

it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2012-019 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-BX-2012-019. This file number should be included on the subject line if email 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 Web site viewing and printing 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-BX-2012-019 and should be submitted on or before April 12, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-6866 Filed 3-21-12; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66616; File No. SR-Phlx-2012-11]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Regarding the Listing and Trading of PHLX FOREX Options™

March 16, 2012.

#### I. Introduction

On January 23, 2012, NASDAQ OMX PHLX LLC ("Exchange" or "Phlx") 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 list and trade U.S. dollar-settled foreign currency options known as PHLX FOREX Options on the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro ("PHLX FOREX Options"). The proposed rule change was published for comment in the **Federal Register** on February 1, 2012.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade foreign currency options known as PHLX FOREX Options on the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro. The proposal establishes new Rules 1000C through 1009C that would, in conjunction with current Exchange trading rules, allow listing and trading of PHLX FOREX Options. The Exchange also is amending Phlx Option Floor

Procedure Advices F-6<sup>4</sup> and F-15<sup>5</sup> ("OFPA's or Advices") to harmonize the Exchange Advices and the proposed PHLX FOREX Options rules.

The proposal allows the listing and trading of PHLX FOREX Options on six of the same foreign currencies that underlie another type of foreign currency option that is currently listed and traded on the Exchange (referred to as either "FCOs" or World Currency Options, "WCOs"), including the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro.<sup>6</sup> The proposal does not affect the continued listing and trading of FCOs on the Exchange, as PHLX FOREX Options will be eligible to list and trade in parallel to current FCOs.<sup>7</sup>

PHLX FOREX Options will be similar, and in many respects identical, to FCOs. As such, the proposed rules provide that the Exchange's existing rules and procedures will be applicable to PHLX FOREX Options, and the proposed PHLX FOREX Options rules will supplement existing rules. For example, PHLX FOREX Options will follow the rules that are currently applicable to FCOs that pertain to areas such as hours of trading, quoting and market making requirements, margin requirements, reporting options positions, filing trade information, and FLEX trading.<sup>8</sup>

<sup>4</sup> Specifically, the Exchange proposes to amend Advice F-6 to reflect "expressed as" pricing for maximum quotes spread parameters in light of bid and ask differentials. The Exchange notes that this change will harmonize Advice F-6 with its corresponding proposed rule 1003C, so that the same pricing is reflected in the rule and the Advice.

<sup>5</sup> The Exchange also proposes to amend Advice F-15, which discusses minor infractions of position/exercise limits and hedge exemptions, to reflect the addition of proposed Rules 1008C and 1009C. The Exchange notes that this will harmonize Advice F-15 with its corresponding proposed Rules 1008C and 1009C, and thereby include minor violations of the proposed rules in the Exchange's Minor Rule Plan as reflected in the Advices.

<sup>6</sup> The product specifications for the current FCOs can be found at <http://www.nasdaqomxtrader.com/wco>. The Exchange currently lists eleven FCOs that trade in the manual auction market as well as electronically. The currencies underlying these FCOs include: the Australian dollar, the British pound, the Canadian dollar, the Euro, the Japanese yen, the Mexican peso, the New Zealand dollar, the Norwegian krone, the South African rand, the Swedish krona, and the Swiss franc.

<sup>7</sup> However, Phlx proposes to amend the FCO rules in one respect to provide that, for purposes of determining position and exercise limits, FCO options will be aggregated with PHLX FOREX Options that are listed on the same underlying currency. See *infra* note 30.

<sup>8</sup> See Exchange Rules 101, 1014, 721, 1003, 1053, and 1079, respectively. In its filing, the Exchange notes that other Exchange rules that are applicable to the trading of foreign currency options products include Rules 1006 (Other Restrictions on Exchange Options Transactions and Exercises); 1014 (Obligations and Restrictions Applicable to

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 66257 (January 26, 2012), 77 FR 5073 ("Notice").

