

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54652; International Series Release No. 1298; File No. SR-Phlx-2006-34]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Relating to U.S. Dollar-Settled Foreign Currency Options

October 25, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 12, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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 Exchange. On September 29, 2006, the Exchange filed Amendment No. 1,³ and on October 20, 2006, the Exchange filed Amendment No. 2.⁴ 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 Phlx proposes to list U.S. dollar-settled foreign currency options ("FCOs") on the British pound and the Euro (together, the "Currencies"), and to adopt rules and rule amendments to permit the trading of U.S. dollar-settled FCOs on the Exchange's electronic trading platform for options, Phlx XL.⁵ The Exchange also proposes to amend a number of existing rules relating to U.S. dollar-settled FCOs, and to amend various rules to delete outdated references to the German mark, Italian lira, Spanish peseta and the French franc.

The text of the proposed rule change, as amended, is available on the Exchange's Web site at <http://www.phlx.com>, at Phlx's principal office, 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 Phlx included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Phlx 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Phlx, the purpose of the proposed rule change is to permit the Exchange to expand its product offerings and revitalize FCOs by listing and trading U.S. dollar-settled FCOs on the Currencies on Phlx XL.⁶ The contract specifications, including certain amendments to the Exchange's existing rules applicable to U.S. dollar-settled FCOs, and the trading rules for these FCOs are discussed in detail below.⁷

i. Contract Specifications and Amendments to U.S. Dollar-Settled FCO Rules

Background. The Exchange has listed and traded physical delivery FCOs issued by The Options Clearing Corporation ("OCC") on a number of currencies since 1982.⁸ For a period of time during the 1990's the Exchange also listed and traded U.S. dollar-settled FCOs on the German mark and the Japanese yen.⁹ The U.S. dollar-settled

FCOs were known and marketed as "Dollar Denominated Delivery" or "3D" FCOs. The U.S. dollar-settled FCOs were cash-settled, European-style options issued by OCC that allowed holders to receive U.S. dollars representing the difference between the current foreign exchange spot price¹⁰ and the exercise price of the option. Specifically, upon exercise of an in-the-money U.S. dollar-settled FCO structured as a call, the holder received, from OCC, U.S. dollars representing the difference between the exercise strike price and the closing settlement value of the U.S. dollar-settled FCO contract multiplied by the number of units of currency covered by the contract.¹¹ For a U.S. dollar-settled FCO structured as a put, the holder received U.S. dollars representing the excess of the exercise price over the closing settlement value of the U.S. dollar-settled FCO contract multiplied by the number of units of foreign currency covered by the contract. Unlike other Phlx-traded FCOs, U.S. dollar-settled FCOs that are in-the-money by any amount on the expiration date would be exercised automatically by OCC, while U.S. dollar-settled FCOs that are out-of-the-money at expiration would expire worthless.

Proposal. The Exchange now proposes to list and trade U.S. dollar-settled FCOs on the Currencies on Phlx XL.¹² The Exchange also proposes to

Release No. 33732 (March 8, 1994), 59 FR 12023 (March 15, 1994). The Exchange commenced trading of U.S. dollar-settled options on the Japanese yen on February 24, 1997. See Securities Exchange Act Release No. 36505, International Series Release No. 889 (November 22, 1995), 60 FR 61277 (November 29, 1995). U.S. dollar-settled German mark options were delisted on January 19, 1999. U.S. dollar-settled Japanese yen options were delisted on August 23, 1999.

¹⁰ The "spot price" with respect to an option contract on a FCO contract means the price for the sale of one foreign currency for another, quoted by various commercial banks in the interbank foreign exchange market for the sale of a single unit of such foreign currency for immediate delivery (which generally means delivery within two business days following the date on which the terms of such sale are agreed upon). See Phlx Rule 1000(b)(16).

¹¹ Phlx Rule 1044, Delivery and Payment, is proposed to be amended to provide that upon exercise of an in-the-money U.S. dollar-settled FCO structured as a call, the holder receives, from OCC, U.S. dollars representing the difference between the exercise strike price and the closing settlement value of the U.S. dollar-settled FCO contract multiplied by the number of units of currency covered by the contract. Similarly, for a U.S. dollar-settled FCO structured as a put, Phlx Rule 1044 provides that the holder receives U.S. dollars representing the excess of the exercise price over the closing settlement value of the U.S. dollar-settled FCO contract multiplied by the number of units of foreign currency covered by the contract.

¹² The Exchange's existing, physical delivery options on the Currencies would not be affected by this proposal and would continue to trade as they

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 dated September 29, 2006 ("Amendment No. 1"). Amendment No. 1 replaced the original filing in its entirety.

⁴ See Form 19b-4 dated October 20, 2006 ("Amendment No. 2"). Amendment No. 2 replaced the Amendment No. 1 in its entirety.

⁵ See Securities Exchange Act Release No. 49832 (June 8, 2004), 69 FR 33442 (June 15, 2004) (SR-Phlx-2003-59).

⁶ The Exchange will file a proposed rule change with the Commission prior to listing U.S. dollar-settled options on any currencies other than the British pound and the Euro.

