

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64480; File No. SR-Phlx-2011-65)

May 12, 2011

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX  
PHLX LLC Regarding Opening Index Option Months and Series

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 6, 2011, NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III 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 clarify that the Exchange will open at least one expiration month and one series for each class of index options open for trading on the Exchange; and that the Exchange may open additional series of index options under certain circumstances. The proposed change is based directly on the recently approved rule of another options exchange, namely Chapter IV, Sections 6 of the NASDAQ Options Market, as well as on Rule 1012 (Series of Options Open for Trading) of the Exchange.

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, on the Commission’s website at [www.sec.gov](http://www.sec.gov), and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 this proposed rule change is to amend Exchange Rule 1101A to indicate that the Exchange will open at least one expiration month and one series for each class of index options open for trading on the Exchange; and that the Exchange may open additional series of index options under certain circumstances. The proposed change is based directly on the recently approved rules of another options exchange, namely Chapter IV, Sections 6 and 8 of the NASDAQ Options Market (“NOM”), as well as on Rule 1012 of the Exchange.<sup>3</sup>

In 2008, the Commission approved the establishment of NOM and rules pertaining thereto<sup>4</sup> that, among others, included NOM Chapter IV, Section 6 regarding series of options

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<sup>3</sup> NOM and the Exchange are each self-regulatory organizations (“SROs”) that operate as independent options exchanges within the NASDAQ OMX Group.

<sup>4</sup> See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008)(SR-NASDAQ-2007-004 and NASDAQ-2007-080)(order approving rules for trading of options on the NASDAQ Options Market, including Chapter IV, Sections 6 and 8).

contracts open for trading<sup>5</sup> and Section 8 regarding long-term options contracts. NOM Sections 6 and 8 generally apply to options that overlay single-stocks or Exchange-Traded Funds and similar products.

In 2011, the Exchange filed an immediately effective proposal at SR-Phlx-2011-04 to conform its rule 1012 regarding the listing of months and series of options on stock or Exchange Traded Fund Shares (“ETFs”) that are approved for listing and trading on the Exchange to the equivalent NOM rules at Chapter IV, Section 6 and Section 8.<sup>6</sup> By SR-Phlx-2011-04, the Exchange harmonized its Rule 1012 regarding opening a minimum of one option expiration month and series for trading and adding new series with similar NOM procedures.<sup>7</sup>

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<sup>5</sup> NOM Chapter IV, Sec 6 states, in relevant part: (b) At the commencement of trading on NOM of a particular class of options, NOM will open a minimum of one (1) series of options in that class. The exercise price of the series will be fixed at a price per share, relative to the underlying stock price in the primary market at about the time that class of options is first opened for trading on NOM.

(c) Additional series of options of the same class may be opened for trading on NOM when Nasdaq deems it necessary to maintain an orderly market, to meet Customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. The opening of a new series of options shall not affect the series of options of the same class previously opened. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, Nasdaq, in its discretion, may add a new series of options on an individual stock until five (5) business days prior to expiration.

<sup>6</sup> See Securities Exchange Act Release No. 63700 (January 11, 2011), 76 FR 2931 (January 18, 2011) (SR-Phlx-2011-04) (notice of filing and immediate effectiveness conforming Phlx Rule 1012 and NOM Chapter IV, Sections 6 and 8).

<sup>7</sup> Rule 1012 states, in relevant part: (A) At the commencement of trading on the Exchange of a particular class of stock or Exchange-Traded Fund Share options, the Exchange shall open a minimum of one expiration month and series for each class of options open for trading on the Exchange.

(B) Additional series of stock or Exchange-Traded Fund Share options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. The opening of a new series of options shall not affect the series of options of the

The Exchange now proposes to similarly revise its Rule 1101A regarding the listing of months and series of options on index products. The rule changes proposed by the Exchange to Phlx Rule 1101A(b) are, to the extent practicable, identical to specified rule provisions in Phlx Rule 1012(a) and NOM Chapter IV, Section 6. The Exchange believes that its proposal is proper, and indeed desirable, in light of its objective to continue to harmonize the listing rules for options products offered for trading on the Exchange, particularly in light of the symbiotic hedging and trading relationship between stock index options and other option classes such as stock and ETF options.

Rule 1101A has developed in the latter portion of the last century to discuss, among other things, price intervals for index options, quarterly options and short term options, and when the Exchange may open months and series (including long-term series) in classes of index options that have been approved for listing and trading on the Exchange. Rule 1101A(b) currently indicates how the Exchange initially fixes expiration months and series in these options.<sup>8</sup> The

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same class previously opened. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until five (5) business days prior to expiration.

<sup>8</sup> Rule 1101A(b) states, in relevant part: (b) After a particular class of stock index options has been approved for listing and trading on the Exchange, the Exchange shall from time to time open for trading series of options therein. Within each approved class of stock index options, the Exchange may open for trading series of options expiring in consecutive calendar months ("consecutive month series"), as provided in subparagraph (i) of this paragraph (b), series of options expiring at three-month intervals ("cycle month series"), as provided in subparagraph (ii) of this paragraph (b) and/or series of options having up to thirty-six months to expiration ("long-term options series") of this paragraph (b). Prior to the opening of trading in any series of stock index options, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series.

Subsections (b)(i) and (ii) discuss consecutive month series and cycle month series, respectively. Subsection (b)(iii) discusses long-term option series.

Exchange now conforms portions of its older Rule 1101A(b) to its recently-updated Rule 1012 as based on NOM Chapter IV, Section 6.