New Rule 1000C states that unless otherwise specified, the proposed rules in the Rule 1000C series of rules (“Rule 1000C Series”) are applicable only to PHLX FOREX Options. Further, Rule 1000C provides that except to the extent that specific rules in the Rule 1000C Series govern, or unless the context otherwise requires, the provisions of the Option Rules applicable to FCOs<sup>9</sup> and of the By-Laws and all other Rules and Policies of the Board of Directors are applicable to the trading on the Exchange of PHLX FOREX Options.

To minimize investor confusion, the Exchange has represented that it intends to engage in an educational effort to inform potential traders about the differences in the PHLX FOREX Options as compared to FCO products.<sup>10</sup>

#### Pricing Convention

In its filing, the Exchange noted that the primary difference between current FCOs and proposed PHLX FOREX Options will be the pricing convention of PHLX FOREX Options, which resembles the “spot market pricing” on the underlying currencies.<sup>11</sup> This is the same convention that is used for currency futures and options on currency futures contracts on the same underlying currencies.<sup>12</sup> Currently, the

Specialists and Registered Options Traders); 1022 (Securities Accounts and Orders of Specialists and Registered Options Traders); 1024 (Conduct of Accounts for Options Trading); 1025 (Supervision of Accounts); 1027 (Discretionary Accounts); 1028 (Confirmations); 1039 (Resolution Of Uncompared Trade); 1043 (Allocation of Exercise Notices); 1044 (Delivery and Payment); 1045 (Officers And Employees Restricted); 1047 (Trading Rotations, Halts and Suspensions); 1049 (Communications to Customers); 1063 (Responsibilities of Floor Brokers); 1064 (Crossing, Facilitation and Solicited Orders); 1066 (Certain Types of Orders Defined); 1068 (Execution of Multi-Part Orders); 1080 (Phlx XL and Phlx XL II); 1083 (Order Protection; Locked and Crossed Markets); 1089 (Dealing Directly With Specialist and Registered Option Trader in Foreign Currency Options); and 1092 (Obvious Errors and Catastrophic Errors). See Notice, *supra* note 3, 77 FR at 5078.

<sup>9</sup> Exchange Option Rules 1000 *et seq.* and 1000A *et seq.*

<sup>10</sup> See Notice, *supra* note 3, 77 FR at 5075. For example, as discussed in the Exchange’s filing, the pricing of PHLX FOREX Options and FCOs will be different in that the pricing of a Euro PHLX FOREX Option will resemble spot market pricing (e.g., 1.0031) while the pricing of a Euro FCO will resemble index option pricing (e.g., 100.31). See Notice, *supra* note 3, 77 FR at 5076. Further, the pricing symbology will be different in that PHLX FOREX Option prices would be stated out to four decimal places while FCOs are priced out to two places.

<sup>11</sup> See Notice, *supra* note 3, 77 FR at 5074. See also proposed Exchange Rule 1001C.

<sup>12</sup> A currency futures contract is a transferable futures contract that specifies the price at which a currency can be bought or sold at a future expiration date. CME Group Inc. lists and trades futures and options on futures contracts on many of the same currencies that the Exchange is proposing for PHLX FOREX Options, including the

Exchange receives spot market prices for currencies underlying the FCOs from a data vendor, which at this time is SIX Telekurs,<sup>13</sup> and converts such spot market prices to “Exchange Spot Prices” by applying an appropriate multiplier (e.g., 100 or 1000).<sup>14</sup> The closing settlement value for FCO settlement purposes is the Exchange Spot Price at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration.<sup>15</sup> The Exchange currently generates a settlement value report for each underlying currency and publicly disseminates unique FCO symbols and settlement values in order to differentiate between live underlying markets and 12:00:00 noon FCO settlement prices.

Unlike FCOs, the proposed PHLX FOREX Options will not use the modified “Exchange Spot Prices” for settlement purposes. Instead, the Exchange will use the spot market prices that it receives from its data vendor (i.e., SIX Telekurs) at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration to calculate settlement values. In other words, the Exchange will not apply a multiplier to the spot price for FOREX Options as it does for FCOs.<sup>16</sup> PHLX FOREX Option

Australian dollar, the British pound, the Canadian dollar, and the Euro. Examples of settlement (closing) spot prices of futures contracts on these currencies can be found at <ftp://ftp.cmegroup.com/pub/settle/stlcur>.