⁷ Existing Phlx rules applicable to FCOs that are not proposed to be amended in this proposed rule change would remain in effect and would apply to both physical delivery FCOs and U.S. dollar-settled FCOs, unless the rule specifically provides otherwise.

⁸ Unlike U.S. dollar-settled FCOs, a physical delivery option on a foreign currency gives its owner the right to receive physical delivery (if it is a call) or to make physical delivery (if it is a put) of the underlying foreign currency when the option is exercised.

⁹ The Exchange traded U.S. dollar-settled options on German marks beginning in September 1994. In its order approving German mark U.S. dollar-settled options, the Commission stated that, in the future, the listing of additional cash/spot (as they were then known) FCOs based on different foreign currencies would require separate 19b-4 filings with the Commission. See Securities Exchange Act

amend a number of rules applicable to U.S. dollar-settled FCOs generally, including the U.S. dollar-settled FCOs on the Currencies, as well as any other U.S. dollar-settled FCOs that the Exchange may list in the future.

Contract Size. The contract sizes of the U.S. dollar-settled FCO contracts on the Currencies would be 10,000 British pounds and 10,000 Euros.¹³

Expirations. The Exchange proposes to amend Phlx Rule 1012(a) by limiting the applicability of paragraph (ii) to physical delivery FCOs, by renumbering paragraph (iii) as paragraph (iv), and by adding new paragraph (iii) to provide that U.S. dollar-settled FCO contracts may be listed with expirations that are the same as the expirations permitted for equity index options pursuant to Phlx Rule 1101A with the exception of long term option series and quarterly expiring FCOs which the Exchange does not propose to list. The Exchange does not anticipate listing FLEX U.S. dollar-settled foreign currency options at this time.¹⁴

The Exchange anticipates that, at least initially, it would list expirations at one, two, three, six, and nine months, and that the options would be on three of the months from the March, June, September, December cycle, plus two additional near term months (five months at all times).¹⁵ The expiration date for the consecutive and cycle month options would be 11:59 p.m. Eastern Time on the Saturday immediately following the third Friday of the expiration month pursuant to Phlx Rule 1000(b)(21), "Expiration date," as proposed to be amended.

Trading Symbols. The Exchange expects that the symbols for options on the British Pound and on the Euro would be as follows:

British Pound Trading Symbol—XDB
British Pound Wrap Symbol—BJF
British Pound Settlement Value Symbol—BIJ
British Pound Strike Symbol—BJR
British Pound Wrap Strike Symbol—BVA
Euro Trading Symbol—XDE
Euro Wrap Symbol—EAE

do today, by open outcry. The Exchange notes, however, that positions in the U.S. dollar-settled FCOs would be aggregated with positions in the physical delivery contracts for purposes of position and exercise limits, as discussed further below.

¹³ The contract sizes for the physical delivery options on the Currencies are 31,250 British pounds and 62,500 Euros.

¹⁴ Currently, trades may be executed in certain FLEX options on equities and equity indexes. See Phlx Rule 1079.

¹⁵ By way of example, in September, the U.S. dollar-settled FCOs would have the following months listed: October, November, December, March, and June.

Euro Settlement Value Symbol—EDY
Euro Strike Symbol—EPA
Euro Wrap Strike Symbol—EAY

Trading Hours. Phlx Rule 101, Hours of Business, would be amended to provide that U.S. dollar-settled FCOs would trade from 9:30 a.m. to 4 p.m. Eastern Time, Monday through Friday. These trading hours differ from the trading hours for the physical delivery FCO contracts because the U.S. dollar-settled FCOs would, unlike the Exchange's physical delivery FCOs, trade on Phlx XL in much the same way that stock index options currently trade.¹⁶ The expiring U.S. dollar-settled FCO contract would cease trading at 4 p.m. on the day prior to its expiration day.¹⁷ Unlike trading in physical delivery FCOs, trading in U.S. dollar-settled FCOs would not close on bank holidays. If Friday is an Exchange holiday, the settlement value for U.S. dollar-settled FCOs would be determined on the basis of the Noon Buying Rate¹⁸ on the preceding trading day, which would also be the last day of trading for the expiring option.

Settlement Values. The Exchange proposes to change the method of determining the closing settlement value for U.S. dollar-settled FCOs. Phlx Rule 1057 would be revised to provide that the closing settlement value would be the day's announced Noon Buying Rate as determined by the Federal Reserve Bank of New York on the trading day prior to the expiration date. If the Noon Buying Rate is not announced by 2 p.m. Eastern Time, the closing settlement value would be the most recently announced Noon Buying Rate, unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances.¹⁹ The closing settlement value would not be disseminated through the Options Price Reporting Authority ("OPRA"), but would be posted on the Exchange's Web site, where it would be publicly available to

¹⁶ Trading hours for the Exchange's physical delivery FCO contracts are from 2:30 a.m. to 2:30 p.m. Eastern Time, Monday through Friday.

¹⁷ The Exchange notes that in order to facilitate trading of the U.S. dollar-settled FCOs on Phlx XL, trading would be permitted to occur after the settlement value is announced on the day prior to expiration, as discussed below.

¹⁸ The Exchange notes that the Commission has recently approved listing standards for securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interests in non-U.S. currency deposited into the trust. The trust utilizes the Noon Buying Rate for the calculation of the Net Asset Value of the trust. See Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (order granting accelerated approval of SR-NYSE-2005-65).

