

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64348; File No. SR-Phlx-2011-58)

April 27, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change to Increase the Position Limit for Options on the Standard and Poor's® Depository Receipts (SPDRs®)

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 April 18, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 amend Phlx Rule 1001 (Position Limits) to increase the position limit for options on the Standard and Poor's Depository Receipts ("SPDRs®").³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ "SPDRs®", "Standard & Poor's®", "S&P®", "S&P 500®", "Standard & Poor's 500", and "500" are trademarks of The McGraw-Hill Companies, Inc.

SPDRs®, also sometimes referred to colloquially as "spiders", are exchange traded funds ("ETFs") based on the S&P 500® Index. Each share of the traditional SPDRs® ETF (SPDRs® Trust Series 1) holds a stake in the 500 stocks represented by the S&P 500®. SPDRs®, and options thereon, are generally used by large institutions and traders as bets on the overall direction of the market. They are also used by individual retail investors who believe in passive management (index investing).

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.

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 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 the proposal is to amend Rule 1001 to increase the position limit applicable to options on SPDRs®, which are trading under the symbol SPY, from 300,000 to 900,000 contracts on the same side of the market.⁴

The Exchange began trading options on SPDRs® on the Exchange's electronic trading platform for options, Phlx XL, on January 10, 2005. That year, the position limit for these options was increased to the current limit of 300,000 contracts on the same size of the market, and has remained unchanged.⁵ However, institutional and retail traders have greatly increased

⁴ By virtue of Rule 1002, which is not amended by this filing, exercise limits on options on SPDRs® would be similar to position limits established in Rule 1001.

⁵ See Securities Exchange Act Release No. 51071 (January 21, 2005), 70 FR 4911 (January 31, 2005)(SR-Phlx-2005-05)(approval order increasing position and exercise limits for options on SPDRs® from 75,000 to 300,000 contracts on the same side of the market)(the "last position increase order"). See also Securities Exchange Act Release Nos. 51043 (January 14, 2005), 70 FR 3402 (January 24, 2005)(SR-Amex-2005-

their demand for options on SPDRs® for hedging and trading purposes, such that these options have experienced an explosive gain in popularity and have been the most actively traded options for the last two years. For example, options on SPDRs® (SPY), the most actively traded options in the U.S. in terms of volume, traded a total of 33,341,698 contracts across all exchanges from March 1, 2011 through March 16, 2011. In contrast, over the same time period options on the Nasdaq-100 Index® Tracking Stock ("QQQSM")⁶, the third most actively traded options, traded a total of 8,730,718 contracts (less than 26.2% of the volume of options on SPDRs®).

Currently, SPY options have a position limit of only 300,000 contracts on the same side on the market while the significantly lesser-volume QQQSM options, which are comparable to SPY options, have a position limit of 900,000 contracts on the same side of the market. The Exchange believes that SPY options should, like options on QQQSM, have a position limit of 900,000 contracts. Given the increase in volume and continuous unprecedented demand for trading options on SPDRs®, the Exchange believes that the current position limit of 300,000 contracts⁷ is entirely too low and inadequate and is a deterrent to the optimal use of the product for hedging and trading purposes. There are multiple reasons to increase the position limit for SPY options.

First, traders have informed the Exchange that the current SPY option position limit of 300,000 contracts, which has remained flat for more than five years despite the tremendous

06)(approval order); 51041 (January 14, 2005), 70 FR 3408 (January 24, 2005)(SR-CBOE-2005-06)(approval order); and 51042 (January 14, 2005), 70 FR 3412 (January 24, 2005)(SR-ISE-2005-05)(approval order).

⁶ QQQSM options were formerly traded under the ticker symbol QQQQSM. QQQSM, Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, Nasdaq-100 Index Tracking StockSM, and are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq").

⁷ Rule 1001.

trading volume increase, is no longer sufficient for optimal trading and hedging purposes. SPY options are, as noted, used by large institutions and traders as a means to invest in or hedge the overall direction of the market. Second, options on SPDRs® are 1/10th the size of options on the S&P 500® Index, traded under the symbol SPX. Thus, a position limit of 300,000 contracts in options on SPDRs® is equivalent to a 30,000 contract position limit in options on SPX.⁸

Traders who trade options on SPDRs® to hedge positions in SPX options (and the SPDRs® ETF based on SPX, SPDRs® Trust Series 1) have indicated on several occasions that the current position limit for options on SPDRs® is simply too restrictive,⁹ which may adversely affect their (and the Exchange's) ability to provide liquidity in this product. And third, the products that are perhaps most comparable to options on SPDRs®, namely options on QQQSM, are subject to a 900,000 contract position limit on the same side of the market.¹⁰ This has, in light of the huge run-up in SPY option trading making them the number one nationally-ranked option in terms of volume, resulted in a skewed and unacceptable SPY option position limit. Specifically, the position limit for options on SPDRs® at 300,000 contracts is but 33% of the position limit for

⁸ Chicago Board Options Exchange, which lists and trades SPX options, has established that there is no position limit on SPX options. See CBOE Rule 24.4 and Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001)(SR-CBOE-2001-22)(order approving permanent elimination of SPX options position limit).

⁹ See supra note 3.