<sup>13</sup> According to the Exchange, SIX Telekurs specializes in the procurement, processing and distribution of international financial information for investment advisory services, fund administration, portfolio management, financial analysis and securities administration. SIX Telekurs collects data directly from hundreds of contributors and exchanges as well as more than thirty (30) worldwide contributing banks. See Notice, *supra* note 3, 77 FR at 5075. This data serves as the basis for the foreign currency spot market prices that SIX Telekurs provides to the Exchange.

The Exchange notes that spot market prices for currencies underlying PHLX FOREX Options are also calculated by other entities and available to investors from other sources such as market data vendors Bloomberg, Reuters, and Thomson. Investors can also get spot market prices for free from sources such as <http://finance.yahoo.com/>; as well as from brokers with whom investors have a trading account. See Notice, *supra* note 3, 77 FR at 5075.

<sup>14</sup> For a definition of Exchange Spot Price, see Rule 1000(b)16.

The International Securities Exchange, LLC (“ISE”) similarly applies multipliers to its cash-settled rate-modified currency options (which are not fungible with Phlx’s FCOs) so that they tend to look like the prices of index and other options. See Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR-ISE-2006-59).

<sup>15</sup> See Exchange Rule 1057.

<sup>16</sup> See Proposed Exchange Rule 1006C. For example, the July 2012 settlement value of a PHLX FOREX Option on the Euro may be \$1.4338 based on the spot market price of the underlying currency; whereas the July 2012 settlement value price of a FCO on the Euro may be \$143.38 based on the

settlement values will be, similarly to FCOs, publicly disseminated with unique symbols to differentiate between live underlying markets and 12:00:00 Eastern Time (noon) PHLX FOREX Option settlement prices. Except for applying multipliers for FCO settlement values, the settlement value methodologies will largely be similar for PHLX FOREX Options and FCOs.

Similar to FCOs, PHLX FOREX Options listed by the Exchange will be European-style exercise.<sup>17</sup> Upon exercise, holders of options contracts would receive U.S. dollars representing the difference between the exchange rate and the exercise price of the option, which would be multiplied by the units of currency in each PHLX FOREX Option contract.<sup>18</sup> Additionally, PHLX FOREX Options that are in-the-money by any amount on the expiration date would be exercised automatically by OCC, while PHLX FOREX Options that are out-of-the-money on the expiration date would expire worthless. The Exchange anticipates that PHLX FOREX Options will be cleared by The Options Clearing Corporation (“OCC”).<sup>19</sup>

#### Opening and Adding New PHLX FOREX Options

The Exchange proposes Rule 1002C regarding the series of underlying PHLX FOREX Options that may be opened for trading after a particular class of PHLX FOREX Option has been approved for listing and trading on the Exchange. Specifically, the Exchange proposes that, at the commencement of trading on the Exchange of a particular class of PHLX FOREX Options, the Exchange will open a minimum of one expiration month and series for each class of options open for trading on the Exchange.<sup>20</sup> The exercise price of each series of PHLX FOREX Options opened for trading on the Exchange will be fixed in terms of U.S. dollars per unit of the underlying currency at a price per

application of a 100 multiplier to the similar spot market price.

<sup>17</sup> Unlike American style options, European style options may be exercised only on the day that they expire.

<sup>18</sup> See Proposed Exchange Rule 1006C. Each PHLX FOREX Option contract for the six currencies discussed in this filing would, like each FCO contract, have 10,000 units of currency. The product specifications for the new PHLX FOREX Options may be found at <http://www.nasdaqomxtrader.com/wco>.

<sup>19</sup> The Exchange’s FCOs are cleared by OCC. See Securities Exchange Act Release No. 54935 (December 13, 2006), 71 FR 76417 (December 20, 2006) (SR-OCC-2006-10) (order approving amendments to OCC’s by-laws and rules to accommodate the clearance and settlement of the Exchange’s FCOs).

