

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60673; File No. SR-Phlx-2009-79)

September 15, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Position Limit
Exemptions

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 8, 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 amend Phlx Rules 1001 (Position Limits) and 1001A (Positions Limits) to enable Exchange members to rely on position limit exemptions granted by other options exchanges.

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.

¹ 15 U.S.C. 78s(b)(1).

² 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 Phlx Rules 1001 and 1001A to enable Exchange members to rely on position limit exemptions granted by other options exchanges under specified circumstances.

This proposed rule change is based on two rules of The NASDAQ Stock Market LLC (“Nasdaq”)³. The rule change is being proposed, subsequent to the merger of The NASDAQ OMX Group, Inc. (“NASDAQ OMX”) and the Philadelphia Stock Exchange, Inc. (now NASDAQ OMX PHLX, Inc.),⁴ to more closely align the position limit rules of the Exchange and Nasdaq.⁵

³ See Rules of the Nasdaq Options Market (“NOM Rules”) Chapter III, Section 8 and Chapter XIV, Section 8.

⁴ See Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008)(SR-Phlx-2008-31). See also Securities Exchange Act Release No. 58183 (July 17, 2008), 73 FR 26182 (May 8, 2008)(SR-NASDAQ-2008-035).

⁵ The proposal is similar in nature to previous proposals that, among other things, sought to more closely align the rules of the two exchanges Phlx and NOM. See, e.g., Securities Exchange Act Release Nos. 59764 (April 20, 2009), 74 FR 18761 (April 24, 2009) (SR-Phlx-2009-17)(approval order regarding proposal to modify the process for nominating Phlx Governors); 59924 (May 14, 2009), 74 FR 23759

Phlx position limits and procedures associated therewith for equity options, exchange traded fund share (“ETF”) options, currency options, and stock index warrants are located in Rule 1001. This rule deals with, in addition to numerical position limit values for the noted products, the concept of control for position limit purposes,⁶ hedge exemptions,⁷ firm facilitation exemptions,⁸ and delta-based equity exemptions.⁹ Phlx position limits and procedures associated therewith for index options are generally located in Rule 1001A. This rule, in addition to numerical position limits for index options, deals with position limit exemptions for index option products.¹⁰ Rules 1001 and 1001A, however, do not have provisions that recognize position limit exemptions that are granted to Exchange members by other option exchanges, as provided for in NOM Rules in Chapter III, Section 8 for non-index options and Chapter XIV, Section 8

(May 20, 2009) (SR-Phlx-2009-23)(approval order regarding proposal to eliminate various standing committees and making other miscellaneous changes); 60431 (August 4, 2009), 74 FR 40265 (August 11, 2009) (SR-Phlx-2009-59)(notice of filing relating to by-laws, Regulatory Oversight Committee, and referee program); and 59923 (May 14, 2009), 74 FR 23902 (May 21, 2009) (SR-NASDAQ-2009-046)(notice of filing and immediate effectiveness relating to criteria for securities that underlie options traded on NOM).

⁶ See Commentary .06 to Rule 1001.

⁷ See Commentary .07 to Rule 1001.

⁸ See Commentary .08 to Rule 1001.

⁹ See Commentary .09 to Rule 1001.

¹⁰ See, for example, Commentaries .01 (hedge exemption) and .02 (firm facilitation exemption) to Rule 1001A.

for index options.¹¹ In light of the desirability to have similar position limit standards, the Exchange is adding such exemptions to its Rules 1001 and 1001A.¹²

Specifically, new Commentary .10 to Rule 1001 and new Commentary .03 to Rule 1001A each provide that an Exchange member may rely upon any available exemptions from applicable position limits that are granted by another options exchange for any options contract traded on the Exchange provided that such member provides the Exchange either with a copy of any written exemption issued by another options exchange or with a written description of any exemption issued by another options exchange that is not in writing, where such description contains sufficient detail for Exchange regulatory staff to verify the validity of that exemption with the issuing options exchange. In addition, the member must fulfill all conditions precedent for such exemption and comply at all times with the requirements of such exemption with respect to the member's trading on the Exchange.

The Exchange notes that position limits tend to be similar across options exchanges, which is desirable in light of cross option exchange membership(s) and multiple listing and trading of similar product(s) on different exchanges. Because Exchange members and member firms frequently have membership and/or trading privileges on other options exchanges, it is important that ad hoc position limit exemptions granted by other options exchanges ("exemption grants") are available to Exchange members to the extent that such exemption grants are reduced to writing and

¹¹ See Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080)(approval order regarding NOM Rules including Chapters III and XIV.)

¹² Position limits for Cash Index Participations ("CIPs"), which are defined in Rule 1000B(b)(1), are established in Phlx Rule 1005B. CIPs are not currently listed and traded on the Exchange.

verifiable by Exchange staff per new Commentaries .10 and .03 to Rules 1001 and 1001A, respectively.¹³ Proposed Commentaries .10 and .03 do not give the Exchange the ability to expand the exemption grants but only to recognize the exemption so that the position limit process would be the same across the exchanges.

For example, during September 2009, firm XYZ may go to another options exchange such as Chicago Board Options Exchange (CBOE), the International Securities Exchange (ISE), or NOM to request a position limit exemption (exemption grant) in respect of option contracts in the SPDRs (SPY). The other exchange provides the exemption grant until expiration in the same month of September to this particular firm (XYZ) for this particular issue (SPY). Should firm XYZ, which is an Exchange member firm, then want to trade SPY on the Exchange to the extent of the exemption grant, the Exchange's proposed rule change would allow it to do so, but only to the extent that firm XYZ provides the Exchange with a copy of the written exemption grant provided by the issuing exchange or, if the exemption is not in writing to the extent that firm XYZ provides the Exchange with sufficient detail for Exchange regulatory staff to be able to verify the validity of the exemption grant with the issuing options exchange.¹⁴

The Exchange believes that by adding uniformity and predictability to the position limit process, the proposed rule change should be beneficial to the Exchange, its members and traders, and their customers. Moreover, the proposed rule change should

¹³ Proposed Commentaries .10 and .03 are, in turn, wholly based on the approved rules of another options exchange, namely NOM Rules Chapter III, Section 8 and Chapter XIV, Section 8, and as such are not novel or in any way controversial.

¹⁴ Additionally, firm XYZ would have to fulfill all conditions precedent for such exemption grant and comply with the requirements of such exemption with respect to trading on the Exchange.

promote competition by allowing trades across options exchanges that are similar in respect of position limits.¹⁵

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁷ 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 have uniform position limit procedures.

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

¹⁵ The Exchange notes that all reporting requirements, including Rule 1003 (Reporting of Options Positions) and Rule 1001A(c) (Reporting Requirements for Options on Market Indexes) remain in force.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6)¹⁹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.²⁰ However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.²¹ The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing, thereby giving the Exchange a uniform position limit process that can recognize all exemptions.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will afford Exchange members the benefit of the proposal—the ability to rely on exemptions granted by other exchanges, when appropriately documented—without unnecessary delay. For this reason, the Commission designates the proposed rule change as operative under upon filing.²²

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 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. Phlx has satisfied this requirement.

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ See id.

²² 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).

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.

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-2009-79 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-2009-79.

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. 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-2009-79 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.²³

Florence E. Harmon
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).