¹⁰ See Rule 1001 and Securities Exchange Act Release No. 51322 (March 4, 2005), 70 FR 12260 (March 11, 2005)(SR-Phlx-2005-17)(notice of filing and immediate effectiveness).

the less active options on QQQSM at 900,000 contracts.¹¹ The Exchange proposes that options on SPDRs® similarly be subject to a position limit of 900,000 contracts.¹²

The volume and notional value of options on SPDRs® and QQQSM, as well as the volume and market capitalizations of their underlying ETFs, are set forth below:

¹¹ Similarly to options on SPDRs® (SPY) being 1/10th the size of options on the related index S&P 500® Index (SPX), so options on the Nasdaq-100 Index® Tracking Stock (QQQSM) are 1/10th the size of options on the related index NASDAQ-100 Index (NDX). The position limit for QQQSM options and its related index NDX have a comparable relationship to that of SPY options and SPX. That is, the position limit for options on QQQSM is 900,000 contracts and there is no positions limit for NDX options. See supra note 9 and Securities Exchange Act Release No. 52650 (October 21, 2005), 70 FR 62147 (October 28, 2005)(SR-CBOE-2001-41)(order approving elimination of NDX options position limit).

¹² The position limit for IWM options on yet another large ETF entitled iShares Russell 2000 Index Fund, (which options have significantly less trading volume than the number one ranked SPY options, as also the QQQSM options) are set at 500,000 contracts.

Option Nat'l Rank 2010	Option Symbol	Name of Underlying ETF	Option ADV 2010	Option Notional Value * December 31, 2010	Current Options Position Limit
1	SPY	SPDR Trust Series 1	3,625,904 contracts	\$ 177,823,76 million	300,000 contracts
4	QQQ	Powershares QQQ Trust	963,502 contracts	\$ 27,141,91 million	900,000 contracts

ETF Nat'l Rank 2010	Name of ETF	ETF ADV 2010	ETF Market Capitalization Dec 31, 2010	ETF Avg Dollar Volume
1	SPDR Trust Series 1	210,232,241 shares	\$ 90,280.71 million	\$ 20,794 million
3	Powershares QQQ Trust	85,602,200 shares	\$ 23,564.8 million	\$3,593 million

* Notional value is calculated as follows: $OI \times Close \times 100$; where OI = underlying security's open interest (in contracts), Close = closing price of underlying security on 12/31/2010.

The options reporting requirement would continue unabated. Thus, the Exchange would require that, just like for options on QQQSM, each member or member organization that maintains a position in SPDRs® options on the same side of the market, for its own account or for the account of a customer, must report certain information. This information would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange specialists and Registered Options Traders ("ROT")¹³ would continue to be exempt from this

¹³ For discussion regarding specialists and ROTs, see Rules 1020 and 1014 (b)(ii), respectively.

reporting requirement as specialist and ROT information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain an aggregate position of 200 or more option contracts (“large positions”) would remain at this level for options on SPDRs®.¹⁴

The Exchange believes that position and exercise limits, at their current levels, no longer serve their stated purpose. There has been a steadfast and significant increase over the last decade in the overall volume of exchange-traded options; position limits, however, have not kept up with the volume. Part of this volume is attributable to a corresponding increase in the number of overall market participants, which has, in turn, brought about additional depth and increased liquidity in exchange-traded options.¹⁵

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes that the existing surveillance procedures and reporting requirements at Phlx, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These

¹⁴ For reporting requirements, see Rule 1003.

¹⁵ The Commission has previously observed that: Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes. See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998)(SR-CBOE-97-11)(order approving).

procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.¹⁶

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.¹⁷ Options positions are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the previously noted Rule 1003 requirement that members file reports with the Exchange for any customer who held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in an option, particularly on SPDRs®. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the authority under Exchange Rule 722(c)(3) to impose a higher margin requirement upon a member or member organization when the Exchange determines a higher requirement is warranted. In addition, the Commission's net capital rule, Rule 15c3-1 under the Act,¹⁸ imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

¹⁶ These procedures have been effective for the surveillance of SPY options trading and will continue to be employed.

¹⁷ 17 CFR 240.13d-1

¹⁸ 17 CFR 240.15c3-1.

Finally, the Exchange believes that while position limit on options on **QQQsSM**, which as noted are similar to options on **SPDRs®**, has been gradually expanded from 75,000 contracts to the current level of 900,000 contracts in 2005, there have been no adverse affects on the market as a result of this position limit increase. Likewise, there have been no adverse affects on the market from expanding the position limit for options on **SPDRs®** from 75,000 contracts to the current level of 300,000 contracts in 2005.

The Exchange believes that restrictive option position limits prevent large customers, such as mutual funds and pension funds, from using options to gain meaningful exposure to and hedging protection through the use of options on **SPDRs®**. This can result in lost liquidity in both the options market and the equity market. The proposed position limit increase will remedy this situation to the benefit of large as well as retail traders, investors, and public customers. The Exchange believes that increasing position and exercise limits for options on would lead to a more liquid and competitive market environment for options on **SPDRs®** that would benefit customers interested in this product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁰ in particular, in that it is designed 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange is proposing to expand the

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

position limit on options on SPDRs®. The Exchange believes that this proposal will be beneficial to large market makers (which generally have the greatest potential and actual ability to provide liquidity and depth in the product), as well as retail traders, investors, and public customers.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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 No. SR-Phlx-2011-58 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2011-58. 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 available publicly. All submissions should refer to File Number SR-Phlx-2011-58 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Cathy H. Ahn
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).