<sup>20</sup> The Exchange notes that it currently intends to open two quarterly and two additional near-term months. See Notice, *supra* note 3, 77 FR at 5076.

unit which is reasonably close to the current spot market price of the underlying foreign currency in the foreign exchange market at or before the time such series of options is first opened for trading on the Exchange. The Exchange notes that this is the same as the procedure for opening initial months and series and fixing expiration terms of equity options and index options on the Exchange.<sup>21</sup>

Regarding additional series of options, proposed Rule 1002C states that additional series of PHLX FOREX Options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices.<sup>22</sup> Regarding long-term options, the proposed rule provides that with respect to any class of PHLX FOREX Options series the Exchange may list options having up to thirty-nine months from the time they are listed until expiration (with up to six additional expiration months).<sup>23</sup> Strike price interval, bid/ask differential and continuity rules will not apply to such options series until the time to expiration is less than nine months.<sup>24</sup> In addition, the Exchange is proposing to allow PHLX FOREX Options to be eligible for FLEX trading.<sup>25</sup>

### Strike Prices

Pursuant to proposed Rule 1002C, the Exchange could initially list exercise strike prices for a PHLX FOREX Option within a 40% band around the current spot market price for the underlying currency, with such options listed at \$.0050 intervals. As the spot market moves, the Exchange may list new strike

prices that, at the time of listing, do not exceed the spot market by more than 20 percent and are not less than the spot market by more than 20 percent (*i.e.*, within the 40% band).<sup>26</sup>

### Bids and Offers and Minimum Trading Increments

The quote spread parameters (or bid/ask differentials) with respect to PHLX FOREX Options are found in subsection (a) of Rule 1003C, which is applicable to PHLX FOREX Options specialists and Registered Options Traders (“ROT’s”). In subsection (a), the Exchange proposes to use the spot market price convention but move the decimal point two places to the right so that a bid and/or offer differential of \$.0025 would be “expressed as” \$.25 for trading purposes.<sup>27</sup> Regarding electronic quotations, the Exchange proposes to state in subsection (b) to Rule 1003C that PHLX FOREX Options may be quoted electronically with a difference not to exceed \$.0500 (expressed as \$5.00) between the bid and offer regardless of the price of the bid.<sup>28</sup> The Exchange believes that because such proposed “expressed as” price demarcations are similar to how prices are now expressed for equity options, it would be easier for PHLX FOREX Options participants to use the

expressed as pricing for trading purposes.<sup>29</sup>

Proposed Rule 1004C regarding bids and offers of PHLX FOREX Options states that except as provided in paragraph (b) and (c) of that Rule (contract adjustments and spread type priority), all bids or offers made on the Exchange floor for PHLX FOREX Option contracts shall be expressed in terms of U.S. dollars per unit of the underlying foreign currency. The example given in the rule is that a bid of “.0325” (which would be expressed as “\$3.25”) for a premium on a \$1.70 strike price option on the British pound would represent a bid to pay \$325 per option contract.

The minimum trading increment for PHLX FOREX Options is set forth in proposed Rule 1005C. For the six currencies that the Exchange proposes to list, the minimum increment would be \$.0001, expressed as \$.01. Subsection (b) adds that different, higher, minimum increments may be fixed by the Exchange for option contracts of a particular series of PHLX FOREX Options, which information would be posted on the Exchange’s Web site.

### Position and Exercise Limits

Proposed Rule 1008C establishes that the new PHLX FOREX Options on the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro, will each have a position limit of 1,200,000 contracts. The proposed rule also establishes that if a PHLX FOREX Option and an FCO are listed on the same underlying currency (*e.g.*, a Euro PHLX FOREX Option and a Euro FCO), then the positions in each option on the same underlying currency will be aggregated for purposes of determining compliance with the applicable position limit.<sup>30</sup> Proposed Rule 1009C establishes that the exercise limits for options on PHLX FOREX Options will be equivalent to the position limits prescribed in Rule 1008C.

### Closing Settlement Value

PHLX FOREX Options will use a closing settlement value methodology that is identical to what is currently being used for FCOs with one distinction—calculating settlement value for PHLX FOREX Options will use

<sup>26</sup> For example, if at the time of initial listing, the spot market of the Euro is at \$1.000 the strike prices the Exchange would list for the PHLX FOREX Option will be \$.800 to \$1.20 in \$.0050 intervals. If the spot market then moves to \$1.3050, the Exchange may list additional strikes at the following prices in \$.0050 intervals: \$1.045 to \$1.565.

