

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82474; File No. SR-Phlx-2017-75)

January 9, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Granting Approval of a Proposed Rule Change to Amend Rule 1009 to Modify the Criteria for Listing an Option on an Underlying Covered Security

I. Introduction

On September 27, 2017, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the criteria for listing an option on an underlying covered security in Phlx Rule 1009, Commentary .01. The proposed rule change was published for comment in the Federal Register on October 11, 2017.³ On November 15, 2017 the Exchange submitted a comment letter on the proposed rule change.⁴ The Commission received no other comment letters. On November 22, 2017, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.⁶ This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 81814 (Oct. 4, 2017), 82 FR 47254 (“Notice”).

⁴ See Letter to Brett J. Fields, Secretary, Commission, from Sun Kim, Assistant General Counsel, Exchange, dated November 15, 2017 (“Exchange Letter”).

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 82147, 82 FR 47254 (November 25, 2017). The Commission designated January 9, 2017, as the date by which it should approve, disapprove, or institute proceedings to determine whether the proposed rule change

II. Description of the Proposal

The Exchange proposes to amend Phlx Rule 1009, Commentary .01 to modify the criteria for listing options on an underlying security as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter “covered security”). In particular, the Exchange proposes to modify Phlx Rule 1009, Commentary .01(4)(i) which currently requires that to list an option, the underlying covered security has to have a market price of at least \$3.00 per share for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation (“OCC”) for listing and trading. The Proposal would shorten the current “look back” period of five consecutive business days to three consecutive business days. The Exchange does not propose to amend any other criteria in Phlx Rule 1009 and the accompanying Commentary to list an option on the Exchange.

III. Discussion and Commission’s Findings

After careful review of the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.⁷ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

should be disapproved.

⁷ In approving this rule change, the Commission has considered the rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As noted above, although the Exchange proposes to shorten the look back period for listing options on the Exchange found in Phlx Rule 1009, Commentary .01(4)(i) from five consecutive business days⁹ to three consecutive business days, it does not propose to change any other listing provision found in Phlx Rule 1009 and the accompanying Commentary, including the requirement of Phlx Rule 1009, Commentary .01(2) that the Exchange verify the number of shareholders of a security underlying an option. The Exchange states that the proposed look back period of three consecutive business days is intended to correspond to the securities industry's recent shortening of the settlement period from T+3 to the current T+2.¹⁰ The Exchange represents that stock trades would clear within T+2 of their trade date (i.e., within three consecutive business days) and therefore the number of shareholders could be verified within three consecutive business days.¹¹ This would facilitate options trading within four

⁹ See Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR-CBOE-2002-62) (Order approving CBOE's proposal to, among other things, shorten the look back period from the majority of business days during the preceding three calendar months to the current five consecutive business days); 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR-Phlx-2003-27) (Notice and immediate effectiveness of the Exchange's filing adopting the same changes to its options listing standards).

¹⁰ See Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017) (Securities Transaction Settlement Cycle) (File No. S7-22-16).

¹¹ In addition to confirming through large clearing agencies such as the Depository Trust and Clearing Corporation, the Exchange also represents that it can verify the shareholder count with various brokerage firms that have a large retail customer clientele, and that it

business days of an IPO (three consecutive business days plus the day the listing certificate is submitted to OCC).

The Exchange also represents that its surveillance technologies and procedures concerning manipulation provide adequate prevention or detection of rule or securities law violations in relation to the proposed shortened time frame, and specifically, that its existing trading surveillances are adequate to monitor the trading in the underlying security and subsequent trading of options.¹² The Commission notes the limited nature of the proposal to shorten the look back period of Phlx Rule 1009, Commentary .01(4)(i) from the current five consecutive business days to the proposed three consecutive business days. In addition, the Exchange represents that its surveillance program is comprehensive and adequate to monitor for manipulation of the underlying security and overlying option. The Commission also notes that it has not received any comments on the proposal, aside from the Exchange Letter.

The Commission finds that the proposal, coupled with the recent move to T+2 settlement, would facilitate transactions in securities, while providing customers safeguards comparable to those provided under the current five consecutive business day look back period. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act, specifically the requirements that the rules of an Exchange be designed to prevent fraudulent and manipulative acts and practices.

has confirmed with some of these brokerage firms who provide shareholder numbers to the Exchange that they are able to provide these numbers within T+2 after an IPO.

¹² See Notice, supra note 3 at 47255-256; Exchange Letter, supra note 4 at 2-3.

IV. Conclusion

IT IS THEREFORE ORDERED THAT, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-Phlx-2017-75), be and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

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Assistant Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).