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November 15, 2017

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SR-PHLX-2017-75

Dear Mr. Fields:

On September 27, 2017, Nasdaq Phlx LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change (“Proposal”) to amend Phlx Rule 1009, Commentary .01(4)(i) to modify the criteria for listing options on an underlying covered security as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (“1933 Act”). The SEC published the Proposal in the Federal Register for notice and comment on October 11, 2017.¹

The Phlx Proposal would permit the listing of an option on an underlying covered security that has a market price of at least \$3.00 per share for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation (“OCC”) for listing and trading. The Proposal would shorten the current “look back” period of five business days to three business days, and would allow the Exchange to more quickly list options on a qualifying covered security that met the \$3.00 eligibility price. As part of the Proposal, Phlx explained that at the time the Exchange adopted the “look back” period of five consecutive business days, it determined that the five-day period was sufficient to protect against attempts to manipulate the market price of the underlying security and would provide a reliable test for stability. Phlx noted, however, that surveillance technologies and procedures concerning manipulation have evolved since then to provide adequate prevention or detection of rule or securities law violations within the proposed time frame, and also

¹ See Securities Exchange Act Release No. 81814 (October 4, 2017), 82 FR 47254 (October 11, 2017) (“Notice of Filing”).



represented that its existing trading surveillances were adequate to monitor the trading in the underlying security and subsequent trading of options on the Exchange.²

Phlx is now submitting this letter to further clarify the portion of the Exchange's representation about its existing surveillances being adequate to monitor the trading in the underlying security and subsequent trading of options on the Exchange. Accordingly, Phlx notes that the scope of its surveillance program also includes cross market surveillance for trading that is not just limited to the Exchange. In particular, the Financial Industry Regulatory Authority ("FINRA"), pursuant to a regulatory services agreement, operates a range of cross-market equity surveillance patterns on behalf of the Exchange to look for potential manipulative behavior, including spoofing, algorithm gaming, marking the close and open, and momentum ignition strategies, as well as more general, abusive behavior related to front running, wash sales, quoting/routing, and Reg SHO violations. These cross-market patterns incorporate relevant data from various markets beyond the Exchange and its affiliates, including data from the New York Stock Exchange ("NYSE").

Additionally for options, the Nasdaq Options Surveillance team utilizes an array of patterns that monitor manipulation of options, or manipulation of equity securities (regardless of venue) for the purpose of impacting options prices on any of the six Nasdaq-operated options markets (i.e., mini-manipulation strategies). Surveillance coverage is initiated once options begin trading on any of Nasdaq's six options markets, including the Exchange. Accordingly, Phlx believes that the cross market surveillance performed by FINRA on behalf of the Exchange, coupled with Exchange staff's real-time monitoring of similarly violative activity on the Exchange and its affiliated markets as described herein and in the Proposal, reflects a comprehensive surveillance program that is adequate to monitor for manipulation of the underlying security and overlying option within the proposed three-day look back period.

Furthermore, Phlx notes that the proposed listing criteria would still require that the underlying security be listed on NYSE, the American Stock Exchange (now known as NYSE American), or the National Market System of The Nasdaq Stock Market (now

² As noted in the Proposal, such surveillance procedures generally focus on detecting securities trading subject to opening price manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. As it relates to IPOs, the Exchange has price movement alerts, unusual market activity and order book alerts active for all trading symbols. These real-time patterns are active for the new security as soon as the IPO begins trading. The Nasdaq MarketWatch group, which provides such real-time surveillance on the Exchange and its affiliated markets, monitors trading activity in IPOs to see whether the new issue moves substantially above or below the public offering price in the first day or several days of trading. See Notice of Filing at 47255.



known as the Nasdaq Global Market) (collectively, the “Named Markets”), as provided for in the definition of “covered security” from Section 18(b)(1)(A) of the 1933 Act.³ Accordingly, Phlx believes that the proposed rule change would still ensure that the underlying security meets the high listing standards of a Named Market, and would also ensure that the underlying is covered by the regulatory protections (including market surveillance, investigation and enforcement) offered by these exchanges for trading in covered securities conducted on their facilities.

Finally, it should be noted that a price/time standard for the underlying security (currently required to be \$3.00 per share for five consecutive business days preceding the day on which Phlx submits a listings certificate to OCC) was first adopted when the listed options market was in its infancy, and was intended to prevent the proliferation of options being listed on low-priced securities that presented special manipulation concerns and/or lacked liquidity needed to maintain fair and orderly markets.⁴ When options trading commenced in 1973, the Commission determined that it was necessary for securities underlying options to meet certain minimum standards regarding both the quality of the issuer and the quality of the market for a particular security.⁵ These standards, including a price/time standard, were imposed to ensure that those issuers upon whose securities options were to be traded were widely-held, financially sound companies whose shares had trading volume and float substantial enough so as not to be readily susceptible to manipulation.⁶ At that time, the Commission determined that the imposition of these standards was reasonable in view of the pilot nature of options trading and the limited experience of investors with options trading.⁷

Now more than 40 years later, the listed options market has evolved into a mature market with sophisticated investors. In view of this evolution, the Commission has approved various exchange proposals to relax some of these initial listing standards throughout the years,⁸ including reducing the price/time standard in 2003 from \$7.50 per

³ See 15 U.S.C. 77r(b)(1)(A).

⁴ See Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949-01 (September 5, 1991) (SR-AMEX-86-19; SR-CBOE-86-15; SR-NYSE-86-20; SR-PSE-86-15; and SR-PHLX-86-21) (“1991 Approval Order”) at 43949 (discussing the Commission’s concerns when options trading initially commenced in 1973).

⁵ See 1991 Approval Order at 43949.

⁶ Id.

⁷ Id.

⁸ See e.g., 1991 Approval Order (modifying a number of initial listing criteria, including the reduction of the price/time standard from \$10 per share each day

share for the majority of business days over a three month period to the current \$3.00 per share/five business day standard ("2003 Proposal").⁹ It has been almost fifteen years since the Commission approved the 2003 Proposal, and both the listed options market and exchange technologies have continued to evolve since then. In this instance, Phlx is only proposing a modest reduction of the current five business day standard to three business days to correspond to the securities industry's move to a T+2 standard settlement cycle.¹⁰ The \$3.00 per share standard and all other initial options listing criteria in Phlx Rule 1009 and accompanying Commentary will remain unchanged by the Proposal. For the reasons discussed herein and in the Proposal, the Exchange therefore believes that the proposed three business day period will be beneficial to the marketplace without sacrificing investor protections.

Sincerely,

A handwritten signature in black ink, appearing to read "Sun Kim".

Sun Kim

Assistant General Counsel

during the preceding three calendar months to \$7.50 per share for the majority of days during the same period).

⁹ See Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR-CBOE-2002-62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR-PCX-2003-06); 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR-ISE-2003-04); 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SR-Amex-2003-19); and 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR-Phlx-2003-27).

¹⁰ See Notice of Filing at 47255.