SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60249; File No. SR-Phlx-2009-50)

July 6, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Permanent Approval of the Exchange's Quarterly Option Series Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4[2] thereunder, notice is hereby given that on June 26, 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 Phlx. 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 to amend its Rules 1012 (Series of Options Open for Trading) and 1101A (Terms of Option Contracts), to make permanent the Exchange's Quarterly Option Series Pilot Program ("QOS Program").

The text of the proposed rule change is available on the Exchange's Web site 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, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make the QOS Program permanent.

On July 9, 2007, the Exchange filed SR-Phlx-2007-08 with the Commission to establish the QOS Program.[3] The QOS Program allows Phlx to list and trade options that expire at the close of business on the last business day or a calendar quarter (“Quarterly Option Series” or “QOS”). Under the QOS Program, Phlx may select up to five (5) currently listed options classes that are either Index Options and exchange traded fund ("ETF") options on which Quarterly Option Series may be opened. In addition, Phlx may also list Quarterly Option Series on any options classes that are selected by other securities exchanges that employ a similar program under their respective rules.[4]

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3 See Securities Exchange Act Release No. 55301 (February 15, 2007), 72 FR 8238 (February 23, 2007) (SR-Phlx-2007-08) (notice of filing and immediate effectiveness). The QOS Program has since been extended and is currently scheduled to expire on July 10, 2009. See Securities Exchange Act Release No. 58039 (June 26, 2008), 73 FR 38284 (July 3, 2008) (SR-Phlx-2009-44) (notice of filing and immediate effectiveness).

4 Rule 1101A(b)(v) extends the QOS Program to Index Options (the “Index QOS Program”).

The Exchange may list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year. All Quarterly Option Series are P.M. settled.[5]

If an option is selected for participation in the QOS Program, the strike price of each Quarterly Option Series is fixed at a price per share, with at least two strike prices above and two strike prices below the approximate value of the underlying security at about the time the Quarterly Options Series is opened for trading on the Exchange. Phlx will list strikes prices for a Quarterly Option series that are within $5 from the closing price of the underlying on the preceding day.

The Exchange may open for trading additional Quarterly Options Series of the same class when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security 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 price of the underlying ETF on the preceding day. The Exchange may also open additional strike prices of Quarterly Option Series in ETF options that are more than 30% above or below the current price of the underlying ETF 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 shall not be considered when determining customer interest under this provision. The opening of the new Quarterly Options Series shall not affect the

[5] The Exchange is making minor changes to Commentary .08 to Phlx Rule 1012 and Rule 1101A(b)(v) to conform the Exchange's rules to those of other exchanges such as, for example, CBOE Rules 5.5(e)(2) and 24.9(a)(2), regarding P.M. settlement and listing series in the fourth quarter of the next calendar year.

series of options of the same class previously opened. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each Quarterly Options Series in ETF options.[6]

The interval between strike prices on Quarterly Options Series shall be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle. By definition, Quarterly Option Series on an option class can never expire in the same week in which monthly option series on the same class expires. And, the Exchange will not list a Short Term Option Series on an options class the expiration of which coincides with that of a Quarterly Options Series on the same options class.

The Exchange has adopted a delisting policy with respect to QOS in ETF options.[7] On a monthly basis, the Exchange reviews series that are outside a range of five (5) strikes above and five (5) strikes below the current price of the underlying ETF, and delists series with no open interest in both the put and the call series having a: (i) strike higher than the 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 delisting policy, customer requests to add strikes and/or maintain strikes in QOS in ETF options in series eligible for delisting shall be granted.

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6 See Securities Exchange Act Release No. 57583 (March 31, 2008), 73 FR 18589 (April 4, 2008) (SR-Phlx-2008-23)(notice of filing and immediate effectiveness).

7 Id.

Further, in connection with the 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 options classes.

During the last quarter of 2008 (and for the new expiration month added after December Quarterly Option Series expiration), the Exchange was permitted to list up to one hundred (100) additional series per expiration month for each Quarterly Options Series in ETF options.[8]

The Exchange has selected the following five ETF option classes to participate in the QOS Program: DIAMONDS Trust (DIA) options, Standard and Poor's Depositary Receipts/SPDRs (SPY) options, iShares Russell 2000 Index Fund (IWM) options, PowerShares QQQ Trust (QQQQ) options and Energy Select SPDR (XLE) options. Phlx believes the QOS Program has been successful and well received by its members and the investing public for the nearly three years that it has been in operation as a pilot.[9]

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8 See Securities Exchange Act Release No. 58943 (November 13, 2008), 73 FR 70398 (November 20, 2008) (SR-Phlx-2008-78) (notice of filing and immediate effectiveness).

9 The Index QOS Program found in Rule 1101A(v) is similar to the QOS Program in Rule 1012, but has several differences. Principal among them are, first, that the strike price of each QOS will be fixed with at least two, but not more than five, strike prices above and two, but not more than five, strike prices below the value of the underlying security at about the time that a QOS is opened for trading on the Exchange. Second, that the exercise price of each QOS opened for trading on the Exchange shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options is first opened for trading on the Exchange (the term "reasonably related to the current index value of the underlying index" means that the exercise price is within thirty percent (30%) of the current index value). Third, that the Exchange

In support of approving the QOS Program on a permanent basis, the Exchange has submitted to the Commission a Quarterly Option Program Report ("Report") detailing the Exchange's experience with the QOS Program.[10] Specifically, the Report contains data and written analysis regarding the five (5) ETF option classes included in the QOS Program. The Report was submitted under separate cover and seeks confidential treatment under the Freedom of Information Act.

The Exchange believes there is sufficient investor interest and demand in the QOS Program to warrant its permanent approval. The Exchange believes that, for the nearly three years that the QOS Program has been in operation, it has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any capacity-related problems with respect to Quarterly Option Series. The Exchange also represents that it has the necessary system capacity to continue to support the option series listed under the QOS Program.

2. <u>Statutory Basis</u>

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular,

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may open additional strike prices of QOS that are below the value of the underlying index provided that the total number of strike prices below the value of the underlying index is no more than five. And fourth, there is no delisting policy is in the Index QOS Program.

10 The requirements for the Report were recently set forth in Securities Exchange Act Release No. 57583 (March 31, 2008), 73 FR 18589 (April 4, 2008)(SR-Phlx-2008-23).

11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(5).

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, by making permanent the Exchange's Quarterly Option Series Pilot Program.

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

Phlx does not believe that the proposed rule change will result in any 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, 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 19(b)(3)(A) of the Act[13] and Rule 19b-4(f)(6) thereunder.[14]

The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can permanently establish a Quarterly Options Series Program that is

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13 15 U.S.C. 78s(b)(3)(A).

14 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. Phlx has satisfied this requirement.

consistent with those of other options exchanges.[15] In addition, the Commission notes that the Exchange's QOS Program currently is scheduled to expire on July 10, 2009. The Commission therefore 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 permanently establish the QOS program without disruption.[16] Therefore, the Commission designates the proposal operative upon filing.

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. Please include File Number SR-Phlx-2009-50 on the subject line.

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15 See Securities Exchange Act Release No. 60164 (June 23, 2009), 74 FR 31333 (June 30, 2009) (SR-CBOE-2009-029) (approving the quarterly options series program on a permanent basis).

16 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).

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2009-50. 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 a.m. and 3 p.m. Copies of the 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-2009-50 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.[17]

Elizabeth M. Murphy
Secretary

[17] 17 CFR 200.30-3(a)(12).