

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60966; File No. SR-Phlx-2009-94)

November 9, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No.1, 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 October 28, 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. Phlx filed Amendment No. 1 to the proposal on November 5, 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 is filing with the Commission a proposal to designate seventy-five options classes to be added to the Penny Pilot in options classes in certain issues ("Penny Pilot" or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Phlx proposed to correct a technical error in Section III. The change has no effect on the substance of the proposed rule change.

“Pilot”) on November 2, 2009.⁴ The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.⁵

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqomxphlx.cchwallstreet.com>, 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 November 2, 2009.

In the Exchange’s immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,⁶ the Exchange proposed expanding the Pilot four times on a

⁴ 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); and 60873 (October 23, 2009) (SR-Phlx-2009-91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot).

⁵ See Rule 1034 regarding the Penny Pilot.

⁶ See Securities Exchange Act Release No. 60873 (October 23, 2009) (SR-Phlx-2009-91) (notice of filing and immediate effectiveness).

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.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on November 2, 2009, based on ADVs from April 1, 2009, through September 30, 2009.

Nat'l Ranking	Symbol	Company Name	Nat'l Ranking	Symbol	Company Name
118	ABX	Barrick Gold Corp	120	MRK	Merck & Co Inc/NJ
48	AXP	American Express Co	35	MS	Morgan Stanley
134	AUY	Yamana Gold Inc	73	NLY	Annaly Capital Management Inc
93	BA	Boeing Co/The	99	NOK	Nokia OYJ
115	BBT	BB&T Corp	121	NVDA	Nvidia Corp
111	BBY	Best Buy Co Inc	80	ORCL	Oracle Corp
94	BP	BP PLC	61	PALM	Palm Inc
67	CHK	Chesapeake Energy Corp	37	PBR	Petroleo Brasileiro SA
58	CIT	CIT Group Inc	85	PG	Procter & Gamble Co/The
78	COF	Capital One Financial Corp	41	POT	Potash Corp of Saskatchewan Inc
68	CVX	Chevron Corp	74	RF	Regions Financial Corp
130	DE	Deere & Co	124	RIG	Transocean Ltd
104	DOW	Dow Chemical Co/The	132	RMBS	Rambus Inc
49	DRYS	DryShips Inc	103	S	Sprint Nextel Corp
88	EFA	iShares MSCI EAFE Index Fund	83	SDS	ProShares UltraShort S&P500
64	ETFC	E*Trade Financial Corp	122	SKF	ProShares UltraShort Financials
32	EWZ	iShares MSCI Brazil Index Fund	107	SLB	Schlumberger Ltd
25	FAS	Direxion Daily Financial Bull 3X Shares	91	SLV	iShares Silver Trust
33	FAZ	Direxion Daily Financial Bear 3X Shares	84	SRS	ProShares UltraShort Real Estate

Nat'l Ranking	Symbol	Company Name	Nat'l Ranking	Symbol	Company Name
112	FITB	Fifth Third Bancorp	119	SSO	ProShares Ultra S&P500
70	FSLR	First Solar Inc	101	STI	SunTrust Banks Inc
26	FXI	iShares FTSE/Xinhua China 25 Index Fund	125	SVNT	Savient Pharmaceuticals Inc
82	GDX	Market Vectors - Gold Miners ETF	92	TBT	ProShares UltraShort 20+ Year Treasury
127	GG	Goldcorp Inc	14	UNG	United States Natural Gas Fund LP
18	GLD	SPDR Gold Trust	117	UNH	UnitedHealth Group Inc
129	HGSI	Human Genome Sciences Inc	110	UPS	United Parcel Service Inc
62	HIG	Hartford Financial Services Group Inc	81	USB	US Bancorp
72	HPQ	Hewlett-Packard Co	44	USO	United States Oil Fund LP
59	IBM	International Business Machines Corp	60	UYG	ProShares Ultra Financials
45	IYR	iShares Dow Jones US Real Estate Index Fund	96	V	Visa Inc
105	JNJ	Johnson & Johnson	10	WFC	Wells Fargo & Co
131	JNPR	Juniper Networks Inc	133	WYNN	Wynn Resorts Ltd
98	KO	Coca-Cola Co/The	52	X	United States Steel Corp
39	LVS	Las Vegas Sands Corp	114	XHB	SPDR S&P Homebuilders ETF
87	MCD	McDonald's Corp	86	XLI	Industrial Select Sector SPDR Fund
71	MGM	MGM Mirage	79	XLU	Utilities Select Sector SPDR Fund
113	MON	Monsanto Co	54	XRT	SPDR S&P Retail ETF
63	MOS	Mosaic Co/The			

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ 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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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

Pursuant to Section 19(b)(3)(A)(i) of the Act⁹ and Rule 19b-4(f)(1) thereunder,¹⁰ 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:

⁹ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁰ 17 C.F.R. 240.19b-4(f)(1).

- 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-2009-94 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-2009-94. 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-2009-94 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).