

#### IV. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA's response to comments, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>16</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>17</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Requiring broker-dealers that carry customer accounts to provide customers at least once each calendar year, or, for certain broker-dealers that are introducing firms as described in the proposed rule, once at the time of initial purchase, with written information regarding the BrokerCheck hotline number, FINRA's Web site address, and a statement regarding the availability of an investor brochure describing BrokerCheck, publicizes the availability of information that helps investors determine whether to conduct, or to continue to conduct, business with a FINRA member or associated person of the member. In addition, the Commission has found NASD Rule 2280, on which the proposed rule is based, to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>18</sup>

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> for approving the proposal, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 1 in the **Federal Register**.<sup>20</sup> Amendment No. 1

<sup>16</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78o-3(b)(6).

<sup>18</sup> See Securities Exchange Act Release No. 39043 (September 10, 1997), 62 FR 48689 (September 16, 1997) (Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Distribution of Information Concerning the Availability of the NASD's Public Disclosure Program).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> Pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

responded to the comments by tailoring the requirement for firms whose contact with customers is limited to introducing customer accounts to be held directly at an entity other than a FINRA member and thereafter do not carry customer accounts or hold customer funds but that the customer, at the outset, still receives the information. In addition, the firms afforded the exception proposed in Amendment No. 1 do not have any obligation under current NASD Rule 2280, so customers will still be receiving more information than they do presently. Therefore, the Commission believes that it is in the public interest to approve the proposal, as modified by Amendment No. 1, on an expedited basis.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as modified by Amendment No. 1, 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 No. SR-FINRA-2008-062 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-FINRA-2008-062. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2008-062 and should be submitted on or before June 29, 2009.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR-FINRA-2008-062), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60008; File No. SR-FINRA-2009-033]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule Cross-References in FINRA Rules

May 29, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 13, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<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).

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**

FINRA is proposing to correct or update certain rule cross-references in certain FINRA rules that have been adopted in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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**

FINRA is in process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook").<sup>4</sup> That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

The proposed rule change would update rule cross-references in FINRA Rules 2114 (Recommendations to Customers in OTC Equity Securities)

<sup>4</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

and 9610 (Application for Exemptions). The former FINRA rule was approved by the Commission on March 19, 2009<sup>5</sup> and will become effective on June 15, 2009. Paragraph (e)(1)(B) of that rule makes reference to FINRA Rule 4512(c); however, the referenced rule has not yet been adopted in the Consolidated FINRA Rulebook, so the proposed rule change would revert the reference to the existing NASD Rule 3110(c)(4)—a non-substantive change. With respect to FINRA Rule 9610, the proposed rule change would update rule cross-references to reflect the adoption of Rule 2114.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be June 15, 2009, the date on which the previously approved rule change will also be implemented.

##### **2. Statutory Basis**

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in 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*

Written comments were neither solicited nor 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

<sup>5</sup> See Securities Exchange Act Release No. 59605 (March 19, 2009), 74 FR 13283 (March 26, 2009) (Order Approving File No. SR-FINRA-2008-055).

<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</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-FINRA-2009-033 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2009-033. 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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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. FINRA has satisfied this notice requirement.

Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2009-033 and should be submitted on or before June 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60021; File No. SR-Phlx-2009-40]

### 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

June 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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,<sup>4</sup> 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")<sup>5</sup>; (2) 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 ("OFPA's" or "Advices") to harmonize Exchange Advices and rules.

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

The purpose of the proposed rule change is to amend Phlx rules<sup>6</sup> to:

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

<sup>5</sup> 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 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>.

<sup>6</sup> 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

Expand the Exchange's current product offering to include options on the New Currencies; clarify certain 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 Advices<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> U.S. dollar-settled FCOs continue being traded electronically over the Exchange's options trading platform, Phlx XL.<sup>10</sup> Additionally, through the spring of 2007 the Exchange traded, through open outcry, physical delivery options on foreign currencies.<sup>11</sup>

Specialists and Registered Options Traders), 1016 (Block Transactions in Physical Delivery Foreign Currency Options), 1027 (Discretionary Accounts), 1033 (Bids and Offers—Premium), 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).

<sup>7</sup> 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)).

<sup>8</sup> 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.

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

<sup>10</sup> 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.

<sup>11</sup> Physical delivery options, so named because settlement could involve delivery of the underlying currency (as opposed to cash for U.S. dollar-settled

Continued

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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