¹⁹ *Id.*

all visitors to the Exchange's Web site on an equal basis, without the need to enter any kind of password to access the settlement value. The Exchange would not disclose the settlement value to any person or group of persons other than employees of the Exchange who need to know prior to posting the value on the Exchange's Web site.

Position and Exercise Limits. For purposes of position and exercise limits, positions in U.S. dollar-settled FCO contracts would be aggregated with positions in the physical delivery contracts. The position limits and exercise limits for the U.S. dollar-settled FCOs would be the same as the position and exercise limits for the physical delivery contracts pursuant to Phlx Rules 1001 and 1002. However, Phlx Rule 1001, Position Limits, would be amended to provide that each Euro U.S. dollar-settled option contract would count as one-sixth of a contract for purposes of position and exercise limits.²⁰ Similarly, each British pound U.S. dollar-settled option contract would count as one-third of a contract for purposes of position and exercise limits.²¹ The other aggregation principles in Phlx Rule 1001 would continue to apply.

Strike Prices. The Exchange proposes to initially list exercise strike prices for each expiration around the current spot price at half-cent (\$.005) intervals up to five percent on each side.²² Thus, if the spot price initially were at 1.0000, the Exchange would list strikes in \$.005 intervals up to 1.0500 and down to .9500 for a total of twenty-one strike prices available for trading. The Exchange would not list any strike prices at intervals other than these \$.005 intervals.²³ New strikes may be added

²⁰ According to the Exchange, each U.S. dollar-settled Euro option contract would be treated as one-sixth of a contract for position and exercise limit purposes because the cash-settled Euro option contract is roughly one-sixth of the size of the physical delivery contract.

²¹ The cash-settled British pound option contract is roughly one-third of the size of the physical delivery contract.

²² To determine foreign currency spot prices, the Exchange receives contributor bank quotes from a vendor in real-time and takes the average of the various quotes.

²³ To facilitate trading on Phlx XL, strike prices would be expressed without reference to the first two decimal places. Minimum quoting increments and maximum quote spreads would also reflect this convention (see below for a fuller discussion of minimum increments and maximum quote spreads). For example, assuming that the actual spot value of the Euro is \$1.00, a strike could be listed at \$1.0050 and would be expressed as \$100.50. Similarly, the minimum quoting increment would be \$.0005, expressed as \$.05. Bids could be made \$1.0045, expressed as \$100.45, \$1.0040, expressed as \$100.40, and so forth. Offers could be made at \$1.0055, expressed as \$100.55, at \$1.0060, expressed as \$100.60, and so forth. Maximum quote

during the life of the option in accordance with Phlx Rule 1012(a)(iii).²⁴ New Commentary Section .06 would be added to Phlx Rule 1012 to specify that strike prices on the Euro and British pound cash-settled option would be listed at half-cent intervals. Text regarding the setting of exercise prices is being moved from paragraph (ii) to new Commentary Section .07 because it would be applicable not only to physical delivery FCOs but to U.S. dollar-settled FCOs as well. Options Floor Procedure Advice F-18, Expiration Month and Strike Prices—Selective Quoting Facility, is proposed to be amended to limit its applicability (including applicability of the Selective Quoting Facility) to physical delivery FCOs.²⁵

Bids and Offers—Premium. Under Phlx Rule 1033, Bids and Offers—Premium, bids and offers in U.S. dollar-settled FCOs on the Currencies must be made in terms of U.S. dollars per unit of the underlying foreign currency. However, the first two decimal places would be omitted from all bid and offer quotations for the British pound and for the Euro. Therefore, for example, a bid of .50 for an option contract on the Euro

spread parameters would be \$.0025, expressed as \$.25. Thus, a market maker could bid \$1.0030, expressed as \$100.30, and offer at \$1.0055, expressed as \$100.55. Prior to commencement of trading of U.S. dollar-settled options on the Currencies as proposed herein, the Exchange intends to issue an informational memorandum to members and member organizations which explains this strike price and quoting convention.

²⁴ Phlx Rule 1012(a)(iv) provides in part that “[a]dditional series of options of the same class may be opened for trading on the Exchange as the market price of the underlying stock or Exchange-Traded Fund Share or the underlying foreign currency, as the case may be, moves substantially from the initial exercise price or prices.” As the spot price for U.S. dollar settled FCO moves, the Exchange would list new strike prices that, at the time of listing, do not exceed the spot price by more than 5% and are not less than the spot price by 5%. For example, if at the time of initial listing the spot price of the Euro is at 1.0000, the strike prices the Exchange would list would be .9500 to 1.0500. If the spot price then moves to 1.0500, the Exchange may list additional strikes at the following prices: 1.0550 to 1.1000. In that event, the Exchange would delist any previously-listed series outside of the current ten percent band that have no open interest.

