

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2009-54. 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 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-NYSEAmex-2009-54 and should be submitted on or before September 3, 2009.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60456; File No. SR-Phlx-2009-63]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of Sponsored Access Pilot Program

August 7, 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 July 29, 2009, NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 proposes to renew its sponsored access rule for a pilot period ending on October 29, 2009. The program expires on July 29, 2009.<sup>3</sup> The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 self-regulatory organization 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 those 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 attract additional business by renewing its sponsored access rule, which is similar to that of other exchanges. During the previous pilot program, no member organizations availed themselves of the program, but the Exchange seeks to make another attempt to institute the program, for a pilot period expiring October 29, 2009. The Exchange will evaluate whether to continue the sponsored access program or not.

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

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

<sup>3</sup> See Securities Exchange Release No. 59362 (February 5, 2009), 74 FR 6931 (February 11, 2009) (SR-Phlx-2009-10).

A Sponsored Participant is a non-member of the Exchange, such as an institutional investor, that gains access to the Exchange and trades under a Sponsoring Member's execution and clearing identity pursuant to a sponsorship arrangement between such non-member and a member organization. Specifically, the Exchange proposes to permit Sponsored Participants to be sponsored by Sponsoring Member Organizations, and thereby access the Exchange, subject to certain requirements. These requirements are intended to confirm that the Sponsored Participant is required to and had procedures in place to comply with Exchange rules, and that the Sponsoring Member Organization takes responsibility for the Sponsored Participant's activity on the Exchange.

First, the Sponsored Participant and its Sponsoring Member Organization must have entered into and maintained an Access Agreement with the Exchange. The Sponsoring Member Organization must designate the Sponsored Participant by name in an addendum to the Access Agreement.

Second, there must be a Sponsored Participant Agreement between the Sponsoring Member Organization and the Sponsored Participant that contains the following sponsorship provisions, enumerated in full in Rule 1094(b)(ii):

(i) The orders of the Sponsored Participant are binding in all respects on the Sponsoring Member Organization;

(ii) The Sponsoring Member Organization is responsible for the actions of the Sponsored Participant;

(iii) In addition to the Sponsoring Member Organization being required to comply with the Exchange Certificate of Incorporation, By-laws, Rules and procedures of the Exchange, the Sponsored Participant shall do so as if such Sponsored Participant were an Exchange member organization;

(iv) The Sponsored Participant shall maintain, keep current and provide to the Sponsoring Member Organization a list of individuals authorized to obtain access to the Exchange on behalf of the Sponsored Participant;

(v) The Sponsored Participant shall familiarize its authorized individuals with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the Exchange;

(vi) The Sponsored Participant may not permit anyone other than authorized individuals to use or obtain access to the Exchange;<sup>4</sup>

<sup>4</sup> If the Exchange determines that an authorized individual has caused a Member Organization to

<sup>8</sup> 17 CFR 200.30-3(a)(12).

(vii) The Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the Exchange, including unauthorized entry of information into the Exchange, and agrees that it is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of authorized individuals, and for the trading and other consequences thereof;

(viii) The Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees', agents' and Participants' use and access to the Exchange for compliance with the terms of this agreement;

(ix) The Sponsored Participant shall pay when due all amounts, if any, payable to Sponsoring Member Organization, the Exchange, or any other third parties that arise from the Sponsored Participant's access to and use of the Exchange. Such amounts include, but are not limited to applicable exchange and regulatory fees.

Third, the Sponsoring Member Organization must provide the Exchange with a Sponsored Participant Addendum to its Access Agreement acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, in that it is 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 helping market participants seeking access to a marketplace.

### *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.

violate the Exchange's Rules, the Exchange could direct the Member Organization to suspend or withdraw the person's status as an authorized individual.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

### *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 rule change does not:* (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>9</sup> However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. The Commission notes that the proposal is substantially similar to the rules of other national securities exchanges.<sup>11</sup> Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of such 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

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

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii). 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. The Exchange has satisfied the five-day pre-filing notice requirement.

<sup>10</sup> *Id.*

<sup>11</sup> See, e.g., International Securities Exchange, LLC Rule 706 and NYSE Arca, Inc. Rule 7.29.

<sup>12</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2009-63 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-2009-63. 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 a.m. and 3 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-2009-63 and should be submitted on or before September 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE**

[Docket No. USTR-2009-0022]

**Implementation of the U.S.-EC Beef  
Hormones Memorandum of  
Understanding**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice, delay of action, and request for comments.

**SUMMARY:** On May 13, 2009, the United States and the European Communities ("EC") announced the signing of a Memorandum of Understanding (MOU) in the *Beef Hormones* dispute. Under the first phase of the agreement, the EC is obligated to open a new beef tariff-rate quota (TRQ) in the amount of 20,000 metric tons at zero rate of duty. The United States in turn is obligated not to increase additional duties above those in effect as of March 23, 2009. The EC opened the new beef TRQ on August 1, 2009. This notice undertakes the process necessary to implement U.S. obligations under the first phase of the MOU and to pursue additional market access under subsequent phases of the MOU.

