option

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. The term "ROT" shall include a Streaming Quote Trader, and a Remote Streaming Quote Trader. See Exchange Rule 1014.

⁴ The Exchange recently filed to list and trade options in these Pilot FCOs. See Securities Exchange Release No. 61069 (June 24, 2009), 74 FR 31782 (July 2, 2009) (SR-Phlx-2009-40) (modifying the pricing methodology for FCOs). The Pilot FCOs are listed and traded electronically over the Exchange's options trading platform.

transaction fees for specialists and ROTs trading Pilot FCOs.⁵ Furthermore, the Exchange Pilot Program would allow the Exchange to pay a \$1,700 monthly stipend (“Monthly Stipend”) per currency to each member organization acting as a specialist.

While changes to the Exchange’s fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective on July 13, 2009 through December 31, 2009.

The text of the proposed rule change is available on the Exchange’s Website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 create an additional financial incentive for specialists and ROTs to make markets in the Pilot FCOs. By paying specialists a Monthly

⁵ FCOs are currently traded on the Exchange under the name PHLX World Currency Options® (“WCOs”).

Stipend on the Pilot FCOs of \$1,700 per currency, the Exchange hopes to defray the operational costs of the specialists. Specifically, the Exchange seeks to defray the specialists' costs associated with their obligations to continuously quote and support the Pilot FCOs.⁶ The Monthly Stipend will be paid on a per currency basis. For example, a member organization acting as a specialist in two of the Pilot FCOs will receive \$3,400 per month.

In addition, the Exchange proposes to waive the options transaction charges assessed on specialists and ROTs in the Pilot FCOs in order to further encourage the trading of the Pilot FCOs. Currently, specialists pay a transaction fee of \$.24 per contract as do ROTs.⁷ The Exchange believes the revenue generated from customer transaction charges and increased order flow would offset the foregone transaction fees of \$.24 per contract that is currently assessed on specialists and ROTs, thereby allowing the Exchange to recoup those fees while increasing order flow and generating increased revenues.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the Pilot Program will generate additional order

⁶ The Exchange currently pays a subsidy, an Options Floor Broker Subsidy, to member organizations with Exchange registered floor brokers for eligible contracts that are entered into the Exchange's trading system to provide an incentive to floor brokers for increased order flow. See Securities Exchange Release No. 59705 (April 3, 2009), 74 FR 16906 (April 13, 2009) (SR-Phlx-2009-28).

⁷ Customers are assessed a transaction fee of \$.44 per options transaction charge in FCOs.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

flow to the Exchange by creating incentives to trade FCOs as well as defray operational costs for specialists.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and paragraph (f)(2) of Rule 19b-4¹¹ thereunder. 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

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2009-57 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2009-57. 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 the 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-Phlx-2009-57 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).