<sup>27</sup> Proposed subsection (a) to Exchange Rule 1003C states in full: with respect to all PHLX FOREX Options, bidding and/or offering so as to create differences of no more than \$.0025 (expressed as \$.25) between the bid and the offer for each option contract for which the prevailing bid is less than \$.0200 (expressed as \$2.00); no more than \$.0040 (expressed as \$.40) where the prevailing bid is \$.0200 (expressed as \$2.00) or more but less than \$.0500 (expressed as \$5.00); no more than \$.0050 (expressed as \$.50) where the prevailing bid is \$.0500 (expressed as \$5.00) or more but less than \$.1000 (expressed as \$10.00); no more than \$.0080 (expressed as \$.80) where the prevailing bid is \$.1000 (expressed as \$10.00) or more but less than \$.2000 (expressed as \$20.00); and no more than \$.0100 (expressed as \$1.00) where the prevailing bid is \$.2000 (expressed as \$20.00).

<sup>28</sup> Proposed subsection (b) to Exchange Rule 1003C states further: the bid/ask differentials set forth in this subparagraph (b) only applies to electronic quotations and only following the opening rotation in each security (*i.e.*, the bid/ask differentials specified in sub-paragraph (a) above shall apply during opening rotation). Quotations provided in open outcry may not be made with bid/ask differentials set forth in this subparagraph (b) and instead must comply with the legal bid/ask differential requirements described in sub-paragraph (a) above and not in this sub-paragraph (b).

<sup>21</sup> See *id.*

<sup>22</sup> Proposed subsection (a)(ii) to Exchange Rule 1002C states further: The opening of a new series of options shall not affect the series of options of the same class previously opened. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of PHLX FOREX Options until five (5) business days prior to expiration.

<sup>23</sup> See Proposed Exchange Rule 1002C(a)(iii).

<sup>24</sup> See *id.*

<sup>25</sup> Specifically, proposed Exchange Rule 1007C provides that the FLEX procedures set forth in Rule 1079 in respect of FCOs will also be applicable to PHLX FOREX Options. Rule 1079 deals with the process of listing and trading FLEX equity, index, and FCOs on the Exchange. The rule states that FLEX options are available for FCOs and discusses, among other things: opening FLEX options trading through the Request-for-Quote (“RFQ”) process; quotes responsive to RFQs; trading parameters and procedures; and position and exercise limits for FLEX options.

<sup>29</sup> See Notice, *supra* note 3, at 5076. As an example, the Exchange states that it would be unwieldy for a trader in a crowd to have to announce that he is improving a price by .0010 (one tenth of a penny). The “expressed as” price would allow the trader to announce that he is improving the price by ten cents or a dime. See *id.* at n.32.

<sup>30</sup> See also proposed change to Exchange Rule 1001 Commentary .05 (c)(iv) (describing the aggregation provision for purposes of determining compliance with position limits for FCO options).

the spot market price, whereas FCOs currently use the modified Exchange Spot Price. Accordingly, proposed Rule 1006C provides that the closing settlement value for PHLX FOREX Options and for FLEX PHLX FOREX Options shall be the spot market 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.<sup>31</sup> The rule states that, like with FCOs, PHLX FOREX Options will be settled in U.S. dollars per unit of underlying currency, and the Exchange will disseminate the closing settlement value through one or more major market data vendors. The rule also indicates that the disclaimer of liability that is applicable to FCOs is likewise applicable to PHLX FOREX Options. In addition, the Exchange states that it will disseminate PHLX FOREX Option closing settlement values on its Web site.<sup>32</sup>

#### *Systems Capacity and Surveillance*

The Exchange represents in its filing that it has the necessary systems capacity to support new options series that will result from the introduction of PHLX FOREX Options on the Exchange.<sup>33</sup> The Exchange also represents that it has an adequate surveillance program in place for trading PHLX FOREX Options, and noted that it will apply the same surveillance program to PHLX FOREX Options that it uses for FCOs.<sup>34</sup>

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

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>35</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>36</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>37</sup> which requires, among other things, that the Exchange's rules be 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, 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.