²⁵ The selective quoting facility establishes criteria to determine whether the bid/ask quotation for each FCO series is eligible for transmission to OPRA for off-floor dissemination to securities data vendors. When the Exchange designates a particular foreign currency option series as a “non-update strike,” its quotes are not made available for continuous dissemination to the public throughout the trading day. See Phlx Rule 1012, Commentary .04. The selective quoting facility, implemented in 1994, was intended to reduce the number of strike prices continuously being updated and disseminated, thus resulting in more timely and accurate foreign currency options quote displays. As noted above, however, the selective quoting facility would be limited to physical delivery FCOs and would not apply to U.S. dollar-settled FCOs.

would represent a bid to pay .005 per Euro—i.e., a bid of \$50.00—for an option contract having a unit of trading of 10,000 Euros. Phlx Rule 1034(a) would be revised to provide that the minimum increment for U.S. dollar-settled FCOs quoting under \$3.00 would be \$.0005 per unit of the foreign currency, expressed as .05 per unit of the foreign currency, which equals a \$5.00 minimum increment per contract consisting of 10,000 Euros or 10,000 British pounds.²⁶ The minimum increment for U.S. dollar-settled FCOs quoting at \$3.00 or higher would be \$.0010 per unit of the foreign currency, expressed as .10 per unit of the foreign currency, which equals a \$10.00 minimum increment per contract consisting of 10,000 Euros or 10,000 British pounds.²⁷

Margin. The U.S. dollar-settled FCOs would have the same customer margin requirements as are provided for the existing FCOs pursuant to Phlx Rule 722, Margin Accounts, Commentary .16.²⁸ The Exchange calculates the

²⁶ By way of example, if the spot price of the Euro is at \$1.0255 and an investor purchases the December Euro \$1.2500 (expressed as \$125.00) Call at a premium of \$.0075 (expressed as \$.75) and then sells the December Euro \$1.2500 Call at a premium of \$.0095 (expressed as \$.95), the investor's profit would be \$.0020 per Euro. The investor's profit would be \$.0020 multiplied by 10,000 Euros (the size of the contract) for a total of \$20.00.

²⁷ The Exchange has determined to set the minimum quoting increment at \$.0005 (expressed as \$.05) per Euro for the U.S. dollar-settled FCOs rather than at the \$.0001 (expressed as \$.01) per Euro minimum quoting increment that currently applies to the Exchange's physical delivery FCOs because the Phlx XL trading system would not accommodate quoting in increments of \$.0001 (expressed as \$.01, or otherwise). So, for example, while a bid of \$.0075 per Euro in the physical delivery FCO can be improved by quoting at \$.0076, a bid of \$.0075 per Euro in the U.S. dollar-settled FCO can only be improved by quoting no less than \$.0080. The minimum increment per contract in the physical delivery Euro option, if it were the same size as the U.S. dollar-settled Euro option, would thus be \$1.00 (\$.0001 multiplied by the contract size of 10,000 Euros), while the minimum increment per contract in the U.S. dollar-settled contract would be \$.0005 multiplied by the contract size of 10,000 Euros).

²⁸ Pursuant to Phlx Rule 722, Commentary .16, the Exchange calculates the margin requirement for customers that assume short FCO positions by adding a percentage of the current market value of the underlying foreign currency contract to the option premium price less an adjustment for the out-of-the-money amount of the option contract. On a quarterly calendar basis, the Exchange reviews five-day price changes over the preceding three-year period for each underlying currency and sets the add-on percentage at a level which would have covered those price changes at least 97.5% of the time (the “confidence level”). If the results of subsequent reviews show that the current margin level provides a confidence level below 97%, the Exchange increases the margin requirement for that individual currency up to a 98% confidence level. If the confidence level is between 97% and 97.5%, the margin level would remain the same but would be subject to monthly follow-up reviews until the

margin requirements for each foreign currency underlying U.S. dollar-settled FCO separately, rather than determining one margin level for all foreign currencies based upon the historical pricing information for all foreign currencies together. The Exchange informs members and the public of the margin levels for each currency option immediately following the quarterly reviews described in Commentary .16 to Phlx Rule 722.

ii. Phlx XL Trading Rules for U.S. Dollar-Settled FCOs

As noted above, the Exchange is proposing that U.S. dollar-settled FCOs trade on Phlx XL, the Exchange's electronic trading platform for options. Currently, all Phlx equity and equity index options also trade on Phlx XL. According to the Exchange, Phlx XL enables market makers to electronically deliver streaming quotes on or off the floor, producing tighter and deeper markets. Additionally, the Exchange believes that trading U.S. dollar-settled FCOs on Phlx XL would enable the Exchange to improve electronic access for customers, broker dealers and market makers while leveraging the advantages of a floor-based environment. Options order-flow providing firms would be able to direct their U.S. dollar-settled FCO orders to the Exchange liquidity provider of their choice under the Exchange's directed order flow program. Exchange specialists, on-floor market makers known as Streaming Quote Traders (“SQTs”),²⁹ and remote market makers known as Remote Streaming Quote Traders (“RSQTs”) ³⁰ who stream their

confidence level exceeds 97.5% for two consecutive months. If during the course of the monthly follow-up reviews, the confidence level drops below 97%, the margin level is increased to a 98% level and if it exceeds 97.5% for two consecutive months, the currency is taken off monthly reviews and is put back on the quarterly review cycle. If the currency exceeds 98.5%, the margin level is reduced to a 98% confidence level during the most recent three year period. Finally, in order to account for large price movements outside the established margin level, if the quarterly review shows that the currency had a price movement, either positive or negative, greater than two times the margin level during the most recent three year period, the margin requirement is set at a level to meet a 99% confidence level (“Extreme Outlier Test”).

