

Participants Fund Deposit by credit to their settlement accounts. Effective July 31, 2009, DTC will enhance its Participants Fund Return Request application to give each participant the ability to have its Voluntary Participants Fund Deposit credited to its settlement account on the next business day following the request. A decrease request must be submitted by 2:30 p.m. in order for a participant to be eligible to receive the credit the following business day. In addition, in an effort to effectively manage risk and to eliminate the need for participants to provide DTC with free form wire instructions, DTC will require that each participant wishing to receive its Voluntary Participants Fund Deposit through Fedwire must establish standing wire instructions with DTC's Account Administration Department for the return of any Voluntary Participants Fund Deposit going forward. Absent such standing wire instructions, DTC will automatically return any requested Voluntary Participants Fund Deposit by crediting the Participant's settlement account. Participants will continue to have the ability to withdraw their Voluntary Participants Fund Deposit on a monthly basis by sending free form wire instructions to DTC.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions by providing participants with a more efficient process for receiving their Voluntary Participants Fund Deposits.

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

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

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

The foregoing rule change has become effective upon filing pursuant to Section

19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(4)<sup>7</sup> thereunder because the proposed rule change effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in DTC's custody or control or for which it is responsible and (ii) does not significantly affect the respective rights of DTC or persons using the service. At any time within sixty days of the filing of such 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 No. SR-DTC-2009-12 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 No. SR-DTC-2009-12. 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

Section, 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 filings also will be available for inspection and copying at DTC's principal office and DTC's Web site at <http://www.dtc.org/impNtc/mor/index.html>. 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-DTC-2009-12 and should be submitted on or before July 23, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-15612 Filed 7-1-09; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60169; File No. SR-Phlx-2009-40]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Listing and Trading of Foreign Currency Options**

June 24, 2009.

#### **I. Introduction**

On May 8, 2008, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend its rules relating to the listing and trading of U.S. dollar-settled foreign currency options ("FCOs"). On May 29, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on June 8, 2009.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by

<sup>8</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> Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 60021 (June 1, 2009), 74 FR 27217 ("Notice").

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(4).

Amendment No. 1, on an accelerated basis.

## II. Description of the Proposal

In January 2007, the Exchange began listing and trading FCOs on the British pound and the Euro.<sup>5</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>6</sup> U.S. dollar-settled FCOs are currently traded electronically over the Exchange's options trading platform. The Exchange no longer trades physical delivery options on foreign currencies.<sup>7</sup>

The Exchange now proposes to amend its rules to enable it to list and trade options on ten new currencies: the Mexican peso, the Brazilian real, the Chinese yuan,<sup>8</sup> 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<sup>9</sup> (the "New Currencies").<sup>10</sup> FCOs on the New Currencies would be listed and traded similarly to other U.S. dollar-settled FCOs that currently are listed and traded on the Exchange,<sup>11</sup> and also would be traded electronically over the Exchange's options trading platform. FCOs on the New Currencies will be

subject to existing Exchange rules and processes that now apply to existing FCOs traded on the Exchange, as proposed to be modified by the Exchange in its proposal.

In addition, the Exchange also proposed several modifications to its FCOs generally, including: Changing the uniform pricing convention methodology for FCOs, establishing new position and exercise limits for FCOs, amending certain existing Exchange rule definitions regarding FCOs, and deleting obsolete references regarding foreign currency products and processes. The Exchange has proposed conforming rule text changes as well as changes to Phlx Option Floor Procedure Advices ("OFPA's")<sup>12</sup> to harmonize Exchange OFPA's with Exchange rules.