As discussed above, the proposed PHLX FOREX Options are similar to Phlx's existing FCO options, which the Commission approved in 2007.<sup>38</sup> In the areas where the two products and the corresponding rules are identical, the Commission continues to believe that such provisions are consistent with the Act. The contract specifications that are unique to the proposed PHLX FOREX Options are discussed below.

The Commission believes that any potential concerns regarding investor confusion between the two products should be mitigated by the Exchange's undertaking to engage in an educational outreach effort to inform potential traders about the differences between the new PHLX FOREX Options and the existing FCO products.<sup>39</sup> Further, PHLX FOREX Options will have their own ticker symbols and the applicable settlement values will be disseminated with unique symbols to differentiate these products from FCO options based on the same underlying currency.

#### *A. Settlement Value and Dissemination of Information*

The Commission notes that the primary difference between current FCOs and proposed PHLX FOREX Options is that the pricing convention of PHLX FOREX Options will be based on the spot market prices for the underlying currencies. As noted above, to calculate settlement values, the Exchange will use the spot market prices that it receives from SIX Telekurs or another data vendor at 12 Eastern Time on the last trading day prior to expiration, but will not apply any multiplier as it does for FCOs. The Commission believes that the proposed closing settlement value methodology for PHLX FOREX Options is substantially similar to the methodology used for FCOs, despite the absence of a modifier for the former, and therefore it does not raise any new regulatory issues.

Further, the Commission believes that sufficient venues exist for obtaining reliable information on the underlying currencies so that investors in PHLX FOREX Options can monitor the

underlying spot market in the underlying currencies.<sup>40</sup> The Commission also believes that the Phlx's procedures and the competitive nature of the spot market for the currencies should help to ensure that the settlement values for PHLX FOREX Options will accurately reflect the spot price for foreign currencies. Finally, the closing settlement value will be publicly disseminated by Phlx. Accordingly, the proposed rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

#### *B. Surveillance*

The Commission notes that the Phlx will integrate PHLX FOREX Options into existing Phlx market surveillance market programs for FCOs. Phlx has represented that it has an adequate surveillance program in place for the trading of FCOs and believes that such program will be adequate for the surveillance of PHLX FOREX Options.<sup>41</sup> In addition, Phlx will have the ability to obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.<sup>42</sup> Accordingly, the Commission believes that Phlx has access to the tools necessary to adequately surveil trading in these options.

#### *C. Position and Exercise Limits*

Phlx proposes a position limit of 1,200,000 contracts for PHLX FOREX Options in the underlying currencies proposed in this filing, namely the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro. The Commission notes that this position limit is consistent with the current position limit for FCOs on Euros.<sup>43</sup> The Commission further notes that the Exchange has provided data evidencing

<sup>40</sup> The Commission notes that the Exchange stated in the Notice that, in addition to spot market prices provided by SIX Telekurs, spot market prices are available from other sources such as Bloomberg, Reuters, and Thompson and available from free sources such as <http://finance.yahoo.com/>. See Notice, *supra* note 3, 77 FR at 5075.

<sup>41</sup> See Notice, *supra* note 3, 77 FR at 5078.

<sup>42</sup> The Exchange is a member of the ISG under the Intermarket Surveillance Group Agreement, which was modernized in 2008, 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 *id.*

<sup>43</sup> See Exchange Rules 1001 and 1002.

<sup>31</sup> Similar to FCOs, the expiration date for PHLX FOREX Options would be the Saturday following the third Friday of the expiration month, and the last trading day would be the third Friday of the expiration month.

<sup>32</sup> See Notice, *supra* note 3, 77 FR at 5078.

<sup>33</sup> See *id.*

<sup>34</sup> See *id.*

<sup>35</sup> 15 U.S.C. 78f.

<sup>36</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>37</sup> 15 U.S.C. 78f(b)(5).

<sup>38</sup> See Securities Exchange Act Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR-Phlx-2006-34) (FCO Approval Order).