²⁹ An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Exchange Rule 1014(b)(ii)(A).

³⁰ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options

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U.S. dollar-settled FCO quotes to the Exchange would be eligible to participate in the directed order flow program. Specialists in U.S. dollar-settled FCOs, like specialists in equity and equity index options, would also be eligible to participate in the Exchange's enhanced specialist participation programs which provide a type of exception to the Exchange's parity rules, allocating to the specialist a greater than equal share of the portion of an order that is divided among the specialist and any "controlled accounts" (*i.e.*, any account controlled by or under common control with a broker-dealer, such as a specialist or an SQT) that are on parity.³¹ By contrast, priority and parity rules for options on physical delivery foreign currency options are set forth in Phlx Rule 1014(h), which generally is a price-time priority rule without regard to account types. Once a bid or offer in physical delivery FCOs establishes priority, no bid-offer may gain parity at that price during that trading session until at least ten percent of the size of the previous bid-offer or 100 contracts, whichever is greater, trades.

The Exchange proposes to amend a number of rules that currently govern the trading of equity and equity index options that trade as "Streaming Quote Options" on Phlx XL to extend the coverage of those rules to U.S. dollar-settled FCOs as well.³² In general, the Exchange proposes to make the necessary rule changes to permit U.S. dollar-settled FCOs to trade much in the same manner as equity index options, which are also U.S. dollar-settled products.³³

to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

³¹ The Exchange currently has several Enhanced Specialist Participation programs, embodied in Phlx Rule 1014(g). These programs establish specified percentages as the Enhanced Specialist Participation, depending on the category of option. Currently, the specialist in physical delivery FCOs is not entitled to a "specialist enhancement," although such a program was once in effect.

³² Phlx Rule 1080(k) provides that the Options Committee may, on an issue-by-issue basis, determine the specific issues in which SQTs may generate and submit option quotations if such SQT is physically present on the Exchange floor, and RSQTs may generate and submit option quotations from off the floor of the Exchange, electronically. Such issues shall be known as "Streaming Quote Options." As noted above, however, the Exchange's current physical delivery FCOs would continue to trade as they do today. They would not be migrated to Phlx XL, and the trading rules which the Exchange is proposing to amend today to govern trading of U.S. dollar-settled FCOs on Phlx XL would not apply to physical delivery FCOs.

³³ In the event of system wide trading halts in equity and equity index options required by Exchange Rule 133 (the "circuit breaker" rule), Trading Halts Due to Extraordinary Market

Phlx Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X), would be amended to include U.S. dollar-settled FCOs as a product that may be traded on Phlx XL as a Streaming Quote Option. In contrast, physical delivery FCOs have always traded on the Exchange by open outcry only, without automated order delivery or execution (as have 3D FCOs in the past). Instead, floor brokers accept and execute orders. In addition, the limit order book is manually maintained by the specialist, rather than electronically like on Phlx XL. Though physical delivery FCOs would continue to trade by open outcry, U.S. dollar-settled FCOs would now trade on Phlx XL. Like equity options and equity index options, U.S. dollar-settled FCOs would trade on Phlx XL beginning at 9:30 a.m. through the end of the trading day at 4 p.m. The text of Phlx Rule 1080 would be amended to provide that U.S. dollar-settled FCOs would generally trade in the same manner as an equity option or an index option.³⁴ The proposed amendments reflect that the Foreign Currency Options Committee would have decision-making authority in certain instances with respect to these new products (rather than the Options Committee, which oversees the trading of equity and equity index options on Phlx XL). Conforming changes are proposed to Options Floor Procedure Advice A-13, Auto-Execution Engagement/Disengagement Responsibility.

Phlx Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, would be amended to make clear that the obligations and restrictions applicable to specialists and registered options traders ("ROT's") trading equity index options now would generally apply to specialists and ROTs in U.S. dollar-settled FCOs.³⁵ Currently, some of those

Volatility, trading in U.S. dollar-settled FCO also would be halted.

³⁴ The Exchange's Equity Options AutoQuote System is an options price quote calculator and quote generator used by specialists in equity options. It incorporates pricing model data, which generate automatic pricing of option series based on a number of factors, including the value of the underlying stock. The Exchange would not provide an autoquote system for specialists in U.S. dollar-traded FCOs trading on Phlx XL. Rule 1080, Commentary .01, would be revised to reflect that the Auto-Quote system applies to equity and equity index options, but not to U.S. dollar-settled FCOs. Options Floor Procedure Advice F-17, FCO Trades to be Effected in the Pit, is proposed to be amended so that it applies only to physical delivery FCOs.

