

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71004; File No. SR-Phlx-2013-101)

December 6, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Regarding the Short Term Options Program

I. Introduction

On October 3, 2013, NASDAQ OMX 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: (1) expand the number of classes on which short term options series (“STOs”) may be opened in accordance with its Short Term Option Series Program (“STO Program”) from 30 to 50; (2) modify the initial and additional series listing provisions to allow the Exchange to open up to thirty STOs for each expiration date in a STO class; (3) expand the strike price range limitations for STOs; and (4) allow the Exchange to list STOs at a strike price interval of \$2.50 or greater where the strike price is above \$150. The proposed rule change was published for comment in the Federal Register on October 22, 2013.³ The Commission received one comment letter on the proposal.⁴ This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 70682 (October 15, 2013), 78 FR 62809 (“Notice”).

⁴ See letter from Megan R. Malone, Attorney, Legal Division, Chicago Board Options Exchange, Incorporated (“CBOE”), to Elizabeth M. Murphy, Secretary, Commission, dated November 12, 2013 (“CBOE Letter”). CBOE expressed support for the proposed expansion of the STO Program to 50 classes.

II. Description of the Proposal

Currently, Commentary .11(a) to Rule 1012 permits the Exchange to open for trading on any Thursday or Friday that is a business day series of options on no more than thirty option classes that expire at the close of business on each of the next five consecutive Fridays that are business days.⁵ The Exchange may also list STOs on option classes selected by other exchanges under their respective STO Program rules.⁶ The Exchange has proposed to increase from thirty to fifty the number of option classes that may be opened by the Exchange pursuant to the STO Program.

The Exchange also proposed to modify its initial and additional STO listing requirements to permit the Exchange to open up to thirty STOs for each expiration date in a class. Phlx's current rules provide that the Exchange may open up to twenty STOs for each expiration date in a class.⁷ Phlx's rules also provide that if the Exchange opens less than twenty STOs for an expiration date, it may open additional series "when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened."⁸ The proposed rule change would permit Phlx to open up to thirty STOs for each expiration date in a class. Under the proposed rule change, if Phlx opens less than thirty STOs for an expiration date, it may open additional series under the same conditions noted above.

Phlx also proposed to change the strike price range limitations for the STO Program. Currently, the strike price of each STO has to be fixed with approximately the same number of

⁵ See Commentary .11(a) to Rule 1012.

⁶ Id.

⁷ Id.

⁸ See Commentary .11(d) to Rule 1012.

strike prices being opened above and below the value of the underlying security at about the time that the STOs are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day.⁹ Further, any additional strike prices listed by the Exchange must also be within thirty percent (30%) above or below the current price of the underlying security.¹⁰

Phlx's proposed rule would provide that any initial or additional series listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) if the price of the underlying security is less than or equal to \$20, strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the price of the underlying security is greater than \$20, strike prices shall be not more than fifty percent (50%) above or below the price of the underlying security. Under the proposed rule change, the Exchange may also open STOs with strike prices that are more than 50% above or below the current price of the underlying security (if the price is greater than \$20); provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers (not including Market-Makers trading for their own account).¹¹

⁹ See Commentary .11(c) to Rule 1012.

¹⁰ See Commentary .11(d) to Rule 1012. Commentary .11(d) to Rule 1012 also permits the Exchange to open additional STOs with strike prices more than 30% above or below the current prices of the underlying security "provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers."

¹¹ Commentary .10(a) to Rule 1012 currently states that if the price of the underlying security is greater than \$20, the Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. The Exchange also proposed to add language clarifying that this restriction does not apply to new proposed Commentary .11(d) to Rule 1012.

The Exchange also proposed to modify the STO Program delisting provisions to conform to the proposed STO strike price range limitations. Currently, the STO delisting rules in Commentary .11(d) to Rule 1012 allow the Exchange to delist certain series so as to list series between 10% and 30% above or below the current price of the underlying.¹² The current rules also permit the Exchange to list additional series in excess of the thirty permitted in the STO Program rules if the underlying has moved such that there are no series that are within the 10% to 30% range and all existing series have open interest.¹³ Phlx proposed to remove the range methodology to provide that the Exchange will delist any series with no open interest in both the call and the put series having a: (i) strike higher than the highest price with open interest in the put and/or call series for a given expiration week; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration week.

Finally, the Exchange proposed to amend Commentary .11(e) to Rule 1012 to indicate that the interval between strike prices on STOs may be \$2.50 or greater where the strike price is above \$150. The current STO Program rules include specific strike price intervals for certain classes that participate in the STO Program, e.g., the strike price may be \$0.50 or greater where the strike price is less than \$75, and \$1 or greater where the strike price is between \$75 and \$150.¹⁴ According to the Exchange, the proposed \$2.50 strike price interval addresses the issue that above a \$150 strike price STO strike price intervals may be \$5.00 or greater.¹⁵

In the proposed rule change, the Exchange stated that the principal reason for the proposed expansion is market demand for weekly options and continuing strong customer

¹² See Commentary .11(d) to Rule 1012.

¹³ See id.

¹⁴ See Commentary .11(e) to Rule 1012.

¹⁵ See, e.g., Commentary .05 to Rule 1012.

demand to use STOs to execute hedging and trading strategies, particularly in the current fast and volatile trading and investing environment.¹⁶ The Exchange also stated that it has received requests from traders and other market participants to expand the STO Program.¹⁷ Phlx also stated that it believes that the delisting proposal will add clarity and certainty to the STO Program.¹⁸

The Exchange stated that it has analyzed its capacity, and represented that it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the potential additional traffic associated with Phlx’s proposed amendment to the STO Program. In addition, Phlx stated that it believes that its members will not have a capacity issue as a result of the proposed rule change.¹⁹

III. Discussion and Commission Findings

After careful review of the proposed rule change and the CBOE Letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁰ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,²¹ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national

¹⁶ See Notice, supra note 3 at 62812.

¹⁷ Id.

¹⁸ See id. at 62811.

¹⁹ See id. at 62813.

²⁰ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78f(b)(5).

market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series.

In approving this proposal, the Commission notes that Exchange has represented that it and OPRA have the necessary systems capacity to handle the potential additional traffic associated with the proposed amendment to the STO Program.²² The Commission expects the Exchange to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

²² See Notice, supra note 3 at 62813.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-Phlx-2013-101) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Kevin M. O'Neill
Deputy Secretary

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).