

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61277; File No. SR-Phlx-2009-108)

January 4, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NASDAQ OMX PHLX, Inc. to Amend the \$1 Strike Program to Allow Low-Strike LEAPS

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 December 18, 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 is filing with the Commission a proposal to amend its Rule 1012 (Series of Options Open for Trading) to expand the Exchange's \$1 Strike Price Program ("Program" or "\$1 Strike Program")³ to allow listing long-term option series ("LEAPS")⁴ in \$1 strike price

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The \$1 Strike Program was initially approved on June 11, 2003, and thereafter extended several times until June 5, 2008. See Securities Exchange Act Release Nos. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003)(SR-Phlx-2002-55)(notice of filing and order approving); 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004)(SR-Phlx-2004-38)(notice of filing and immediate effectiveness); 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005)(SR-Phlx-2005-35)(notice of filing and immediate effectiveness); 53938 (June 5, 2006), 71 FR 34178 (June 13, 2006)(SR-Phlx-2006-36)(notice of filing and immediate effectiveness); and 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007)(SR-Phlx-2007-29)(notice of filing and immediate effectiveness). The program was subsequently made permanent and expanded. See Securities Exchange Act Release Nos. 57111 (January 8, 2008), 73 FR 2297 (January 14, 2008)(SR-Phlx-2008-01)(notice of filing and immediate effectiveness); and 59590 (March 17, 2009), 74 FR 12412 (March 24, 2009)(SR-Phlx-2009-21)(notice of filing and immediate effectiveness).

⁴ Long-Term Equity Anticipation Securities (LEAPS) are long term options that generally have up to thirty-nine months from the time they are listed until expiration.

intervals up to \$5 in up to 200 option classes in individual stocks.

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

This proposed rule change is based on a filing previously submitted by Chicago Board Options Exchange, Incorporated ("CBOE") that was recently approved by the Commission.⁵

The purpose of the proposal is to expand the \$1 Strike Program in a limited fashion to allow Phlx to list new series in \$1 strike price intervals up to \$5 in LEAPS in up to 200 option classes on individual stocks.

Currently, under the \$1 Strike Program, the Exchange may not list LEAPS at \$1 strike price intervals for any class selected for the Program. The Exchange also is restricted from listing any series that would result in strike prices being \$0.50 apart, unless the series are part

Commentary .03 to Rule 1012. Long-term FLEX options and index options are considered separately in Rules 1079(a)(6) and 1101A(b)(iii), respectively.

⁵ See Securities Exchange Act Release No. 60978 (November 10, 2009), 74 FR 59296 (November 17, 2009)(SR-CBOE-2009-068)(order approving proposed rule change to allow listing LEAPS in \$1 Strike Program).

of the \$.50 Strike Program.⁶

Phlx believes that its proposal to allow limited listing of LEAPS in the Program is appropriate and will allow investors to establish option positions that are better tailored to meet their investment objectives, vis-à-vis credit risk, using deep out-of-the-money, long-term put options. These types of options are viewed as a viable, liquid alternative to over the counter-traded (“OTC”) credit default swaps (“CDS”), because such options do not possess the negative characteristics associated with CDS, namely, lack of transparency, insufficient collateral requirements, and inefficient trade processing.

The Exchange notes that its proposal is limited in scope, as \$1 strikes in LEAPS may only be listed up to \$5 and in only up to 200 option classes. As is currently the case in the \$1 Strike Program, the Exchange would not list series with \$1.00 intervals within \$0.50 of an existing \$2.50 strike price in the same series.⁷ As a result, the Exchange does not believe that this proposal will cause a significant increase in quote traffic.

Moreover, as the Commission is aware, the Exchange has adopted various quote mitigation strategies in an effort to lessen the growth rate of quotations. When it expanded the \$1 Strike Price Program several months ago the Exchange included a delisting policy that would be applicable with regard to this proposed expansion; the Exchange has likewise

⁶ Regarding the \$.50 Strike Program, see Commentary .05(a)(ii) to Rule 1012 and Securities Exchange Act Release No. 60694 (September 18, 2009), 74 FR 49048 (September 25, 2009)(SR-Phlx-2009-65)(notice of filing and order approving). The \$.50 Strike Program establishes strike price intervals of \$0.50 for options on stocks trading at or below \$3.00.

