

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58915; File No. SR-Phlx-2008-68)

November 7, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by NASDAQ OMX PHLX, Inc. Relating to Settlement Values and Spot Prices for Foreign Currency Options

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 October 30, 2008, 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 and II below, which Items have been prepared by the Exchange. On November 6, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to modify the definition of the closing settlement value for foreign currency options traded on the Exchange (“FCOs”).

The text of the proposed rule change is available on the Exchange’s Website at [http://www.phlx.com/regulatory/reg\\_rulefilings.aspx](http://www.phlx.com/regulatory/reg_rulefilings.aspx).

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

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

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 indicate that the spot price at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration will be the closing settlement value for FCOs instead of the Noon Buying Rate.

The Exchange currently uses the Noon Buying Rate, which it receives from the Federal Reserve Bank of New York (the "New York Fed"),<sup>5</sup> for the purposes of setting the closing settlement values of the Australian dollar, the Euro, the British pound, the Canadian dollar, the Swiss franc and the Japanese yen. Going forward, the closing settlement value for FCOs will be the spot price at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration.

By way of background, for all currencies underlying FCOs trading on the Exchange, it disseminates closing (final) settlement values on its website, and disseminates modified spot prices over the facilities of the Consolidated Tape Association ("CTA") at least once every

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<sup>5</sup> On October 2, 2007, the New York Fed announced its decision to discontinue the publication of foreign exchange rates such as the Noon Buying Rate on December 31, 2008, given the availability of alternate market-based sources for these rates. The Exchange believes that other markets that trade foreign currency options, such as for example the International Securities Exchange ("ISE"), also use foreign currency rates provided by the New York Fed. See ISE Rule 2212.

fifteen seconds while the Exchange is open for trading.<sup>6</sup> Spot prices are FCO quotations obtained by the Exchange from a foreign currency price quotation dissemination system selected by the Exchange.<sup>7</sup> The Exchange calculates averages of bid and ask values provided by Tenfore Systems Limited (“Tenfore”)(the “Tenfore Values”) to get spot prices for FCOs. The Exchange then calculates modified spot prices for each of the foreign currencies underlying its FCOs by applying multipliers to the spot prices (100 for the British pound, the Australian dollar, the Canadian dollar and the Swiss franc; and 10,000 for the Japanese yen). Because the Tenfore Values are expressed in foreign currency units per U.S. dollar for the Japanese yen, the Canadian dollar and the Swiss franc (rather than in U.S. dollars per unit of foreign currency as for other currencies such as the Euro), in calculating spot market prices for these three currencies the Exchange uses the inverse of the average of the Tenfore Values (that is, one divided by the average of the Tenfore Values).<sup>8</sup>

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<sup>6</sup> See Securities Exchange Act Release Nos. 55513 (March 22, 2007), 72 FR 14636 (March 28, 2007)(SR-Phlx-2007-28) and 56034 (July 10, 2007), 72 FR 38853 (July 16, 2007)(SR-Phlx-2007-34).

<sup>7</sup> See Phlx Rule 1000(b)16.

<sup>8</sup> The Exchange now gets Tenfore Values from Thomson Financial LLC (“Thomson”) and uses them to calculate spot and modified spot prices. It is expected that in the future another entity, QuoteMedia Inc. (“QuoteMedia”), will use the Tenfore Values to calculate spot prices in the same way that the Exchange now does, and will provide the spot prices to NASDAQ OMX in the proper format (already inverted for the Japanese yen, the Canadian dollar, and the Swiss franc). NASDAQ OMX will then apply the relevant multipliers to the spot prices to calculate modified spot prices. As part of NASDAQ OMX, the Exchange will have access to the spot prices and the modified spot prices on or after November 3, 2008, and will no longer need to perform any calculations regarding them. The Exchange will continue to disseminate modified spot prices over the facilities of the CTA, or through one or more major market data vendors, at least once every fifteen seconds while the Exchange is open for trading.

## Settlement Value

Currently, the Exchange uses the Noon Buying Rate for the closing settlement value of the Australian dollar, the Euro, the British pound, the Canadian dollar, the Swiss franc and the Japanese yen. The closing settlement value for options on the Japanese yen, the Canadian dollar and the Swiss franc is an amount equal to one divided by the day's announced Noon Buying Rate, as determined by the New York Fed on the expiration date, rounded to the nearest .0001 (except in the case of the Japanese yen where the amount is rounded to the nearest .000001). If the Noon Buying Rate is not announced by 5:00 p.m. eastern time on expiration day, the closing settlement value is based upon the most recently announced Noon Buying Rate, unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances.

Going forward, the closing settlement value for FCOs will be the spot price at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration as calculated by the supplier of the data,<sup>9</sup> and the Exchange will no longer need to calculate an average of the Tenfore Values nor calculate inverse values for the Japanese yen, the Canadian dollar and the Swiss franc to get proper spot prices.<sup>10</sup>

### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in particular, in that it is

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<sup>9</sup> Similarly to modified spot prices, the Exchange will disseminate settlement values over the facilities of the CTA or through one or more major market data vendors, such that settlement values should be available to users at the same time.

<sup>10</sup> The Exchange is proposing conforming changes to its Rule 1079.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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, by enabling the Exchange to continue providing closing settlement values for FCOs to its customers.

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.

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 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that this filing allows the Exchange to continue providing FCO data (with no substantive changes to the data or its calculation) to

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 C.F.R. 240.19b-4(f)(6). Rule 19b-4(f)(6) also requires the self-regulatory organization to give the Commission 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. Phlx has satisfied the five-day pre-filing requirement.

public customers. As the Exchange is consolidating certain systems with other NASDAQ OMX Group systems, the Exchange believes that waiving the 30-day operative delay will allow the Exchange to provide FCO data in the most efficient and cost-effective way, and in the timeliest manner, to the benefit of investors. The Exchange believes that on or after November 3, 2008, when the Exchange will no longer need to conduct data calculations, investors should find that they are able to access FCO data faster and at times when it previously would not be available. Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.<sup>15</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-Phlx-2008-68 on the subject line.

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<sup>15</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Paper Comments:

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

All submissions should refer to File Number SR-Phlx-2008-68. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-2008-68 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>16</sup>

Florence E. Harmon  
Acting Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).