

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65373; File No. SR-Phlx-2011-127)

September 21, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Maximum Number of Quoters (“MNQ”) Permitted to be Assigned in Equity Options

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 September 15, 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, II, and III, 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 proposes to amend Exchange Rule 507, Application for Approval as an SQT or RSQT and Assignment in Options, which governs the assignment of options to Streaming Quote Traders (“SQTs”)³ and Remote Streaming Quote Traders

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ An SQT is an Exchange Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit options quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Exchange Rule 1014(b)(ii)(A).

(“RSQTs”),⁴ by establishing a higher maximum number of quoting participants (“Maximum Number of Quoters” or “MNQ”) that will apply to all equity options listed for trading on the Exchange.

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.

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 provide additional liquidity in equity options on the Exchange by increasing the MNQ in all equity options.⁵ Currently,

⁴ An RSQT is a ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

⁵ Commentary .05 to Rule 507 (which is proposed to be re-numbered as Commentary .04) states that the Exchange may increase the MNQ levels established in this Commentary by submitting to the SEC a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act, and will continue to require any proposed decrease in MNQ to be filed with the Commission pursuant to Section 19(b)(2) of the Act.

the Exchange limits the number of participants that may be assigned to a particular equity option at any one time based upon each option's monthly national volume. Commentary .02 to Rule 507 currently sets forth tiered MNQ levels permitting assignment of trading privileges to 24 market participants for the top 5% most actively traded options; 19 market participants for next 10% most actively traded options, and 17 market participants for all other options.⁶ The ranking is currently based upon the preceding month's national volumes. Because the MNQ will now be the same for all equity options traded on the Exchange, there is no longer a need to calculate and establish multiple MNQ levels based upon monthly national volume. Accordingly, the Exchange proposes to delete current Commentary .03 to Rule 507, which states that, within the first five days of each month, a new MNQ will be set based on the previous month's trading volume ("new MNQ"), and which sets forth rules that apply to those options for which the new MNQ decreases the previous MNQ.⁷

The Exchange proposes to increase the MNQ level to 30 for all equity options listed for trading on the Exchange. After careful analysis, the Exchange believes it has

⁶ When initially adopted, Commentary .02 (a) – (c) established MNQ levels of 20 market participants for the top 5% most actively traded options; 15 market participants for next 10% most actively traded options, and 10 market participants for all other options. See Securities Exchange Act Release No. 55114 (January 17, 2007), 72 FR 3185 (January 24, 2007) (SR-Phlx-2006-81). These MNQ levels were subsequently increased to levels of 22, 17, and 12, respectively. See Securities Exchange Act Release No. 56261 (August 15, 2007), 72 FR 47112 (August 22, 2007)(SR-Phlx-2007-51). The MNQ levels were then increased to 22, 17 and 15 respectively. See Securities Exchange Act Release No. 58906 (November 6, 2008), 73 FR 67239 (November 13, 2008) (SR-Phlx-2008-76). The current MNQ levels of 24, 19 and 17, respectively, were established in September, 2009. See Securities Exchange Act Release No. 60688 (September 18, 2009), 74 FR 49058 (September 25, 2009) (SR-Phlx-2009-82).

⁷ See supra note 5.

sufficient capacity to increase the MNQ as proposed. The Exchange believes that the effect of an increase in the MNQ fosters competition in that it increases the number of SQTs and RSQTs that may quote electronically in a product. Pursuant to re-numbered Commentary .04 to Rule 507, the Exchange will announce all changes regarding MNQ levels to the membership on the Exchange's website.

All new applicants for trading privileges will be subject to the process for assignment described in Rule 507. The Exchange considers all applicants for assignment in options using the objective criteria set forth in Exchange Rule 507(b). The objective criteria are used by the Exchange in determining the most beneficial assignment of options for the Exchange and the public.

The Exchange also proposes technical changes to Commentaries .04 and .05 to the rule, which are being re-numbered to account for the deletion of Commentary .03.

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 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 adding depth and liquidity to the Exchange's markets in equity options.

The Exchange further believes that increasing the MNQ, and establishing an MNQ level that will apply to all equity options traded on the Exchange, is pro-

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

competitive, because it adds depth and liquidity to the Exchange's markets by permitting additional participants to compete on the Exchange.

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: (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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.

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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). 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.

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-2011-127 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-2011-127. 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-2011-127 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.¹²

Elizabeth M. Murphy
Secretary

¹² 17 CFR 200.30-3(a)(12).