**DATES:** *Effective Date:* A modified list of products subject to additional duties in connection with the *Beef Hormones* dispute (announced on January 15, 2009) had been scheduled to be effective with respect to products that are entered, or withdrawn from warehouse, for consumption on or after August 15, 2009. In order to meet U.S. obligations under the MOU, the United States Trade Representative ("Trade Representative") has now changed this effective date to September 19, 2009. Moreover, as explained below, the Trade Representative will take additional steps before that time in order to continue to implement U.S. obligations under the MOU.

**FOR FURTHER INFORMATION CONTACT:** Roger Wentzel, Director, Agricultural Affairs, (202) 395-6127 or David Weiner, Director for the European Union, (202) 395-4620 for questions concerning the *EC-Beef Hormones* dispute; or William Busis, Associate

General Counsel and Chair of the Section 301 Committee, (202) 395-3150, for questions concerning procedures under Section 301.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On January 15, 2009, the Trade Representative announced modifications ("January 15 modifications") to the action taken in July 1999 in connection with the World Trade Organization ("WTO") authorization of the United States in the *EC-Beef Hormones* dispute to suspend concessions and related obligations with respect to the European Communities ("EC"). See 74 FR 4265 (Jan. 23, 2009). The January 15 modifications initially had an effective date of March 23, 2009. The Trade Representative subsequently delayed the effective date of the additional duties imposed under the January 15 modifications to April 23, 2009; to May 9, 2009; and then to August 15, 2009. The effective date of the removal of duties under the January 15 modifications remained March 23, 2009. See 74 FR 11613 (March 18, 2009); 74 FR 12402 (March 24, 2009); 74 FR 19263 (April 28, 2009). As a result of removal of duties on March 23, 2009, a reduced list of products subject to additional duties (at a rate of 100 percent *ad valorem*) has been in place since that time. This reduced list is set out in the Annex to this notice. Under the first phase of the MOU, the United States maintains the right to impose these additional duties, and is obligated not to impose additional duties on any other products in connection with the *EC-Beef Hormones* WTO dispute.

The first phase of the MOU concludes on August 3, 2012. Under a possible second phase of the MOU, the EC would expand the beef TRQ to 45,000 metric tons, and the United States would suspend all of the additional duties imposed in connection with the *EC-Beef Hormones* WTO dispute.

For additional background concerning the *EC-Beef Hormones* WTO dispute; the January 15 modifications; and the prior delays in the effective date of the modifications, see 73 FR 66066 (Nov. 6, 2008); 74 FR 4265 (Jan. 23, 2009), 74 FR 11613 (March 18, 2009), 74 FR 12402 (March 24, 2009), 74 FR 19263 (April 28, 2009), and 74 FR 22626 (May 13, 2009). Further information on the May 13, 2009 U.S.-EC MOU may be found on USTR's Web site, <http://www.ustr.gov>.

**B. Delay of Action**

Pursuant to Section 305 of the Trade Act of 1974, the Trade Representative has determined that a further delay in implementation of the January 15

modifications would be desirable to obtain a satisfactory solution with respect to the EC's ban on U.S. beef. Accordingly, the Trade Representative has decided to delay the effective date of the additional duties imposed under the January 15 modifications from August 15, 2009 to September 19, 2009. The actions to be delayed are: (i) The imposition of increased duties on additional products, (ii) the application to products of additional EC member States of the increased duties on currently covered products, and (iii) the increase in the level of duties on one of the products that is being maintained on the product list. These are the same actions that were previously delayed until August 15, 2009.

The increased duties under the January 15 modifications are set out in Annex II of the notice published at 74 FR 12402 (March 24, 2009), as modified by the notice published at 74 FR 19263 (April 28, 2009). In order to delay the effective date of the increased duties until September 19, 2009, the Trade Representative has decided that the modifications to the Harmonized Tariff Schedule of the United States that are contained in Parts A and B of Annex II shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after September 19, 2009. As explained below, however, further steps are contemplated before that time. In addition, any merchandise covered under Part B of Annex II of the notice published at 74 FR 12402 that is admitted to a U.S. foreign-trade zone on or after September 19, 2009 must be admitted in "privileged foreign status" as defined in 19 CFR 146.41. Questions concerning customs matters may be directed to Renee Chovanec, International Coordination, Office of International Trade, U.S. Customs and Border Protection, (202) 863-6384.

**C. Opportunity for Public Comments**

Prior to September 19, 2009, the Trade Representative intends to take further steps under the Trade Act to implement U.S. obligations under the first phase of the MOU and to pursue additional market access under subsequent phases of the MOU. The Section 301 Committee seeks comments on these matters, including with regard to the imposition of 100 percent duties on the products currently subject to such duties throughout the remainder of the first phase of the MOU. (The list of products currently subject to 100 percent duties in connection with *EC-Beef Hormones* WTO dispute is set out in the Annex to this notice.) As noted above, the United States maintains the right to impose these additional duties

<sup>13</sup> 17 CFR 200.30-3(a)(12).