

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61630; File No. SR-Phlx-2010-26)

March 2, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. to Permit the Concurrent Listing of \$3.50 and \$4 Strikes for Classes Participating in the \$0.50 Strike Program and the \$1 Strike 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 February 19, 2010, NASDAQ OMX PHLX, Inc. ("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 amend Commentary .05 to Rule 1012 (Series of Options Open for Trading) to permit the concurrent listing of \$3.50 and \$4 strikes for classes that participate in both the \$0.50 Strike Price Program ("\$0.50 Strike Program")³ and the \$1 Strike Price Program ("\$1 Strike Program").⁴ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The \$0.50 Strike Program was initially approved on September 18, 2009. See Securities Exchange Act Release No. 60694 (September 18, 2009), 74 FR 49048 (September 25, 2009)(SR-Phlx-2009-65)(order approving).

⁴ The \$1 Strike Program was initially approved as a pilot on June 11, 2003. See Securities Exchange Act Release Nos. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003)(SR-Phlx-2002-55)(order approving). The program was subsequently made permanent and expanded. See Securities Exchange Act Release Nos. 57111

Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).⁵

The text of the proposed rule change is available on the Exchange's Web site 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 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 proposal is to amend Commentary .05 to Rule 1012 to permit the concurrent listing of \$3.50 and \$4 strikes for classes that participate in both the \$0.50 Strike Program and the \$1 Strike Program.

The Exchange recently implemented a rule change that permits strike price intervals of \$0.50 for options on stocks trading at or below \$3.00 pursuant to the \$0.50

(January 8, 2008), 73 FR 2297 (January 14, 2008)(SR-Phlx-2008-01)(notice of filing and immediate effectiveness); 59590 (March 17, 2009), 74 FR 12412. (March 24, 2009)(SR-Phlx-2009-21)(notice of filing and immediate effectiveness); and 61277 (January 4, 2010), 75 FR 1442 (January 11, 2010)(SR-Phlx-2009-108)(notice of filing and immediate effectiveness).

⁵ 17 CFR 240.19b-4(f)(6)(iii).

Strike Program.⁶ As part of the filing to establish the \$0.50 Strike Program, the Exchange contemplated that a class may be selected to participate in both the \$0.50 Strike Program and the \$1 Strike Program. Under the \$1 Strike Program, new series with \$1 intervals are not permitted to be listed within \$0.50 of an existing \$2.50 strike price in the same series, except that strike prices of \$2 and \$3 are permitted to be listed within \$0.50 of a \$2.50 strike price for classes also selected to participate in the \$0.50 Strike Program.⁷ Under the Exchange's current Rule 1012, for classes selected to participate in both the \$0.50 Strike Program and the \$1 Strike Program, the Exchange may either: (a) list a \$3.50 strike but not list a \$4 strike; or (b) list a \$4 strike but not list a \$3.50 strike. For example, if a \$3.50 strike for an option class in both the \$0.50 and \$1 Strike Programs was listed, the next highest permissible strike price would be \$5.00. Alternatively, if a \$4 strike was listed, the next lowest permissible strike price would be \$3.00. The intent of the \$0.50 Strike Program was to expand the ability of investors to hedge risks associated with stocks trading at or under \$3 and to provide finer intervals of \$0.50, beginning at \$1 up to \$3.50. As a result, the Exchange believes that the current filing is consistent with the purpose of the \$0.50 Strike Program and will permit the Exchange to fill in any existing gaps resulting from having to choose whether to list a \$3.50 or \$4 strike for options classes in both the \$0.50 and \$1 Strike Programs.

Therefore, the Exchange is submitting the current filing to permit the listing of concurrent \$3.50 and \$4 strikes for classes that are selected to participate in both the \$0.50 Strike Program and the \$1 Strike Program. To effect this change, the Exchange is

⁶ See Securities Exchange Act Release No. 60694 (September 18, 2009), 74 FR 49048 (September 25, 2009)(SR-Phlx-2009-65)(order approving); and Commentary .05(a)(ii) to Rule 1012.

⁷ See Commentary .05(a)(i)(C) of Rule 1012.

proposing to amend Commentary .05(a)(i)(B) to Rule 1012 by adding \$4 to the strike prices of \$2 and \$3 currently permitted if a class participates in both the \$0.50 Strike Program and the \$1 Strike Program.

The Exchange is also proposing to amend the current rule text to delete references to “\$2.50 strike prices” (and the example utilizing \$2.50 strike prices) and to replace those references with broader language, *e.g.*, “existing strike prices.”

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ 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, by permitting the Exchange to list more granular strikes on options overlying lower priced securities, which the Exchange believes will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

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.

⁸ 15 U.S.C. 78f(b).

⁹ 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)¹⁰ of the Act and Rule 19b-4(f)(6)(iii) thereunder¹¹ because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

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

The Exchange has requested that the Commission waive the 30-day operative delay to permit the Exchange to compete with other exchanges whose rules permit concurrent listing of \$3.50 and \$4 strikes for classes similarly participating in both a

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Exchange has satisfied this requirement.

\$0.50 strike program and a \$1 strike program. The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will encourage fair competition among the exchanges. Therefore, the Commission designates the proposal operative upon filing.¹²

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-2010-26 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-2010-26. 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 Web site

(<http://www.sec.gov/rules/sro.shtml>).

¹² 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).

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 Web site viewing and printing in the Commission's Public Reference Room. 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-2010-26 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).