

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60156; File No. SR-Phlx-2009-46)

June 22, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to \$1 Strikes for Reduced Value Nasdaq 100 Options (MNX)

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 12, 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. 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 proposes to amend Phlx Rules 1012 (Series of Options Open for Trading) and 1101A (Terms of Options Contracts) to allow the Exchange to list options that are based on 1/10<sup>th</sup> the value of the Nasdaq-100 Index and are known as Reduced Value Nasdaq 100 Options, at \$1 strike price intervals.

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.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</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 those 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 parts 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 Rules 1012 (Series of Options Open for Trading) and 1101A (Terms of Options Contracts) by adding a new interpretation that would allow the Exchange to list options that are based on 1/10th the value of the Nasdaq-100 Index ("NDX") and are known as Reduced Value Nasdaq 100 Options ("MNX" or "Mini-NDX"), at \$1 or greater strike price intervals.<sup>4</sup>

Specifically, the Exchange proposes that the minimum strike price interval Mini-NDX options will be \$1 or greater. The Exchange believes that \$1 strike price intervals in Mini-NDX option series will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives. The rule changes proposed herein are consistent with existing rules and practices that allow other options exchanges to list and trade Mini-NDX options at \$1 or greater strike price intervals.<sup>5</sup>

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<sup>4</sup> Currently, under subsection (a)(xxxiv) to Rule 1001A, the Exchange has authority to list Mini-NDX options at \$2.50 strike price intervals.

<sup>5</sup> See Securities Exchange Act Release Nos. 58924 (November 10, 2008), 73 FR 68464 (November 18, 2008) (SR-CBOE-2008-96) (approval order); 58997 (November 21, 2008), 73 FR 72887 (December 1, 2008) (SR-ISE-2008-88) (notice of filing and

For initial series, the Exchange would list at least two strike prices above and two strike prices below the current value of the MNX at or about the time a series is opened for trading on the Exchange. As part of this initial listing, the Exchange would list strike prices that are within five (5) points from the closing value of the MNX on the preceding day.

As for additional series, the Exchange would be permitted to add additional series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the underlying MNX moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing value of the MNX. The Exchange would also be permitted to open additional strike prices that are more than 30% above or below the current MNX value provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account would not be considered when determining customer interest. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series in Mini-NDX options. In addition, the Exchange confirms that it shall not list LEAPS on Reduced Value Nasdaq 100 Options at intervals less than \$2.50.<sup>6</sup>

The Exchange is also proposing to set forth a delisting policy with respect to Mini-NDX options. Specifically, the Exchange would, on a monthly basis, review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of the MNX and delist series with no open interest in both the put and the call series having a: (i) strike higher than the

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immediate effectiveness); and 59129 (December 22, 2008), 73 FR 79945 (December 30, 2008) (SR-BSE-2008-57) (notice of filing and immediate effectiveness).

<sup>6</sup> This is consistent with Rule 1101A(a)(xxxv).

highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in Mini-NDX options in series eligible for delisting shall be granted.

Further, in connection with the proposed delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed Mini-NDX options.

It is expected that the proposed delisting policy for Mini-NDX options will be adopted by other options exchanges that list and trade Mini-NDX options.

The Exchange also proposes to add new Commentary .09 to Rule 1012, which would be an internal cross reference stating that the intervals between strike prices for Mini-NDX option series would be determined in accordance with proposed new Commentary .02 to Rule 1101A.

Phlx has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of \$1 strikes or greater for Mini-NDX options.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is

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<sup>7</sup> 15 U.S.C. 78f(b).

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, by allowing the Exchange to list Reduced Value Nasdaq 100 Options at \$1 strike price intervals.

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 solicited or received.

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

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative, so that the Exchange may, for

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<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission 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 Exchange has satisfied this requirement.

competitive reasons, list Reduced Value Nasdaq 100 Options at the same \$1 strike price intervals currently listed by other option exchanges. The Commission believes such waiver is consistent with the protection of investors and the public interest.<sup>11</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2009-46 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.

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<sup>11</sup> For purposes only of waiving the 30-day operative delay of this proposal, 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-2009-46. 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 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 Number SR-Phlx-2009-46 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.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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