<sup>39</sup> See Notice, *supra* note 3, 77 FR at 5075.

the liquidity of the markets for these six currencies. Specifically, the Exchange has represented that the six major foreign currencies that underlie PHLX FOREX Options are all within the top ten most traded foreign currencies in the world, and represent a 72.9% share of the daily market turnover (excluding U.S. dollars).<sup>44</sup> Accordingly, the Commission believes that the proposed position limits are consistent with the Act.

Further, PHLX FOREX Options contracts will be aggregated with FCO contracts for position and exercise limit purposes. The Commission believes that aggregation of PHLX FOREX Options contracts with FCOs on the same underlying currency for purposes of position and exercise limits is appropriate and designed to address concerns with the potential for manipulation or disruptions of the markets for PHLX FOREX Options contracts and FCOs.

#### D. Other Rules

The Commission believes that the other rule changes proposed by the Phlx to accommodate the trading of PHLX FOREX Options are consistent with the Act. First, the Commission believes that the procedure for opening initial months and series and setting expiration terms is appropriate and consistent with the Exchange's rules for equity and index options on the Exchange.<sup>45</sup> Specifically, the Exchange will open a minimum of one expiration month and series for each class of options open for trading on the Exchange, and the exercise price will be fixed at a price that is reasonably close to the current spot market price of the underlying foreign currency at or before the time such series of options is first opened for trading.

Further, the Commission believes it is reasonable for the Phlx to initially list exercise strike prices within a 40 percent band around the current spot market price for an underlying currency for a PHLX FOREX Option. The Commission also believes that it is consistent with the Act for the Exchange to establish the proposed minimum trading increments for PHLX FOREX Options. The Commission notes that the Phlx has represented that it has the systems capacity to support the additional quotations and messages that will result from listing options on PHLX FOREX Options.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>46</sup> that the proposed rule change (SR-Phlx-2012-11) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>47</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66614; File No. SR-ISE-2012-22]

#### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Add an Index Option Product for Trading on the Exchange

March 16, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 9, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 self-regulatory organization. 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 proposing to amend its rules to trade options on the ISE Max SPY™ Index ("ISE Max SPY"), a newly-developed, ISE proprietary index (patent pending). The ISE Max SPY is designed to represent 10 times the value of the published prices in the SPDR® S&P 500® ETF Trust. The Exchange also proposes to list and trade long-term options on the ISE Max SPY. Options on the Max SPY will be p.m. cash-settled and will have European-style exercise provisions.

The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>46</sup> 15 U.S.C. 78s(b)(2).

<sup>47</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.

#### 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 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 amend its Rules 2001, 2004 and 2009 to provide for the listing and trading of options on the ISE Max SPY™ index, a newly-developed, ISE proprietary index (patent pending). The ISE Max SPY is designed to represent 10 times the value of the published share prices in the SPDR® S&P 500® ETF Trust. In addition to options on the ISE Max SPY, the Exchange may list long-term options on ISE Max SPY.<sup>3</sup> Options on the ISE Max SPY will be P.M. cash-settled and will have European-style exercise provisions.

The ISE Max SPY Index is constructed using the share prices of the SPDR® S&P 500® ETF Trust (the "Trust", which is commonly known by its exchange symbol "SPY"). According to the Trust's prospectus, SPY is based on the S&P 500®, which is a capitalization-weighted index of 500 stocks from a broad range of industries. The component stocks are weighted according to the total market value of their outstanding shares. The impact of a component's price change is proportional to the issue's total market share value, which is the share price times the number of shares outstanding. These are all summed for all 500 stocks and divided by a predetermined base value. The base value for the S&P 500® is adjusted to reflect changes in capitalization resulting from, among other things, mergers, acquisitions, stock rights and substitutions. The ISE Max SPY is calculated by multiplying the share prices of SPY by a factor of 10 and rounding to the tenths place. For example, if the share price for SPY is

<sup>3</sup> Under ISE Rule 2009(b), "Long-Term Index Options Series," the Exchange may list long-term options that expire from 12 to 60 months from the date of issuance.

<sup>44</sup> See Notice, *supra* note 3, 77 FR at 5077.

<sup>45</sup> See Exchange Rules 1012 and 1101A.