

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62294; File No. SR-Phlx-2010-81)

June 15, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. to List Options on Trust Issued Receipts in \$1 Strike Intervals

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 10, 2010, 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 Exchange Rule 1012 to allow the Exchange to list options on Trust Issued Receipts in \$1 strike price intervals.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, on the Commission's Web site at <http://www.sec.gov>, 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 Exchange Rule 1012, Series of Option Contracts Open for Trading, by adding additional text to Commentary .05(a)(vi) to allow the Exchange to list options on the Trust Issued Receipts (“TIRs”), including Holding Company Depository Receipts (“HOLDRS”), as defined under Commentary .05(a)(iv) to Rule 1012, in \$1 or greater strike price intervals, where the strike price is \$200 or less and \$5 or greater where the strike price is greater than \$200.³

Currently, the strike price intervals for options on TIRs are as follows: (1) \$2.50 or greater where the strike price is \$25.00 or less; (2) \$5.00 or greater where the strike

³ HOLDRS are a type of Trust Issued Receipt and the current proposal would permit \$1 strikes for options on HOLDRS (where the strike price is less than \$200).

price is greater than \$25.00; and (3) \$10.00 or greater where the strike price is greater than \$200.⁴

The Exchange is seeking to permit \$1 strikes for options on TIRs (where the strike price is less than \$200) because TIRs have characteristics similar to exchange-traded funds (“ETFs”). Specifically, TIRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the receipts. They are negotiable receipts issued by a trust representing securities of issuers that have been deposited and held on behalf of the holders of the TIRs. TIRs, which trade in round-lots of 100, and multiples thereof, may be issued after their initial offering through a deposit with the trustee of the required number of shares of common stock of the underlying issuers. This characteristic of TIRs is similar to that of ETFs which also may be created on any business day upon receipt of the requisite securities or other investment assets comprising a creation unit. The trust only issues receipts upon the deposit of the shares of the underlying securities that are represented by a round-lot of 100 receipts. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender TIRs in a round-lot and round-lot multiples of 100 receipts.

Strike prices for ETF options are permitted in \$1 or greater intervals where the strike price is \$200 or less and \$5 or greater where the strike is greater than \$200.⁵

⁴ See Exchange Rule 1012, Commentary .05(a)(iii). See also Securities Exchange Act Release No. 44709 (August 16, 2001), 66 FR 44194 (August 22, 2001) (SR-Phlx-2001-71).

⁵ See Exchange Rule 1012, Commentary .05 (permitting \$1 strikes for options on Units covered under Commentary .05, also known as ETF options).

Accordingly, the Exchange believes that the rationale for permitting \$1 strikes for ETF options equally applies to permitting \$1 strikes for options on TIRs.

The Exchange has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary system capacity to handle the additional traffic associated with the listing and trading of \$1 strikes, where the strike price is less than \$200, for options on TIRs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ 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 list options on TIRs at \$1 strike price intervals. The Exchange believes that the marketplace and investors expect options on TIRs to trade in a similar manner to ETF options and this filing would allow the marketplace and investors the ability in trading options on TIRs. The Exchange further believes that investors will be better served if \$1 strike price intervals are available for options on TIRs, where the strike price is less than \$200.

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

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to a rule of another exchange that has been approved by the Commission.¹⁰ Therefore, the Commission designates the proposal operative upon filing.¹¹

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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 C.F.R. 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to 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 Commission has waived the five-day pre-filing requirement in this case.

¹⁰ See Securities Exchange Release No. 34-62141 (May 20, 2010), 75 FR 29787 (May 27, 2010) (SR-CBOE-2010-036).

¹¹ 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).

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-2010-81 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-2010-81. 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 Web site 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-2010-81 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

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).