### Pricing of FCOs

The Exchange proposes to modify the convention of how it prices FCOs. Currently, Rule 1012, Commentary .06 provides that the Exchange may initially list exercise strike prices in the following format, *e.g.*: the Euro in the range of \$.9500 (expressed as \$95) to \$1.0550 (expressed as \$105.50). In other words, options on foreign currencies are currently priced without the application of an up-front multiplier and are followed by an "expressed as" price. The Exchange proposes to amend Commentary .06 to align its pricing practice in a way that better reflects how options are actually priced by applying a designated up-front modifier to the price. As such, the Exchange will no longer need to follow FCO prices of several decimal places with "expressed as" prices. The Exchange's proposed changes regarding the methodology and convention of pricing options on foreign currencies is similar to the pricing convention used by other markets that trade currency options.<sup>13</sup>

To accomplish these changes, the Exchange proposes to modify the definition of Spot Price in Phlx Rule 1000(b)(16) 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.<sup>14</sup> The multipliers will be applied by the Exchange so that Exchange Spot Prices would be similar to index option prices.<sup>15</sup> The up-front application of appropriate multipliers to cash market spot prices to get Exchange Spot Prices more accurately reflects how options on foreign currencies are actually priced on exchanges that list and trade such products. To effectuate this change, the Exchange proposes to amend Rules 1012, 1014, 1033, 1034, and 1092, and OFPA F-6 to clarify the new uniform FCO pricing convention. The Exchange also proposes to amend its rules to reflect that the Exchange Spot Price will be the settlement price for its FCOs.<sup>16</sup>

<sup>14</sup> See Securities Exchange Act Release No. 58915 (November 6, 2008), 73 FR 67916 (November 17, 2008) (SR-Phlx-2008-68) (indicating, among other things, that Quote Media, Inc. provides spot prices to The NASDAQ OMX Group, Inc. ("NASDAQ OMX")). Proposed Rule 1000(b)(16) provides: "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."

<sup>15</sup> 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 priced by the Exchange, ISE, and other markets that trade options on foreign currencies. In contrast, using the old pricing methodology (without the 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).

<sup>16</sup> The closing settlement value for the Phlx FCOs will continue to be spot price (now the "Exchange Spot Price") at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration unless the

Continued

<sup>5</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 noted 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>6</sup> See Securities Exchange Act Release No. 56034 (July 10, 2007), 72 FR 38853 (July 16, 2007) (SR-Phlx-2007-34).

<sup>7</sup> Physical delivery options, so named because settlement could involve delivery of the underlying currency (as opposed to cash for U.S. dollar-settled FCOs), traded on the Exchange since 1982 but since March 2007 are no longer listed and traded on the Exchange.

<sup>8</sup> The Exchange noted that the Chinese yuan may also be referred to as "renminbi" (similar to the British pound and sterling). See Notice, *supra* note 4, at note 4.

<sup>9</sup> The Exchange notes that 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). See Notice, *supra* note 4, at note 12.

<sup>10</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.

<sup>11</sup> See Securities Exchange Act Release Nos. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR-Phlx-2006-34); and 56034 (July 10, 2007), 72 FR 38853 (July 16, 2007) (SR-Phlx-2007-34). See also *supra* notes 5 and 6 (citing to the approval orders for the existing Phlx FCOs).

<sup>12</sup> See proposed changes to Option Floor Procedure Advices B-7 (Time Priority of Bids/Offer 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>13</sup> The International Securities Exchange, LLC ("ISE"), for example, also lists and trades options on certain foreign currencies (including, for example, 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 Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR-ISE-2006-59). ISE, like Phlx's proposal, applies up-front multipliers to currency spot prices so that ISE's currency prices tend to look like the prices of index and other options.

The Exchange will continue to disseminate FCO-related data including the settlement values and Exchange Spot Prices for its FCOs 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.<sup>17</sup>

The Exchange also proposes to delete rule text that reflects the prior methodology. For example, the Exchange proposes to amend Rule 1014 to reflect the revised uniform FCO pricing that no longer requires indicating bid/ask prices “expressed as” a modified value, after appropriate multipliers are applied.<sup>18</sup> Phlx also would amend Rule 1033, which applies to all currencies, to clarify that premiums on all U.S. dollar-settled FCOs will be calculated in the same way for all FCOs. Similarly, 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.<sup>19</sup> For example, under the proposal, a bid of “3.25” for a premium on a \$170 strike price option on the British pound would represent a bid to pay \$325 per option contract. Further, the Exchange will clarify that minimum price increments for all FCOs will remain at \$.01, but without the need to indicate different minimum price increments for different currencies that are thereafter each “expressed as \$.01”.

