

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60211; File No. SR-Phlx-2009-51)

July 1, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Penny Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on June 26, 2009, 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 proposes to extend a pilot (the "pilot") that permits certain options series to be quoted and traded in increments of \$0.01. The Exchange proposes to extend the pilot through October 31, 2009.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 continue to permit specified options series to be quoted and traded in increments of \$0.01 by extending the pilot through October 31, 2009.

The pilot began on January 26, 2007.³ All series in options included in the pilot (“pilot options”) trading at a price of less than \$3.00 are currently quoted and traded in minimum increments of \$0.01, and pilot options with a price of \$3.00 or higher are currently quoted and traded in minimum increments of \$0.05, except that options overlying the PowerShares QQQQ Trust (“QQQQ”) are quoted and traded in minimum increments of \$0.01 for all series regardless of the price. A list of all pilot options was communicated to membership via Exchange circular.⁴

Report to the Commission

Throughout the pilot, the Exchange has prepared and submitted periodic analytical reports (“reports”) to the Commission that address the impact of the pilot on the quality of the Exchange’s markets and option quote traffic and capacity. The Exchange will submit another such report not later than the last business day of August, 2009, covering the period from May 1,

³ See Securities Exchange Act Release No. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74). In that filing, the Exchange also made conforming amendments to various Exchange rules in order to be consistent with the pilot. These conforming changes were also approved on a pilot basis. The pilot was subsequently extended through July 3, 2009. See Securities Exchange Act Release No. 59631(March 26, 2009), 74 FR 15022 (April 2, 2009) (SR-Phlx-2009-25).

⁴ Any additions to or deletions from the list will be published in an Options Trader Alert, which will be available on the Exchange’s web site.

2009 through July 31, 2009, and will submit further reports as requested by the Commission as the pilot continues. The Exchange will amend its rules accordingly.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ 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 ensuring the orderly continuity of the pilot.

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: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)⁷ of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸

A proposed rule change filed under Rule 19b-4(f)(6)⁹ normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing to ensure continuity of the pilot, which is scheduled to expire July 3, 2009.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot to continue without interruption through October 31, 2009.¹¹ Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ For the 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. 78(c)(f).

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-2009-51 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-2009-51. 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>). 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 inspection and copying 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 No. SR-NASDAQ-2009-51 and should be submitted on or before [insert date 21 days from date of 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).