

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65420; File No. SR-Phlx-2011-128)

September 28, 2011

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Regarding Simplification of the Exchange's \$1 Strike Price Program

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 September 27, 2011, NASDAQ OMX PHLX LLC ("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 is filing with the Commission a proposal to modify Commentary .05 to Phlx Rule 1012 (Series of Options Open for Trading) to simplify the Exchange's \$1 Strike Price Program (the "\$1 Strike Program" or "Program").

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).³

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the Exchange's principal office, on the Commission's website at www.sec.gov, and at the Commission's Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

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

The purpose of this proposed rule change is to modify Commentary .05 to Phlx Rule 1012 to simplify the Exchange's \$1 Strike Program.

In 2003, the Commission issued an order permitting the Exchange to establish the Program on a pilot basis.⁴ At that time, the underlying stock had to close at \$20 on the previous trading day in order to qualify for the Program. The range of available \$1 strike price intervals was limited to a range between \$3 and \$20 and no strike price was permitted that was greater than \$5 from the underlying stock's closing price on the previous trading day. Series in \$1 strike price intervals were not permitted within \$0.50 of an existing strike. In addition, the Exchange was limited to selecting five (5) classes and reciprocal listing was permitted. Furthermore,

⁴ See Securities Exchange Act Release No. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003)(SR-Phlx-2002-55)(approval of pilot program).

LEAPS⁵ in \$1 strike price intervals were not permitted for classes selected to participate in the Program. The Exchange renewed the pilot program on a yearly basis.⁶

In 2008, the Program was expanded and the Commission granted permanent approval of the Program.⁷ At that time, the Program was expanded to increase the upper limit of the permissible strike price range from \$20 to \$50. In addition, the number of class selections per exchange was increased from five (5) to ten (10). Since the Program was made permanent, the number of class selections per exchange has been increased from ten (10) classes to 55 classes.⁸ The number of class selections per exchange has been last expanded to 150 classes in 2010.⁹

Amendments To Simplify Non-LEAPS Rule Text

The development and expansion of the Program has resulted in very lengthy rule text that is complicated and could be difficult to understand. The Exchange believes that the proposed changes to simplify the rule text of the Program will benefit market participants since the Program will be easier to understand and will maintain the expansions that were made to the Program in 2010. Through the current proposal, the Exchange also hopes to make administration of the Program easier (e.g., system programming efforts). To simply the rules of the Program

⁵ Long-Term Equity Anticipation Securities (LEAPS) are long-term options that generally have up to thirty-nine months from the time they are listed until expiration. Commentary .03 to Rule 1012. Long-term FLEX options and index options are considered separately in Rules 1079(a)(6) and 1101A(b)(iii), respectively.

⁶ Securities Exchange Act Release Nos. 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004)(SR-Phlx-2004-38); 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005)(SR-Phlx-2005-35); 53938 (June 5, 2006), 71 FR 34178 (June 13, 2006)(SR-Phlx-2006-36); and 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007)(SR-Phlx-2007-29).

⁷ See Securities Exchange Act Release No. 57111 (January 8, 2008), 73 FR 2297 (January 14, 2008)(SR-Phlx-2008-01).

⁸ See Securities Exchange Act Release No. 59590 (March 17, 2009), 74 FR 12412 (March 24, 2009)(SR-Phlx-2009-21).

⁹ See Securities Exchange Act Release No. 62420 (June 30, 2010), 75 FR 39593 (July 9, 2010)(SR-Phlx-2010-72).

and, as a proactive attempt to mitigate any unintentional listing of improper strikes, the Exchange is proposing the following streamlining amendments:

- When the price of the underlying stock is equal to or less than \$20, permit \$1 strike price intervals with an exercise price up to 100% above and 100% below the price of the underlying stock.¹⁰
 - However, the above restriction would not prohibit the listing of at least five (5) strike prices above and below the price of the underlying stock per expiration month in an option class.¹¹
 - For example, if the price of the underlying stock is \$2, the Exchange would be permitted to list the following series: \$1, \$2, \$3, \$4, \$5, \$6 and \$7.¹²
- When the price of the underlying stock is greater than \$20, permit \$1 strike price intervals with an exercise price up to 50% above and 50% below the price of the underlying security up to \$50.¹³
- For the purpose of adding strikes under the Program, the "price of the underlying stock" shall be measured in the same way as "the price of the underlying security" set forth in subparagraph (a) of Commentary .10 to Rule 1012.¹⁴

¹⁰ See proposed new subparagraph (a)(i)(B)(1) of Commentary .05 to Rule 1012.