³⁵ However, Phlx Rule 1014(c)(i)(B), which provides for a maximum option price change with exceptions based upon the price of the underlying security, would not apply to U.S. dollar-settled FCOs. The Exchange does not have a maximum

same obligations, such as, for example, bid/ask differentials and affirmative market making obligations and restrictions, apply to the trading of physical delivery FCOs. Though specialists and ROTs in physical delivery FCOs would remain subject to these obligations and restrictions, specialists and ROTs in U.S. dollar-settled FCOs would now be subject to obligations and restrictions similar to those that apply to equity and equity index option specialists and ROTs. For example, while Phlx Rule 1014(c)(ii) prescribes bid/ask differentials for specialists and ROTs in physical delivery FCOs, Phlx Rule 1014(c)(i), as revised, would prescribe the bid/ask differentials for both equity options (in subsection (a)) and U.S. dollar-settled FCOs (in subsection (b)). The bid/ask differentials for equity options and the bid/ask differentials for U.S. dollar-settled FCOs, as expressed, would be the same.³⁶ The bid/ask differential rules for U.S. dollar-settled FCOs would be amended to resemble those applicable to equity options in order to facilitate trading on the Phlx XL system by the system's current users who are accustomed to the existing bid/ask differentials applicable to equity options.

Like Phlx Rule 1080, Phlx Rule 1014 would be amended to reflect that the Foreign Currency Options Committee would have decision-making authority in certain instances with respect to these new products. Proposed amendments to Phlx Rule 1014 also would limit existing provisions of Phlx Rule 1014 currently applicable to FCO contracts to physical delivery FCOs. Conforming changes are proposed to Options Floor Procedure Advices B-6, Priority of Options Orders for Equity Options and Index Options by Account Type, B-7, Time Priority of Bids/Offers in Foreign Currency Options, and F-6, Option Quote Parameters.

Phlx Rule 1016, Block Transactions in Foreign Currency Options, would be revised to limit block trades to physical delivery FCOs. The block trading rule currently enables market participants to execute large-size FCO orders in an orderly fashion at a price that may not be the best bid or offer for that particular FCO, but is the best price available for executing a block trade in such FCO.

option price change rule that applies to physical delivery FCOs and is not proposing a maximum option price change rule for U.S. dollar-settled FCOs.

³⁶ *See* Phlx Rule 1034, Minimum Increments, which would be amended to require the first two decimal places to be disregarded in expressing quotes for U.S. dollar-settled options on the Euro and the British pound.

The procedure permits this limited exception to the existing priority and precedence rules of the Exchange while continuing to protect smaller customer orders and orders that constitute the "best market" or best bid or offer. However, in order to take advantage of the block execution procedure, Phlx Rule 1016 requires a floor broker with a block order to quote the market in a particular FCO, announce that a block quotation for a specified number of contracts over 1,000 is sought, and ascertain from the trading crowd the best price at which the entire order can be executed. Trading of U.S. dollar-settled FCOs on Phlx XL by SQTs and RSQTs which stream quotes into the system makes execution of block trades pursuant to the procedures required by Phlx Rule 1016 impractical for that product.³⁷ Phlx Rule 1017, Openings in Options, governs the Exchange's fully automated opening system for options traded on Phlx XL as part of the Phlx XL system.³⁸ Phlx Rule 1017 is proposed to be amended to reflect that U.S. dollar-settled FCOs would be opened using the automated opening system, subject to certain adjustments to current processes because FCO openings, unlike openings of equity and index options, would not depend upon the opening of trading in an underlying cash market.³⁹ Currently, openings in FCOs have been conducted pursuant to Phlx Rule 1047, Commentary .01, utilizing one of the types of trading rotations listed there. Specifically, in addition to consulting his pricing and quotation tools, the specialist manually checks the limit order book and with

floor brokers, and then opens each FCO for trading and sends out opening quotes in each series, which may include executing opening trades. Though physical delivery FCO will continue to open in this fashion, U.S. dollar-settled FCO would now open largely in the same way as equity and equity index options. Phlx Rule 1017 would provide that Phlx XL would accept orders and quotes in U.S. dollar-settled FCOs beginning no later than one hour before market opening, and that the specialist assigned in the particular U.S. dollar-settled FCO must enter opening quotes not later than 30 seconds after market opening.⁴⁰ It would provide that in certain circumstances an anticipated opening price would be calculated if the quotes of at least two Phlx XL participants have been submitted within two minutes of market opening (or such shorter time as determined by the FCO Committee and disseminated to membership via Exchange circular), as opposed to within two minutes of the opening trade or quote on the primary market for the underlying security, as is the case for equity options. Finally, it would provide that the system would not open a series of U.S. dollar-settled FCO if the opening price is not within an acceptable range (as determined by the FCO Committee and announced to Exchange members and member organizations by way of Exchange circular). In addition, Phlx Rule 1017 would be amended to clarify its application to index options by inserting reference to "underlying securities constituting 100% of the index value." The rule currently refers to the opening of the "underlying security," which makes sense with respect to equity options, but not index options. Conforming changes are proposed to Options Floor Procedure Advices A-12, Opening Rotations, and A-14, Equity Option and Index Option Opening Parameters. Phlx Rule 1063, Responsibilities of Floor Brokers, is being amended to provide that the Floor Broker Management System currently employed with respect to equity and equity index options would also be required to be used for U.S. dollar-settled FCO.⁴¹ As amended, the rule

would limit the "electronic audit trail" procedures currently applicable to FCOs to physical delivery FCOs only. Conforming changes are proposed to Options Floor Procedure Advice C-2, Options Floor Broker Management System.

