

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62028; File No. SR-Phlx-2010-65)

May 4, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. 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")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 27, 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 May 3, 2010.<sup>3</sup> The

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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> 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), 74 FR 56675 (November 2, 2009)(SR-Phlx-2009-91)(notice of filing and immediate effectiveness expanding and extending Penny Pilot); and 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009)(SR-Phlx-2009-94)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010)(SR-Phlx-2010-12)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.<sup>4</sup>

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 this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective May 3, 2010.

In the Exchange's immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,<sup>5</sup> 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

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<sup>4</sup> See Rule 1034 regarding the Penny Pilot.

<sup>5</sup> 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).

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 May 3, 2010, based on ADVs for the six months ending March 31, 2010.

Nat'l Ranking	Symbol	Security Name	Nat'l Ranking	Symbol	Security Name
153	XLV	Health Care Select Sector SPDR Fund	247	JCP	JC Penney Co Inc
155	CIEN	Ciena Corp	248	ACL	Alcon Inc
157	AMLN	Amylin Pharmaceuticals Inc	249	STP	Suntech Power Holdings Co Ltd
158	CTIC	Cell Therapeutics Inc	250	TLB	Talbots Inc
159	MDT	Medtronic Inc	251	SYMC	Symantec Corp
162	TIVO	TiVo Inc	253	AMED	Amedisys Inc
163	MNKD	MannKind Corp	255	TM	Toyota Motor Corp
171	MDVN	Medivation Inc	257	HK	Petrohawk Energy Corp
176	BRKB	Berkshire Hathaway Inc	258	ENER	Energy Conversion Devices Inc
178	APOL	Apollo Group Inc	259	STT	State Street Corp
181	BSX	Boston Scientific Corp	260	BHP	BHP Billiton Ltd
185	XLY	Consumer Discretionary Sel. Sec. SPDR Fund	261	NFLX	NetFlix Inc
188	CLF	Cliffs Natural Resources Inc	262	LDK	LDK Solar Co Ltd
190	ZION	Zions Bancorporation	263	SPG	Simon Property Group Inc
194	IOC	InterOil Corp	264	TIF	Tiffany & Co
197	ITMN	InterMune Inc	265	BUCY	Bucyrus International Inc
204	GME	GameStop Corp	266	WAG	Walgreen Co
209	XLK	Technology Select Sector SPDR Fund	268	IP	International Paper Co
210	AKS	AK Steel Holding Corp	271	XME	SPDR S&P Metals & Mining ETF
212	GRMN	Garmin Ltd	272	KGC	Kinross Gold Corp
213	MRVL	Marvell Technology Group Ltd	273	EP	EI Paso Corp
215	XLP	Consumer Staples Select Sector SPDR Fund	274	SEED	Origin Agritech Ltd
216	UNP	Union Pacific Corp	275	WIN	Windstream Corp
220	DTV	DIRECTV	279	DHI	DR Horton Inc
223	WMB	Williams Cos Inc/The	280	ADBE	Adobe Systems Inc
225	MEE	Massey Energy Co	281	PCX	Patriot Coal Corp

227	CELG	Celgene Corp	282	SPWRA	SunPower Corp
229	GMCR	Green Mountain Coffee Roasters Inc	284	LCC	US Airways Group Inc
231	WDC	Western Digital Corp	285	PRU	Prudential Financial Inc
234	DAL	Delta Air Lines Inc	286	LEN	Lennar Corp
235	FXE	CurrencyShares Euro Trust	287	EWT	iShares MSCI Taiwan Index Fund
237	COST	Costco Wholesale Corp	288	KBH	KB Home
239	MJN	Mead Johnson Nutrition Co	289	CREE	Cree Inc
240	ALL	Allstate Corp/The	290	SIRI	Sirius XM Radio Inc
241	SII	Smith International Inc	291	MMR	McMoRan Exploration Co
242	RTN	Raytheon Co	292	CENX	Century Aluminum Co
243	DVN	Devon Energy Corp	293	GFI	Gold Fields Ltd
244	MT	ArcelorMittal			

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> 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 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.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

Pursuant to Section 19(b)(3)(A)(i) of the Act<sup>8</sup> and Rule 19b-4(f)(1) thereunder,<sup>9</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-65 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-2010-65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 C.F.R. 240.19b-4(f)(1).

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 Web site viewing and printing 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 Number SR-Phlx-2010-65 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>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).