⁷ However, strike prices of \$2 and \$3 are permitted within \$0.50 of a \$2.50 strike price for classes also selected for the \$.50 Strike Program. See proposed Commentary .05(a)(i)(C) to Rule 1012, which is similar in this respect to the current Commentary .05(a)(i)(B).

established a number of other delisting policies.⁸ The Exchange and other options exchanges amended the Options Listing Procedures Plan (“OLPP”) in 2008 to impose a minimum volume threshold of 1,000 contracts national average daily volume (“ADV”) per underlying class to qualify for an additional year of LEAP series.⁹ Most recently, the Exchange, along with the other options exchanges, amended the OLPP to adopt objective, exercise price range limitations applicable to equity option classes, options on Exchange Traded Funds (“ETFs”) and options on trust issued receipts (“TIRs”)(the “range limitation strategy”).¹⁰ The Exchange has filed a rule change proposal to codify the range limitation strategy in its own rules.¹¹ The Exchange believes that these price range limitations, in conjunction with the delisting policies in place at the Exchange,¹² will have a meaningful quote mitigation impact.

⁸ For the \$1 Strike Program delisting policy, see Securities Exchange Act Release No. 59590 (March 17, 2009), 74 FR 12412 (March 24, 2009)(SR-Phlx-2009-21)(notice of filing and immediate effectiveness). The \$1 Strike Program delisting policy includes a provision stating that the Exchange may grant member requests and add strikes and/or maintain strikes in series of options classes traded pursuant to the Program that are eligible for delisting. For other delisting policies proposed and implemented by the Exchange, see Securities Exchange Act Release Nos. 60249 (July 6, 2009), 74 FR 33506 (July 13, 2009)(SR-Phlx-2009-50)(notice of filing and immediate effectiveness regarding Quarterly Options Series program); 60156 (June 22, 2009), 74 FR 31077 (June 29, 2009, 2009)(SR-Phlx-2009-46)(notice of filing and immediate effectiveness regarding options on reduced value NASDAQ-100 index); 60840 (October 20, 2009), 74 FR 55593 (October 28, 2009)(SR-Phlx-2009-77)(order approving listing certain options at \$1 strike price intervals below \$200); and Commentary.11 to rule 1010 (low ADV delisting policy) and Securities Exchange Act Release No. 56881 (December 3, 2007), 72 FR 69276 (December 7, 2007)(SR-Phlx-2007-72)(notice of filing and immediate effectiveness regarding delisting securities underlying low ADV options).

⁹ See Securities Exchange Act Release No. 58630 (September 24, 2008), 73 FR 57166 (October 1, 2008)(File No. 4-443)(order approving Amendment No. 2 to OLPP).

¹⁰ See Securities Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009)(File No 4-443)(order approving Amendment No. 3 to OLPP). Phlx’s proposal to list \$1 strikes in LEAPs to \$5 would not be subject to the exercise price range limitations contained in new paragraph (3)(g)(ii) of the OLPP.

¹¹ See SR-Phlx-2009-103 (unpublished).

¹² See, for example, Securities Exchange Act Release Nos. 60249 (July 6, 2009), 74 FR 33506 (July 13, 2009)(SR-Phlx-2009-50)(notice of filing and immediate effectiveness regarding Quarterly Options Series program); 60156 (June 22, 2009), 74 FR 31077

The margin requirements set forth in Rules 721 through 723 and the position and exercise requirements set forth in Rules 1001 and 1002, respectively, will continue to apply to these new series, and no changes are being proposed to those requirements by this rule change.

With regard to the impact on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional traffic that may be associated with the listing and trading of LEAPS in the \$1 Strike Program as proposed by this filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁴ 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. The Exchange believes that the ability to list and trade LEAPS at \$1 strike price intervals will benefit investors by giving them more flexibility to more closely tailor their investment and hedging decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden

(June 29, 2009, 2009)(SR-Phlx-2009-46)(notice of filing and immediate effectiveness regarding options on reduced value NASDAQ-100 index); 60840 (October 20, 2009), 74 FR 55593 (October 28, 2009)(SR-Phlx-2009-77)(order approving listing certain options at \$1 strike price intervals below \$200); and Commentary.11 to rule 1010 (low ADV delisting policy) and Securities Exchange Act Release No. 56881 (December 3, 2007), 72 FR 69276 (December 7, 2007)(SR-Phlx-2007-72)(notice of filing and immediate effectiveness regarding delisting securities underlying low ADV options).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

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; or (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission hereby grants that request.¹⁷ The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it recently approved a proposal from CBOE which is nearly identical to the current proposal and on which no comments were received.¹⁸ Therefore, the proposal is operative upon filing.

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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 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, 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.

¹⁷ 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).

¹⁸ See Exchange Act Release No. 60978 (November 10, 2009), 74 FR 59296 (November 17, 2009) (approving SR-CBOE-2009-68).

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 No. SR-Phlx-2009-108 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 No. SR-Phlx-2009-108. 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 Phlx. 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-Phlx-2009-108 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.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).