

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65706; File No. SR-Phlx-2011-143)

November 8, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change to Modify Commentary .01 to Rule 1009 Regarding Criteria for Listing an Option on an Underlying Covered Security

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on October 24, 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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to amend Commentary .01 to Rule 1009 to modify the criteria for listing options on an underlying covered security.

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, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

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 the proposed rule change is to amend Commentary .01 to Rule 1009 to modify the criteria for listing options on an underlying covered security as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter "covered security(ies)"). The Exchange proposes to modify Rule 1009, Commentary .01(4)(i) to permit the listing of an option on an underlying covered security that has a market price of at least \$3.00 per share on the business day immediately preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation ("OCC") for listing and trading. The Exchange does not intend to amend any other criteria for listing options on an underlying security in Rule 1009 and accompanying Commentary.

Currently the underlying covered security must have a closing market price of \$3.00 per share for five consecutive business days preceding the date on which the Exchange submits a listing certificate to OCC. In the proposed amendment, the market price will still be measured by the closing price reported in the primary market in which the underlying covered security is

traded; however, the measurement will be the price on the business day immediately preceding the submission of the listing certificate, instead of the prior five consecutive business days.

The Exchange acknowledges that the Options Listing Procedures Plan⁵ requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin.⁶ The proposed amendment will still comport with that requirement. For example, if an initial public offering occurs at 11 a.m. on Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Tuesday by 12:01a.m. (Chicago time), with the market price determined by the closing price on Monday. The option on the initial public offering would be eligible for trading on the Exchange on Wednesday. The proposed amendment would essentially enable options trading within two business days of an initial public offering becoming available instead of six business days (five consecutive business days plus the day the listing certificate is submitted to OCC).

⁵ On July 6, 2001, the Commission approved the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11a(2)(3)(B) [sic] of the Securities Exchange Act of 1934 (a/k/a the Options Listing Procedures Plan (“OLPP”)), which was proposed by the American Stock Exchange LLC (“Amex”), Chicago Board Options Exchange, Incorporated (“CBOE”), International Securities Exchange LLC (“ISE”), Options Clearing Corporation (“OCC”), Philadelphia Stock Exchange, Inc. (“Phlx”), and Pacific Exchange, Inc. (“PCX”) (n/k/a NYSE Arca). See Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). On February 5, 2004, Boston Stock Exchange, Inc. (“BSE”) was added as a Sponsor to OLPP. See Securities Exchange Act Release No. 49199, 69 FR 7030 (February 12, 2004). On March 21, 2008, the Nasdaq Stock Market, LLC (“Nasdaq”) was added as a Sponsor to the OLPP. See Securities Exchange Act Release No. 57546, 73 FR 16393 (March 27, 2008). On February 17, 2010, BATS Exchange, Inc. (“BATS”) was added as a Sponsor to the OLPP. See Securities Exchange Act Release No. 61528, 75 FR 8415 (February 24, 2010).

⁶ See OLPP at page 3.

The Exchange's current provision of the "look back" period of five consecutive business days assumed the five-day period was necessary to protect against attempts to manipulate the market.⁷ Surveillance technologies and procedures concerning manipulation have evolved over the last decade to provide adequate prevention or detection of rule or securities law violations and the disciplining of the Exchange's members and persons associated with them for violation of such rules or laws. Surveillance for opening price manipulation and other existing surveillance patterns are utilized to monitor trading in options. The Exchange represents that these surveillance procedures are adequate to monitor the trading of options on the Exchange. In addition, the Exchange has complete access to information regarding trading activity of the underlying securities and options thereon. Furthermore, pursuant to Rule 1047(c), trading in any option may be halted by an Options Exchange Official whenever the Options Exchange Official deems such action appropriate in the interest of a fair and orderly market and to protect investors. The combination of the surveillance technologies and procedures, coupled with Rule 1047(c) provide a sufficient measure of protection from any attempts of market manipulation.

The proposed change will apply to all covered securities that meet the criteria of Exchange Rule 1009. Pursuant to Exchange Rule 1009, the Exchange Board of Directors (the "Exchange Board") establishes guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions.⁸ However, the fact that a particular security may meet the guidelines established by the Exchange Board does not

⁷ See Release No. 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR-Phlx-2003-27).

