

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60879; File No. SR-Phlx-2009-90)

October 26, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Permit Listing Option Series that are Restricted to Closing Transactions if Such Series are Listed and Restricted to Closing Transactions on Another National Securities Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on October 16, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. Phlx filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposal to amend Phlx Rule 1010 (Withdrawal of Approval of Underlying Securities or Options) to permit the Exchange to list option series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange; and to add an exception regarding opening transactions to accommodate or facilitate certain closing transactions. The Exchange requests

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).⁵

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Phlx Rule 1010 to permit the Exchange to list option series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange; and to add an exception regarding opening transactions to accommodate or facilitate certain closing transactions.

This filing is based on a similar immediately effective filing recently filed by another options exchange, Chicago Board Options Exchange ("CBOE").⁶ In that filing, it was noted that

⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁶ See Securities Exchange Act Release No. 60625 (September 4, 2009), 74 FR 46825 (September 11, 2009) (SR-CBOE-2009-066) (notice of filing and immediate effectiveness).

the impetus for the filing was a customer request for it to list a series of options that was previously delisted by the filing exchange but was listed on another exchange and restricted to closing transactions, a situation that may equally occur on Phlx as well as other options exchanges.

Rule 1009 (Criteria for Underlying Securities) sets forth the requirements or criteria that underlying securities must meet before the Exchange may initially list options on such securities. Rule 1010 sets forth listing maintenance and delisting criteria in respect of securities underlying options listed on the Exchange that are used by the Exchange to determine whether such listing status should be continued. These rules do not have provisions for listing option series that are restricted to closing transactions where such series are listed on another exchange.

Phlx proposes to add new Commentary .05 to Rule 1010 to provide that if an option series is listed but restricted to closing transactions on another national securities exchange, the Exchange may list such series (even if such series would not otherwise be eligible for listing under the Exchange's rules), which shall also be restricted to closing transactions on the Exchange.⁷

Similar to series that no longer meet the Exchange's criteria for continued listing, (i) opening transactions by market makers⁸ executed to accommodate closing transactions of other market participants, and (ii) opening transactions by Phlx member organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with

⁷ The parenthetical text is being proposed to eliminate ambiguity about the Exchange's ability to list a restricted series pursuant to proposed Commentary.05 to Rule 1010 in the event other Exchange Rules would otherwise prohibit the listing of that series.

⁸ Market makers on the Exchange include specialists, Registered Options Traders (“ROT’s”), Streaming Quote Traders (“SQT’s”), and Remote Streaming Quote Traders (“RSQT’s”). See Rule 1014(b).

Phlx Rule 1064 (b) will be permitted in any restricted series listed pursuant to proposed Commentary .05 to Rule 1010. No restrictions will be in place with respect to the exercise of any restricted series.

Additionally, the Exchange is making changes in Rule 1010 to codify exceptions for these opening transactions by market makers to accommodate closing transactions of other market participants or by member organizations to facilitate the closing transactions of public customers executed as crosses. This is done to conform Rule 1010 to similar provisions in listing rules of other options exchanges.⁹

The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are listed and traded on other exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act¹¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Permitting the Exchange to accommodate possible customer requests and allow execution of trades on the Exchange will encourage competition and not harm investors or the public interest.

⁹ See, for example, CBOE Rule 5.4 and Securities Exchange Act Release No. 48142 (July 9, 2003), 68 FR 42150 (July 16, 2003)(SR-CBOE-2002-36)(order approving, among other things, exceptions for certain opening transactions by market makers).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ Phlx has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

delay is consistent with the protection of investors and the public interest. In particular, the Exchange would be permitted to list the restricted series solely for the purpose of closing transactions as long as the restricted series is listed on another national securities exchange. In addition, the proposed rule change is substantially similar to the rules of CBOE.¹⁶ The Commission therefore designates the proposal operative upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁸

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2009-90 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.

¹⁶ See CBOE Rules 5.4 and 5.4.12(b).

¹⁷ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78s(b)(3)(C).

All submissions should refer to File Number SR-Phlx-2009-90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2009-90 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).