

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63134; File No. SR-Phlx-2010-149)

October 20, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to the \$0.50 Strike Price Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on October 19, 2010, NASDAQ OMX PHLX LLC (“Phlx” or the “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 Exchange Rule 1012, Series of Options Open for Trading, to correct a minor error related to a previous rule change regarding the \$0.50 Strike Program.<sup>3</sup>

The text of the proposed rule change is available on the Exchange’s Website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, on the Commission’s website at [www.sec.gov](http://www.sec.gov), 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

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 63132 (October 19, 2010) (SR-Phlx-2010-118).

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 Exchange proposes amending Rule 1012, Series of Options Open for Trading, to add additional language to Rule 1012 related to the Exchange’s ability to list a strike price of \$6.00 within \$.50 of an existing strike price for classes selected to participate in the \$0.50 Strike Program.<sup>4</sup> The Exchange filed a rule change to expand the \$0.50 Strike Program.<sup>5</sup> Specifically, the Exchange amended its \$0.50 Strike Program to establish strike price intervals of \$.50, beginning at \$.50 for certain options classes where the strike price is \$5.50 or less and whose underlying security closed at or below \$5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1000 contracts per day as determined by The Options Clearing Corporation (“OCC”) during the preceding three calendar months. The Exchange also amended Exchange Rule 1012 to increase the number of classes permitted in the \$.50 Strike Program from 5 to 20 individual stocks.<sup>6</sup>

At that time, the Exchange made an additional amendment to Commentary .05(a)(i)(B) of

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<sup>4</sup> See Securities Exchange Act Release No. 63132 (October 19, 2010) (SR-Phlx-2010-118).

<sup>5</sup> See Securities Exchange Act Release Nos. 60694 (September 18, 2009), 74 FR 49048 (September 25, 2009) (SR-Phlx-2009-65) (order approving); and 61630 (March 2, 2010), 75 FR 11211 (March 10, 2010) (SR-Phlx-2010-26) (notice of filing and immediate effectiveness allowing concurrent listing of \$3.50 and \$4 strikes for classes that participate in both the \$0.50 Strike Program and the \$1 Strike Program).

<sup>6</sup> See Securities Exchange Act Release No. 63132 (October 19, 2010) (SR-Phlx-2010-118).

Exchange Rule 1012 to add language to the \$1 Strike Program that addresses listing series with \$1 intervals within \$.50 of an existing strike price in the same series. Specifically, the Exchange added \$5 to the listed strike prices of \$2, \$3 and \$4 to account for the overlap with the \$0.50 Strike Program amendments.

The Exchange proposes to add \$6 to that list to account for existing amendments to the \$0.50 Strike Program to allow for a strike price of \$5.50. The Exchange intended to expand this language originally to account for all possible strike prices as a result of its recent filing. This minor amendment was not made at that time as a result of an oversight. The Exchange proposes this language to correct that oversight.

## 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 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 correcting a minor error in a previous rule change to account for recent amendments to the \$0.50 Strike Program. This amendment will clarify Exchange Rule 1012 by adding \$6 to the list of strike prices permitted within \$.50 of an existing strike price for classes selected to participate in the \$0.50 Strike Program. This amendment will clarify Exchange Rule 1012 to correct the minor error.

### 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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 does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, 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, 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. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because doing so will permit immediate correction of the Exchange's error in their prior filing revising the terms of the \$0.50 Strike Price Program. Therefore, the Commission designates the proposal operative upon filing.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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.

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<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 Exchange to give the Commission written notice of the Exchange's 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 has waived the five-day pre-filing requirement in this case.

<sup>11</sup> 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).

#### 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-2010-149 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.

All submissions should refer to File Number SR- Phlx-2010-149. 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 website (<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 website viewing and printing 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 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-2010-149 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).