Additionally, the Exchange proposes to modify Rule 1012, Commentary .06 to

Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances.

<sup>17</sup> See Securities Exchange Act Release No. 59611 (March 20, 2009), 74 FR 13498 (March 27, 2009) (SR-Phlx-2009-22) at note 10.

<sup>18</sup> Additionally, Rule 1092 and OFPA F-6 would be amended to clarify that option prices will no longer be represented in terms of several decimal places that are then expressed as different values.

<sup>19</sup> 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).

specify 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.<sup>20</sup> The Exchange also proposes to amend Rule 1012 to permit the Exchange to list, with respect to any U.S. dollar-settled FCOs, options having up to ten options series with expirations up to thirty-six months.<sup>21</sup> The Exchange proposes to establish that FLEX currency options will similarly have expiration dates of up to three years.<sup>22</sup>

Closing settlement values are addressed in Rule 1057 and 1079 (for FLEX options). In both rules, the closing settlement price for U.S. dollar-settled FCOs is the Spot Price at 12:00:00 (noon) Eastern Time on the last trading day prior to expiration.<sup>23</sup> Phlx proposes to amend Rules 1057 and 1079 to reflect the new pricing convention it has proposed. Specifically, Rules 1057 and 1079 would be amended to add the New Currencies and reflect that the Exchange Spot Price per Rule 1000(b)(16) would be the settlement price.<sup>24</sup>

<sup>20</sup> The Exchange could 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.

<sup>21</sup> Proposed Rule 1012(a)(iii)(C) provides: “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.”

<sup>22</sup> See proposed Rule 1079(a)(6).

<sup>23</sup> 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). See also *supra* note 14 (regarding the vendor used for spot prices).

<sup>24</sup> Proposed Rule 1057 provides that: “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

## Position Limits

Rule 1001 generally establishes position limits for FCOs at 200,000 on the same side of the market relating to the same underlying currency.<sup>25</sup> The Exchange proposes to amend Rule 1001 to establish three levels of position limits for FCOs. Specifically, the Exchange proposes the following position limits: (i) 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; (ii) 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 (iii) 1,200,000 contracts for options on the Euro.<sup>26</sup>

The Exchange also proposes to eliminate from Rules 1001 and 1079 the practice of fractional counting of U.S. dollar-settled FCO 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, but is no longer required as the Exchange no longer trades physical delivery options on foreign currencies.

## Systems Capacity and Surveillance

The New Currencies would be covered under the Exchange’s existing surveillance programs.<sup>27</sup> Specifically, the Exchange represented that it has 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.” See also proposed Rule 1079 (concerning FLEX options).

<sup>25</sup> Rule 1001 currently sets forth 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 proposed to be deleted in this filing, the 100,000 contract position limit on the Mexican peso is proposed to be deleted.

<sup>26</sup> See proposed Commentary .05(b) to Rule 1001.

<sup>27</sup> The Exchange noted that it is a member of the Intermarket Surveillance Group (“ISG”) 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. See Notice, *supra* note 4, at note 33.

necessary systems capacity to support new options series that will result from the introduction of options on the New Currencies.<sup>28</sup> The Exchange further represented that it has an adequate surveillance program in place for trading U.S. dollar-settled FCOs and that it will apply the same surveillance program to the New Currencies.<sup>29</sup>

#### *Other Conforming Changes*

The Exchange proposes other conforming changes to its rules to accommodate the New Currencies. For example, the Exchange proposes to add the ten New Currencies to the six currencies that are currently listed in Rule 1000.<sup>30</sup> The Exchange also proposes technical changes to delete obsolete references, rules, and OFPAs 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 the Regulatory Services Post, which no longer exists.<sup>31</sup>

### **III. Discussion and Commission's Findings**

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>32</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>33</sup> which requires, among other things, that the rules of a national securities exchange be 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.

