

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58943; File No. SR-Phlx-2008-78)

November 13, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Temporarily Increasing the Number of Additional Quarterly Option Series in Exchange-Traded Fund Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 12, 2008, 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. 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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to amend Phlx Rule 1012, Series of Options Open for Trading, to temporarily increase the number of additional Quarterly Option Series (“QOS”) in exchange-traded fund (“ETF”) options from sixty (60) to one hundred (100) that may be added by the Exchange pursuant to Phlx’s QOS pilot program (the “Pilot Program”).⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ Phlx’s Pilot Program was established in 2007, see Securities Exchange Act Release No. 55301 (February 15, 2007), 72 FR 8238 (February 23, 2007)(SR-Phlx-2007-08), and extended through July 10, 2009, see Securities Exchange Act Release No. 58039 (June 26, 2008), 73 FR 38284 (July 3, 2008)(SR-Phlx-2008-44). The American Stock Exchange LLC (“AMEX”), the Boston Stock Exchange, Inc. (“BSE”), the Chicago Board Options Exchange, Incorporated (“CBOE”), the International Stock Exchange

The text of the proposed rule change is available on the Exchange's Website at http://www.phlx.com/regulatory/reg_rulefilings.aspx.

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

This proposed rule change is based on a recent Chicago Board Options Exchange, Incorporated ("CBOE") filing.⁶

The purpose of this proposed rule change is to temporarily increase the number of additional QOS in ETF options from sixty (60) to one hundred (100) that may be added by the Exchange. To effect this change, the Exchange is proposing to add new subparagraph (h) to Commentary .08 of its Rule 1012.

Because of the current, unprecedented market conditions, the Exchange has received requests from market participants to add lower priced strikes for QOS in the Energy Select

LLC ("ISE"), the Nasdaq Stock Market LLC ("NOM"), and NYSEArca, Inc. ("NYSEArca," formerly the Pacific Stock Exchange, Inc. or "PCX") have similar pilot programs (the pilot programs, together with Phlx's Pilot Program, are together known as the "QOS Pilot Programs").

⁶ See Securities Exchange Act Release No. 58887 (October 30, 2008), 73 FR 66083 (November 6, 2008)(SR-CBOE-2008-111).

Sector SPDR ("XLE"), the DIAMONDS Trust, Series 1 ("DIA") and the Standard and Poor's Depository Receipts/SPDRs ("SPY"). For example, for December 2008 expiration, there is demand for strikes (a) ranging from \$20 up through and including \$40 for XLE, (b) ranging from \$60 up through and including \$75 for DIA, and (c) ranging from \$74 up through and including \$85 for SPY. These strikes are much lower than those currently listed for which there is open interest.

However, under current Commentary .08 to Phlx Rule 1012, the Exchange cannot honor these requests because the maximum number of additional series, sixty (60), has already been listed. The Exchange is therefore seeking to temporarily increase to one hundred (100) the number of additional QOS that may be added. The increase of additional series would be permitted immediately for expiration months currently listed and for expiration months added throughout the last quarter of 2008, including the new expiration month added after December 2008 expiration. The Exchange believes that this proposal is reasonable and will allow for more efficient risk management. The Exchange believes this proposal will facilitate the functioning of the Exchange's market and will not harm investors or the public interest.

The Exchange believes that user demand and the recent downward price movements in the underlying ETFs warrant a temporary increase in the number of strikes for all QOS in ETF options. Currently, the Exchange list QOS in five ETF options: (1) iShares Russell 2000 Index Fund ("IWM"); (2) Nasdaq-100 Index Tracking Stock ("QQQQ"); (3) SPY; (4) DIA; and (5)

XLE. The chart below provides the historical closing prices of these ETFs over the past couple of months:

ETF	10/27/08	10/13/08	10/6/08	9/30/08	8/29/08	7/31/08
IWM	44.86	56.98	59.72	68.00	73.87	71.32
QQQQ	28.69	35.13	34.86	38.91	46.12	45.46
SPY	83.95	101.35	104.72	115.99	128.79	126.83
DIA	80.26	95.03	99.90	108.36	115.45	113.70
XLE	40.86	50.55	54.89	63.30	74.65	74.40

The additional series will enable the Exchange to list in-demand, lower priced strikes.

It is expected that other options exchanges that have adopted the QOS Pilot Program will submit similar proposals.⁷

The Exchange represents that it has the necessary systems capacity to support the new options series that will result from this proposal. Further, as proposed, the Exchange notes that these series would temporarily become part of the pilot program and will be considered by the Commission when the Exchange seeks to renew or make permanent the Pilot Program in the future. In addition, the Exchange states that in the event that current market volatility continues, it may seek to continue (through a rule filing) the time period during which the additional series proposed by this filing may be added.

2. Statutory Basis

Because the rule proposal is responsive to the current, unprecedented market conditions, is limited in scope as to QOS in ETF options and as to time, and because the additional new series can be added without presenting capacity problems, the Exchange believes the rule proposal is consistent with the Act and the rules and regulations thereunder applicable to a

⁷ See e.g., Securities Exchange Act Release No. 58926 (November 10, 2008) (SR-ISE-2008-82).

national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) of the Act⁹ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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

Because the foregoing rule does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to be met.

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to better meet customer demand in light of recent increased volatility in the marketplace.¹² Therefore, the Commission designates the proposal operative upon filing.

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Phlx-2008-78 on the subject line.

Paper comments:

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

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

All submissions should refer to File Number SR-Phlx-2008-78. 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 a.m. and 3:00 p.m. 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 No.

SR-Phlx-2008-78 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

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

Florence E. Harmon
Acting Secretary

¹³ 17 CFR 200.30-3(a)(12).