

office space, no shared employees, no shared systems).

The Exchange may furnish to NYFIX the same information on the same terms that the Exchange makes available in the normal course of business to any other person. Specifically:

(a) NYFIX must not be provided an information advantage concerning the operation of the Exchange or any of its facilities, particularly regarding changes and improvements to the trading systems, that are not available to the industry generally.

(b) NYFIX will be prevented from having any advance knowledge of proposed changes or modifications to the operations of the Exchange or its facilities, including but not limited to advance knowledge of related filings by the Exchange pursuant to Rule 19b-4 of the Act.¹⁰

(c) NYFIX will not share employees or databases with the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities, and will be housed in a separate office.

(d) NYFIX will only be notified of any changes or improvements to any of the Exchange's operations or trading facilities in the same manner that other persons are notified of such changes or improvements;

(e) NYFIX will not disclose any system or design specifications, or any other information, to any employees of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities that would give NYFIX an unfair advantage over its competitors.

(f) None of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities will disclose any system or design specifications, or any other information, to any employees of NYFIX or any affiliate of NYFIX that would give the Exchange, any other facility of the Exchange, any other affiliate of the Exchange, or NYFIX an unfair advantage over its competitors.

The Commission also notes that each of NYFIX Millennium and NYFIX Securities has the Financial Industry Regulatory Authority ("FINRA"), an unaffiliated self-regulatory organization ("SRO"), as its designated examining authority and neither broker-dealer is a member of the Exchange.¹¹

The Commission finds that the temporary proposed affiliation between the Exchange and NYFIX Millennium and NYFIX Securities, pursuant to the proposed terms and conditions, is

consistent with the Act, particularly Section 6(b)(5) thereunder.¹² The Commission continues to be concerned about potential unfair competition and conflicts of interest when an exchange, or one of its affiliates, is the parent company of a broker-dealer that provides Routing Services that may be in competition with services provided by members of that exchange. The Commission believes, however, that the temporary nature of the affiliation, together with the proposed terms and conditions, are reasonably designed to mitigate concern about potential unfair competition and conflicts of interest between the commercial interests of the Exchange or its affiliates, and the Exchange's regulatory responsibilities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NYSEArca-2009-84), as amended, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60966; File No. SR-Phlx-2009-94]

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

November 9, 2009.

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

¹² 15 U.S.C. 78(f)(b)(5).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 "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 Web site 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,

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.

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.

¹⁰ 15 U.S.C. 78a.

¹¹ See Notice.

2010,⁶ 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 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
118	ABX	Barrick Gold Corp.
48	AXP	American Express Co.
134	AUY	Yamana Gold Inc.
93	BA	Boeing Co/The.
115	BBT	BB&T Corp.
111	BBY	Best Buy Co Inc.
94	BP	BP PLC.
67	CHK	Chesapeake Energy Corp.
58	CIT	CIT Group Inc.
78	COF	Capital One Financial Corp.
68	CVX	Chevron Corp.
130	DE	Deere & Co.
104	DOW	Dow Chemical Co/The.
49	DRYS	DryShips Inc.
88	EFA	iShares MSCI EAFE Index Fund.
64	ETFC	E*Trade Financial Corp.
32	EWZ	iShares MSCI Brazil Index Fund.
25	FAS	Direxion Daily Financial Bull 3X Shares.
33	FAZ	Direxion Daily Financial Bear 3X Shares.
120	MRK	Merck & Co Inc/NJ.
35	MS	Morgan Stanley.
73	NLY	Annaly Capital Management Inc.
99	NOK	Nokia OYJ.
121	NVDA	Nvidia Corp.
80	ORCL	Oracle Corp.
61	PALM	Palm Inc.
37	PBR	Petroleo Brasileiro SA.
85	PG	Procter & Gamble Co/The.
41	POT	Potash Corp of Saskatchewan Inc.
74	RF	Regions Financial Corp.
124	RIG	Transocean Ltd.
132	RMBS	Rambus Inc.
103	S	Sprint Nextel Corp.
83	SDS	ProShares UltraShort S&P500.
122	SKF	ProShares UltraShort Financials.
107	SLB	Schlumberger Ltd.
91	SLV	iShares Silver Trust.
84	SRS	Pro Shares Ultra Short Real Estate.
112	FITB	Fifth Third Bancorp.
70	FSLR	First Solar Inc.
26	FXI	iShares FTSE/Xinhua China 25 Index Fund.
82	GDX	Market Vectors—Gold Miners ETF.
127	GG	Goldcorp Inc.
18	GLD	SPDR Gold Trust.
129	HGSI	Human Genome Sciences Inc.
62	HIG	Hartford Financial Services Group Inc.
72	HPQ	Hewlett-Packard Co.
59	IBM	International Business Machines Corp.
45	IYR	iShares Dow Jones U.S. Real Estate Index Fund.
105	JNJ	Johnson & Johnson.
131	JNPR	Juniper Networks Inc.
98	KO	Coca-Cola Co/The.
39	LVS	Las Vegas Sands Corp.
87	MCD	McDonald's Corp.
71	MGM	MGM Mirage.
113	MON	Monsanto Co.
63	MOS	Mosaic Co/The.
119	SSO	ProShares Ultra S&P500.
101	STI	SunTrust Banks Inc.
125	SVNT	Savient Pharmaceuticals Inc.

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

Nat'l ranking	Symbol	Company name
92	TBT	ProShares UltraShort 20+ Year Treasury.
14	UNG	United States Natural Gas Fund LP.
117	UNH	UnitedHealth Group Inc.
110	UPS	United Parcel Service Inc.
81	USB	US Bancorp.
44	USO	United States Oil Fund LP.
60	UYG	ProShares Ultra Financials.
96	V	Visa Inc.
10	WFC	Wells Fargo & Co.
133	WYNN	Wynn Resorts Ltd.
52	X	United States Steel Corp.
114	XHB	SPDR S&P Homebuilders ETF.
86	XLI	Industrial Select Sector SPDR Fund.
79	XLU	Utilities Select Sector SPDR Fund.
54	XRT	SPDR S&P Retail ETF.

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 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

- 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 a.m. and 3 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 December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

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⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁰ 17 CFR 240.19b-4(f)(1).

¹¹ 17 CFR 200.30-3(a)(12).