With respect to the listing and trading of FCOs on the proposed New Currencies, the Commission believes that the proposal may provide investors with additional strategic investment and hedging tools. The Commission notes that the currency market for each proposed New Currency is highly liquid and is characterized by a significant degree of volume and turnover. As a result, the Commission believes that sufficient venues exist to provide investors with ready access to reliable information on the New Currencies so that investors in FCOs can monitor the underlying spot market in the currencies. In addition, investors will be able to obtain information regarding futures trading on most of the New Currencies.<sup>34</sup> Further, the Commission notes that the Exchange's proposal is designed to ensure that the New Currencies are listed and traded under the same terms that apply to other U.S. dollar-settled FCOs that are currently traded on the Exchange, as such terms are proposed to be amended by the Exchange in this filing.

The Commission further believes that the Exchange's proposal to modify the methodology of pricing options on foreign currencies is consistent with the Act. The proposed new methodology clarifies and greatly simplifies the pricing of FCOs on Phlx in that it eliminates the need to express the price of options on foreign currencies with an "expressed as" price. The Exchange's proposal to apply an appropriate up-front multiplier to the cash market spot prices it receives from a price quotation dissemination system to establish the Exchange Spot Price for FCOs is consistent with the Act and also is consistent with the pricing convention used by other markets that trade foreign currency options.<sup>35</sup> The new methodology should result in more uniform pricing between FCOs and other option products that trade on the Exchange. The use of the Exchange Spot Price will therefore bring the underlying value of a Phlx FCO up to a level that more closely resembles the value an investor would expect to see for other options traded on the Exchange. Investors will be able to access a list of the modifiers that are used in creating each of the modified exchange rates.<sup>36</sup>

In addition, the Exchange will continue to disseminate Exchange Spot Prices and other FCO-related data throughout the day over the facilities of a major public data vendor to inform investors' trading of FCOs.

Further, the Commission believes that the proposals permitting Exchange Strike Prices to be listed within a 40 percent band around Exchange Spot Prices at fifty cent internals; clarifying that premiums on all U.S. dollar-settled FCOs will be calculated in the same way for all options; and clarifying that minimum price increments for all currencies will remain at \$.01, are all consistent with the Act. Permitting Strike Prices to be listed within a 40 percent band around the Exchange Spot Price allows accurate pricing of options on foreign currencies, and amending the rules to ensure that premiums and minimum price increments will be the same for all FCOs perfects the mechanism of a free and open market by simplifying the Exchange's rules and implementing rules that are consistent across all options on foreign currencies.

The Commission believes that the Exchange's proposal to institute three levels of position limits for FCOs on the same side of the market relating to the same underlying currency is reasonably designed to protect the options and related markets from disruptions or manipulation, and imposes similar position limits to those that have been adopted by other markets that trade foreign currency options as such have been approved previously by the Commission.<sup>37</sup> Further, the elimination of fractional counting differentiations for position limit purposes is appropriate, because physical delivery foreign currency options are no longer traded on the Exchange. Accordingly, the Commission believes that the proposed changes to the position limit rule are appropriate and consistent with the Act.

In approving the proposed rule change, the Commission has relied upon the Exchange's representations that it has the necessary systems capacity and adequate surveillance programs in place to support new options series that will result from this proposal.

The Commission believes that the other rule changes proposed by the Exchange to delete obsolete and outdated rules and OFPAs regarding foreign currency products and processes to eliminate confusion and extraneous references are consistent with the Act and should permit the Exchange to

<sup>28</sup> See Notice, *supra* note 4, at 74 FR 27220.

<sup>29</sup> See *id.*

<sup>30</sup> The Exchange will similarly add the New Currencies throughout its rules. See, e.g., Rules 1009, 1057, and 1079.

<sup>31</sup> 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.

<sup>32</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>33</sup> 15 U.S.C. 78f(b)(5).