Phlx Rule 1069, Customized Foreign Currency Options, is proposed to be revised to limit applicability of the rule to physical delivery FCO. U.S. dollar settled FCOs would not be eligible to trade on a customized basis.

Futures on the British pound and the Euro, as well as options on such futures are traded on the CME (both exchange pit trading and GLOBEX trading). Euro Currency Trust Shares and British Pound Sterling Shares trade on NYSE and on NYSE Arca. The Exchange represented that, to the best of the Exchange's knowledge, these U.S. markets are the primary trading markets in the world for exchange-traded futures, options on futures and trust shares on these currencies. The Phlx represented that it is able to obtain information regarding trading in the Euro Currency Trust Shares, British Pound Sterling Shares, Euro and British Pound options, and Euro and British Pound futures and options on futures through Phlx members, in connection with such members' proprietary or customer trades which they effect on any relevant market.⁴² The Phlx represented that it may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG. Specifically, the Phlx can obtain such information from the NYSE and NYSE Arca in connection with shares of the Euro Currency Trust and the CurrencyShares™ British Pound Sterling Trust trading on the NYSE and NYSE Arca, and from the CME and LIFFE in connection with Euro and Pound futures trading on those exchanges.⁴³ Additionally, pursuant to Phlx Rule 1022, Securities Accounts and Orders of Specialists and Registered Options Traders, specialists and ROTs are required to identify all accounts maintained for foreign currency trading in which the specialist or ROT engages in trading activity or over which he exercises investment discretion, and no

³⁷ However, Phlx Rule 1033(a)(iii), which would apply to U.S. dollar-settled FCOs, provides in relevant part that "[i]n response to a floor broker's solicitation of a single bid or offer, the members of a trading crowd (including the specialist and ROTs) may discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO-X guarantee can be executed at that time, or the number of contracts that could be executed at a given price or prices * * *."

³⁸ For a description of the automated opening system, see Securities Exchange Act Release Nos. 52667 (October 25, 2005), 70 FR 65953 (November 1, 2005) (SR-Phlx-2005-25), and 53242 (February 7, 2006), 71 FR 7604 (February 13, 2006) (SR-Phlx-2006-11).

³⁹ Currently, with respect to automated openings in an Industry or Market Index conducted pursuant to Phlx Rule 1017, the specialist may engage the automated opening system to open such options when underlying securities representing 50% of the current index value of all the securities underlying the index have opened for trading on the primary market. The system automatically opens all index options when underlying securities representing 100% of the current index value of all the securities underlying the index have opened for trading on the primary market. Because the spot foreign currency market, on the other hand, has no opening on a primary market, the rules for automated opening of U.S. dollar-settled FCOs would differ from those governing equity index option openings.

⁴⁰ Market opening, as with equity and equity index options, is normally at 9:30 a.m. Eastern Time.

⁴¹ The Options Floor Broker Management System is a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an

accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. See Phlx Rule 1080, Commentary .06.

⁴² See Equity Floor Procedure Advice F-8 and Options Floor Procedure F-8, Failure to Comply with an Exchange Inquiry.

⁴³ NYSE and NYSE Arca are members of ISG. CME and LIFFE are affiliate members of ISG.

specialist or ROT may engage in foreign currency trading in any account not reported pursuant to the rule. Further, Phlx Rule 1022 provides that every specialist and ROT must make available to the Phlx upon request all books, records and other information relating to transactions for their own account or accounts of associated persons with respect to the foreign currency underlying U.S. dollar-settled FCOs, including transactions in the cash market as well as the futures, options and options on futures markets. Phlx Rule 1022(d) is proposed to be amended to add transactions in "other foreign currency derivatives" to the list of currency related transactions with respect to which specialists and ROTs must provide information to the Exchange.

Exchange rules designed to protect public customers trading in FCOs would apply. Specifically, under paragraph (b) of Phlx Rule 1024, "Conduct of Accounts Open for Trading," members are prohibited from accepting a customer order to purchase or write a U.S. dollar-settled FCO unless such customer's account has been specially approved in writing by a designated Foreign Currency Options Principal of the member for transactions in FCOs. Additionally, Phlx Rule 1026, "Suitability," is designed to ensure that options, including U.S. dollar-settled FCO, are sold only to customers capable of evaluating and bearing the risks associated with trading in the instruments. Finally, under Phlx Rule 1027, "Discretionary Accounts," members are permitted to exercise discretionary power with respect to trading U.S. dollar-settled FCOs in a customer's account only if the member has received prior written authorization from the customer and the account has been accepted in writing by a designated Foreign Currency Options Principal. In addition, under Phlx Rule 1027, the Foreign Currency Options Principal or a Registered Options Principal must approve and initial each discretionary U.S. dollar-settled FCO on the day the order is entered.⁴⁴ Phlx Rules 1025, Supervision of Accounts, 1026, Suitability, 1028, Confirmations, and 1029, Delivery of Options Disclosure Documents, also would apply to trading in U.S. dollar-settled FCO.