First, the Exchange proposes to state in Rule 1101A(b) that at the commencement of trading on the Exchange of a particular class of stock index options, the Exchange will open at least one expiration month and series for each class of options open for trading on the Exchange, thereby replacing the current language in subsection (b) about opening index options. The language change proposed by the Exchange in Rule 1101A(b) regarding one expiration month and series is taken directly (and is practically verbatim) from Exchange Rule 1012 (a)(i)(A), as also from NOM Chapter IV, Section 6(b) and (e). The Exchange notes that the proposed change affords additional flexibility so that multiple option classes and series are not mandated if they are not needed, thereby potentially reducing the proliferation of classes and series.

Second, in light of the proposed language in Rule 1101A(b) regarding opening one month and series, the Exchange is deleting all inapposite language in Rule 1101A. As such, reference to consecutive month series in subsection (b)(i) and to cycle month series in subsection (b)(ii) is eliminated. Similarly, reference to consecutive and cycle month series is eliminated from subsection (b)(iii). This is analogous to what the Exchange did when it conformed its Rule 1012 and NOM Chapter IV, Section 6.<sup>9</sup>

Third, the Exchange proposes to add new language in Rule 1101A(b)(i) to state that it may open additional option series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. New series of options may be

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<sup>9</sup> In the filing that conformed Rule 1012 with NOM Chapter IV, Section 6, for example, the Exchange deleted reference to the cycle month concept. See supra note 6.

added until the beginning of the month in which the options contract will expire. Additionally, due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until five (5) business days prior to expiration. The language for this proposed rule change is likewise taken directly Exchange Rule 1012 (a)(i)(B), as also from NOM Chapter IV, Section 6(c).

Fourth, the Exchange proposes to add new language into Rule 1101A(b)(i) stating that the opening of a new series of options shall not affect the series of options of the same class previously opened. The language of this proposal is taken directly from Exchange Rule 1012(a)(i)(B) (and is similar to language present in NOM Chapter IV, Section 6(c)). Moreover, the Exchange notes that similar language is present in subsections of Rule 1101A that were added more recently, such as subsection (b)(v)(D) regarding the Quarterly Options Series Program and subsection (b)(vi)(D) regarding the Short Term Options.<sup>10</sup>

The Exchange notes that all of the language proposed in this filing is similar to language in current Phlx Rule 1012 and NOM Chapter IV, Section 6, and to the extent practicable is taken verbatim therefrom.<sup>11</sup> Moreover, the proposed language has been in continual use on the Exchange since the beginning of 2011 and on NOM for over three years.<sup>12</sup> Finally, the proposed

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<sup>10</sup> See Securities Exchange Act Release Nos. 62296 (June 15, 2010), 75 FR 35115 (June 21, 2010)(SR-Phlx-2010-84)(notice of filing and immediate effectiveness regarding Short Term Options); and 55301 (February 15, 2007), 72 FR 8238 (February 23, 2007)(SR-Phlx-2007-08)(notice of filing and immediate effectiveness regarding Quarterly Option Series).

<sup>11</sup> Moreover, because certain proposed language, such as that regarding additional series of options, is not currently elucidated in Rule 1101A, the rule is supplemented to set forth addition of new series to an existing option class up to five business days prior to expiration. The Exchange has been following the practice of not adding new series of options on individual stocks within five days of expiration.

<sup>12</sup> See supra notes 4 and 6.

language is fundamental to achieving harmonization of Exchange rules across option categories used by market participants for trading and hedging on the Exchange.

For example, a retail (e.g., individual) investor long Apple (APPL) call options expiring in October 2011 may wish to hedge his APPL position with a corresponding position in October put options of the Alpha Index<sup>13</sup> AAPL/SPY (AVSPY) that quantifies the return of AAPL stock vs. the ETF SPY. Or, a market participant with a position in options on Hovnanian Enterprises, Inc. (HOV) may wish to hedge his position with options on a proprietary index traded on the Exchange such as the PHLX Housing Sector<sup>SM</sup> (HGX). Clearly, Exchange market participants engage in hedging and trading opportunities across various option classes listed on the Exchange, and seek the most efficient strategies. These strategies require the ability to closely coordinate the expiration dates of the options months and series involved. Because Exchange listing rules regarding months and series of options on indexes such as AVSPY and HGX currently are not the same as equivalent listing rules for single-stock options such as AAPL and HOV, however, the above-described hedges likely could not be done at all, let alone efficiently. The Exchange's proposal would remedy this situation.

The Exchange believes that harmonization of Exchange rules and the rules of the options exchanges under the NASDAQ OMX umbrella would allow more precise tailoring of hedging and trading opportunities and would thereby be beneficial to the Exchange and its traders, market participants, and public investors in general.

In terms of housekeeping changes, the Exchange proposes to make a non-substantive change that amends subsection (b) of Rule 1101A to "60" months. This is done to conform

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<sup>13</sup> See Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2011)(SR-Phlx-2010-176)(order approving NASDAQ OMX Alpha Indexes).

subsection (b) with subsection (b)(3), which discusses long-term options series having up to 60 months to expiration.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> 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 proposes to clarify that it will open at least one expiration month and one series for each class of index options open for trading on the Exchange, and under what circumstances it may open additional series of index options, and thereby harmonize its rules and the rules of Phlx and NOM. The Exchange believes that this would allow better hedging and trading opportunities and efficiency, and would be beneficial to the Exchange and its traders, market participants, and public investors in general.

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.

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<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-65 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-2011-65. 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 website (<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 website 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 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 publicly available. All submissions should refer to File Number SR-Phlx-2011-65 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.<sup>16</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).