¹¹ Id.

¹² Id.

¹³ See proposed new subparagraph (a)(i)(B)(2) of Commentary .05 to Rule 1012.

¹⁴ See proposed new subparagraph (a)(i)(B)(3) of Commentary .05 to Rule 1012. Subparagraph (a) of Commentary .10 to Rule 1012 provides, in relevant part, that the price of the underlying security is measured by: (i) for intra-day add-on series and next-day series additions, the daily high and low of all prices reported by all national securities exchanges; (ii) for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines to list a new series; and (iii) for option series to be added as a result of pre-market trading, the most recent

- Prohibit the listing of additional series in \$1 strike price intervals if the underlying stock closes at or above \$50 in its primary market and provide that additional series in \$1 strike price intervals may not be added until the underlying stock closes again below \$50.¹⁵

Amendments To Simplify LEAPS Rule Text

The 2010 expansion of the Program permitted for some limited listing of LEAPS in \$1 strike price intervals for classes that participate in the Program. The Exchange is proposing to maintain the expansion as to LEAPS, but simplify the language and provide examples of the simplified rule text. These changes are set forth in proposed subparagraph (a)(i)(B)(5) of Commentary .05 to Rule 1012.

For stocks in the Program, the Exchange may list one \$1 strike price interval between each standard \$5 strike interval, with the \$1 strike price interval being \$2 above the standard strike for each interval above the price of the underlying stock, and \$2 below the standard strike for each interval below the price of the underlying stock ("2 wings"). For example, if the price of the underlying stock is \$24.50, the Exchange may list the following standard strikes in \$5 intervals: \$15, \$20, \$25, \$30 and \$35. Between these standard \$5 strikes, the Exchange may list the following \$2 wings: \$18, \$27 and \$32.¹⁶

share price reported by all national securities exchanges between 8:45 a.m. and 9:30 a.m. Eastern Time.

¹⁵ The Exchange believes that other markets that have \$1 strike programs will submit similar proposals to the Commission, and therefore proposes the \$50 dollar prohibition in this filing for purposes of uniformity. The Exchange intends, however, to subsequently propose an amendment to the \$50 prohibition so that it would not impede addition series in \$1 strike price intervals in certain circumstances (e.g. stock gapping).

¹⁶ The Exchange notes that a \$2 wing is not permitted between the standard \$20 and \$25 strikes in the above example. This is because the \$2 wings are added based on reference to the price of the underlying and as being between the standard strikes above and below the price of the underlying stock. Since the price of the underlying stock (\$24.50) straddles the standard strikes of \$20 and \$25, no \$2 wing is permitted between these standard strikes.

In addition, the Exchange may list the \$1 strike price interval which is \$2 above the standard strike just below the underlying price at the time of listing. In the above example, since the standard strike just below the underlying price (\$24.50) is \$20, the Exchange may list a \$22 strike. The Exchange may add additional long-term options series strikes as the price of the underlying stock moves, consistent with the OLPP.

Non-Substantive Amendments to Rule Text

The 2010 expansion of the Program prohibited the listing of \$2.50 strike price intervals for classes that participate in the Program. This prohibition applies to non-LEAP and LEAPS. The Exchange proposes to maintain this prohibition and codify it in proposed new subparagraph (a)(i)(A) of Commentary .05 to Rule 1012.

For ease of reference, the Exchange is proposing to add the headings “\$1 Strike Price Interval Program,” “Initial and Additional Series,” and “LEAPS” to Commentary .05 of Rule 1012. And finally, the Exchange is making non- substantive, technical changes to the proposed rule such as replacing the word “security” with the word “stock.”

The Exchange represents that it has the necessary systems capacity to support the increase in new options series that will result from the proposed streamlining changes to the Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁸ 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

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and to simplify the provisions of the \$1 Strike Program.

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 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 Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

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 the proposal is substantially similar to that of another

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 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 prefiling requirement in this case.

exchange that has been approved by the Commission.²¹ Therefore, the Commission designates the proposal operative upon filing.²²

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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-2011-128 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.

²¹ See Securities Exchange Act Release No. 65383 (September 22, 2011) (SR-CBOE-2011-040) (order approving proposed rule change to simplify the \$1 Strike Price Interval Program).

²² 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-2011-128. 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 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 publicly available. All submissions should refer

to File Number SR-Phlx-2011-128 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.²³

Elizabeth M. Murphy
Secretary

²³ 17 CFR 200.30-3(a)(12).