⁸ See Exchange Rule 1009(b). The Exchange Board established specific criteria to consider by the Exchange in evaluating potential underlying securities for Exchange Option Transactions in its Commentary to Exchange Rule 1009.

necessarily mean that it will be approved as an underlying security.⁹ As part of the established criteria, the issuer must be in compliance with any applicable requirement of the Securities Exchange Act of 1934.¹⁰ Additionally, in considering the underlying security, the Exchange relies on information made publicly available by the issuer and/or the market in which the security is traded.¹¹ Also, in determining whether to list an option that otherwise meets the objective listing criteria, the Chairman of the Exchange Board or his designee may consider, *inter alia*, the name recognition of the option or underlying security.¹² Even if the proposed option meets the objective criteria, the Chair of the Exchange Board may decide not to list or place limitations or conditions upon listing.¹³ The Exchange believes these measures, along with its surveillance of the trading of options, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the timeframe contained in this proposal.

Just as important, investors have requested that the Exchange offer options on initial public offerings sooner than the six business days time frame in order to provide the opportunity to hedge existing positions post-haste. As such, the Exchange believes the proposed amendment will allow the Exchange to provide investors with the options that are most useful and demanded by them without sacrificing any investor protections.

⁹ Id.

¹⁰ See Exchange Rule 1009, Commentary .01(5)

¹¹ See Exchange Rule 1009, Commentary .02(d).

¹² See Exchange Rule 1009 Commentary .02(e).

¹³ See Exchange Rule 1009, Commentary .02(c)

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁵ 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 allowing the Exchange to swiftly list options on a qualifying security that has met the \$3.00 eligibility price to meet the investor demands. The proposed amendment will remove impediments and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors of an initial public offering, who are restricted from selling shares, to swiftly hedge their investment in the stock without the time delay.

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

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such 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. The Commission is asking that commenters address the merit of Phlx's statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change. The Commission notes that, prior to 2003, in order to qualify as underlying securities for options traded on national securities exchanges, covered securities were required to have a closing market price of at least \$7.50 per share for the majority of business days during the three calendar months preceding the date of selection.¹⁶ In proposing the \$3 per share closing market price requirement and the five-day "look back" period that is the current requirement on Phlx and other national securities exchanges that list options, Phlx stated that the "look back" period of five consecutive days "would provide a sufficient measure of protection from any attempts to manipulate the market price of the underlying security."¹⁷ The Exchange further stated that it believed that the proposed \$3 price standard and the five-day "look back"

¹⁶ See Securities Exchange Act Release No. 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR-Phlx-2003-27) ("Phlx Five-Day Notice") (notice of filing and immediate effectiveness of proposed rule change relating to the amendment of price criteria for certain securities that underlie options traded on the Exchange). See also Securities Exchange Act Release No. 46957 (December 6, 2002), 67 FR 77106 (December 16, 2002) (SR-CBOE-2002-62).

¹⁷ Phlx Five-Day Notice at 25078.

period would “provide a reliable test for stability [and] would present a more reasonable time period for qualifying the price of an underlying security.”¹⁸ In approving the five-day “look back” period proposal, the Commission stated that the proposed requirements, coupled with an exchange’s additional listing requirements, would enable the listing of options on companies that are financially sound.¹⁹ In light of the foregoing, what are commenters’ views as to whether Phlx’s proposed initial listing standard and existing initial and maintenance listing standards would be sufficient to assure price stability of the underlying covered security? For example, the proposed standard would allow the listing of options on a stock that traded above \$3 for only one day. What are commenters’ views as to how the proposed “look back” period would impact concerns about the ability to manipulate the market? What are commenters’ views on whether surveillance technologies and procedures concerning manipulation have evolved sufficiently to adequately prevent or detect potential violations of securities laws and rules and regulations thereunder resulting from this proposed rule change?

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-2011-143 on the subject line.

¹⁸ Id.

¹⁹ The Chicago Board Options Exchange was the first exchange to propose the \$3 per share closing market price requirement and the five-day “look back” period. See Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072, 3072-73 (January 22, 2003) (SR-CBOE-2002-62) (order approving proposed rule change to amend CBOE rule which establishes the pricing criteria for securities that underlie options traded on the Exchange).

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-2011-143. 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-2011-143 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.²⁰

Kevin M. O'Neill
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).