<sup>34</sup> See *supra* note 9 (noting that CME lists and trades futures contracts on most of the New Currencies (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)).

<sup>35</sup> See *supra* note 13 (discussing ISE's FCOs).

<sup>36</sup> See *supra* note 14 (describing the modifiers set forth in proposed Rule 1000(b)(16)).

<sup>37</sup> See Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR-ISE-2006-59).

update its rules applicable to FCOs and thereby facilitate its ability to administer its FCO program.

#### IV. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>38</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after publication of the Notice in the **Federal Register**. The Commission notes that the proposal, as modified by Amendment No. 1, was published for a 15-day comment period,<sup>39</sup> and that it did not receive any comment letters on the proposal. The Commission notes that the proposal, as modified by Amendment No. 1, extends to the New Currencies the same rule set that currently is applicable to FCOs traded on the Exchange, as proposed to be amended by the current filing. The proposal is similar to another exchange's FCO program, including most of the proposed New Currencies, the position limits, and the up-front modified spot price, and so does not raise additional issues that have not been considered previously by the Commission.<sup>40</sup> Accordingly, the Commission finds that the proposed rule change does not raise any novel regulatory issues and believes that accelerating approval of this proposal at the conclusion of a 15-day comment period should benefit investors by offering them the ability to invest in FCOs based on the New Currencies and by offering the new FCO features, methodologies, and processes without further delay. In particular, the proposal should greatly simplify the pricing methodology and structure of Phlx's FCOs with respect to, among other things, strike, bid and ask, spot and settlement prices, and should consequently facilitate the ability of investors to more readily understand and trade these products.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>41</sup> that the proposed rule change (SR-Phlx-2009-40), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60179; File No. SR-NYSE-2009-61]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Decommissioning the Requirement for Member Organizations To Report Program Trading Activity on the Daily Program Trading Report

June 26, 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 June 24, 2009, the New York Stock Exchange LLC (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The NYSE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 decommission the requirement for member organizations to report program trading activity on the Daily Program Trading Report ("DPTR").

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 self-regulatory organization 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 Exchange proposes to implement the previously approved decommissioning of the requirement that member organizations report program trading activity via the Daily Program Trading Report ("DPTR").<sup>5</sup> Because certain entities previously used DPTR data, the Exchange delayed implementing the decommissioning of the DPTR requirement to provide adequate time to coordinate with such entities. The Exchange files this rule proposal to announce the stated policy of the Exchange that the last trade date for which member organizations will be required to file the DPTR with the Exchange will be July 10, 2009 and therefore the last required date to submit the DPTR will be July 14, 2009.

##### Background

In 2007, the Exchange filed a rule proposal to update the definition of program trading and to make certain conforming changes to rules governing program trading at the Exchange (the "2007 rule filing").<sup>6</sup> In addition to amending the definition of program trading, the Exchange proposed to streamline the reporting process that member organizations must follow when reporting program trading.<sup>7</sup>

In the 2007 rule filing, the Exchange proposed to eliminate DPTR. The 2007 filing noted that there was some duplication between the DPTR data and the audit trail information that member organizations provide to the Exchange via account-type indicators at the time that they submit program trades to the Exchange. The Exchange uses account type indicators to capture program trade information for those portions of the

<sup>5</sup> See Securities Exchange Act Release No. 55793 (May 22, 2007), 72 FR 29567 (May 29, 2007) (SR-NYSE-2007-34).

<sup>6</sup> See Securities Exchange Act Release No. 55615 (Apr. 11, 2007), 72 FR 19225 (Apr. 17, 2007) (SR-NYSE-2007-34).

<sup>7</sup> Beginning in 1988, the Exchange required that member organizations report program trading by the close of the second business day following the trade day on the DPTR.

<sup>38</sup> 15 U.S.C. 78s(b)(2).

<sup>39</sup> See Notice, *supra* note 4.

<sup>40</sup> See *supra* note 37 (citing to the approval order for SR-ISE-2006-59).

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 19b-4(f)(1).