Finally, the Exchange represents that it has adequate systems capacity to process quotations and trades in the proposed U.S. dollar-settled FCO.

iii. Deletion of Outdated References to the German Mark, the French Franc, the Spanish Peseta and the Italian Lira

Finally, as a housekeeping matter, the Exchange proposes to delete outdated references to the German mark, the Italian lira, the Spanish peseta and the French franc from a number of Exchange rules regarding FCOs that were once listed on those currencies.⁴⁵ In that regard, the Exchange is proposing to amend Phlx Rule 722, Margin Accounts; Phlx Rule 1000, Applicability, Definitions and References; Phlx Rule 1001, Position Limits; Phlx Rule 1009, Criteria for Underlying Securities; Phlx Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders; Phlx Rule 1033, Bids And Offers—Premium; Phlx Rule 1034, Minimum Increments; Phlx Rule 1069, Customized Foreign Currency Options; Phlx Rule 1079, FLEX Index and Equity Options; and Options Floor Procedure Advice B-7, Time Priority of Bids/Offers in Foreign Currency Options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁴⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁴⁷ in particular, in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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 by providing FCO users who do not necessarily need to exchange currency at settlement with an alternative U.S. dollar-settled FCO in an electronic trading venue.

⁴⁵ On January 1, 1999, the European Union introduced the Euro which replaced the national currencies of a number of countries including Germany, Italy, Spain and France that qualified for inclusion in European Monetary Union. On January 1, 1999, these countries began to use the Euro along with their existing currencies ("legacy currencies"). At that point, the legacy currencies became units of the Euro and continued to constitute legal tender in their respective countries of origin until 2002. In 2002, the legacy currencies ceased to be units of the Euro, and the Euro became the sole medium of exchange of the participating member states. The Phlx began trading the Euro FCO in January 1999. See Securities Exchange Act Release No. 40953 (January 15, 1999), 64 FR 3734 (January 25, 1999) (SR-Phlx-99-01).

⁴⁶ 15 U.S.C. 78f(b).

⁴⁷ 15 U.S.C. 78f(b)(5).

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

The Exchange believes that the proposed rule change will impose no 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

The Exchange has neither solicited nor received comments on this proposal.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2006-34 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-Phlx-2006-34. 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

⁴⁴ See *supra* note 8.

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. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. 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-2006-34 and should be submitted on or before November 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁸

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54659; File No. SR-Phlx-2006-67]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Cap Registered Options Trader and Specialist Equity Option Comparison and Transaction Charges When Certain Requirements Are Met

October 27, 2006.

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 19, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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 Exchange. The Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to

Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ 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 Phlx proposes to adopt a cap on Registered Options Trader ("ROT") comparison charges and ROT and specialist transaction charges⁵ in connection with non-AUTOM delivered equity option contracts⁶ when an ROT or specialist executes over 14,000 contracts calculated on a daily basis in all equity options overlying the same underlying security per day ("Qualifying Option"). This proposal will apply only to transactions when an ROT or specialist is the contra-party to a customer order. Therefore, after the 14,000 non-AUTOM delivered contract level is reached in a Qualifying Option, additional comparison and transaction charges will not be assessed on subsequent option contracts in excess of 14,000 that are executed on that day in that specific Qualifying Option when the ROT or specialist is the contra-party to a customer order.⁷ In addition, even when the 14,000 cap is reached, the Exchange will continue to impose a license fee of \$0.10 per contract side on applicable ROTs and specialists for equity option transactions on those licensed products that carry a license fee.⁸ This proposal was designated to

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The Exchange does not currently assess a comparison charge on specialist transactions. Therefore, the proposed cap will apply to ROT comparison and transaction charges combined and separately to specialist transaction charges.

⁶ For purposes of this fee, orders delivered via the Floor Broker Management System shall be deemed to be non-AUTOM delivered orders. See Phlx Rule 1063.

⁷ For example, if an ROT executes a total of 35,000 non-AUTOM delivered customer SPY equity option contracts (puts and calls) in a given day, the transaction and comparison charges assessed for these transactions will be capped for that day at \$3,080 (14,000 contracts * (\$0.19 (transaction charge) + \$0.03 (comparison charge)). In this example, additional transaction and comparison charges will continue to be assessed on all other option contracts executed by that ROT, except for those executed option contracts in other options that also meet the above requirements. For orders delivered electronically and transactions that are executed with a contra party other than a customer (i.e., another ROT), comparison and transaction charges will continue to be assessed even when the contracts are in the same option (i.e., SPY) that qualified for the cap described above.

⁸ For a complete list of the licensed products that will be assessed a \$0.10 license fee per contract side after the 14,000 equity option contract cap is reached, see \$60,000 "Firm Related" Equity Option

become effective for trades settling on or after October 20, 2006.

The text of the proposed rule change is available on the Phlx's Web site, <http://www.phlx.com>, at the Phlx's Office of the Secretary, 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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to create an incentive for ROTs and specialists to attract additional order flow to the Exchange and also, in connection with sizeable customer transactions, to create an incentive for ROTs and specialists to execute additional contracts knowing comparison and transaction fees are capped once the 14,000 threshold is met. This proposal should also provide additional incentives for member organizations to increase liquidity and allow the Exchange to remain competitive.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

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

The Phlx believes that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

and Index Option Cap on the Exchange's fee schedule.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

⁴⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.