

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82170; File No. SR-PHLX-2017-96)

November 29, 2017

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section (a)(i)(D) of Rule 1012, Series of Options Open for Trading

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 November 17, 2017, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 proposes to amend Section (a)(i)(D) of Rule 1012, Series of Options Open for Trading, to delete two sentences regarding opening for trading of long term option series, which sentences have effectively been superseded by another rule.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqphlx.cchwallstreet.com/>, 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

Section (a)(i)(D) of Rule 1012 currently provides that the Exchange may list, with respect to any class of stock or Exchange-Traded Fund Share options series, options having from twelve up to thirty-nine months from the time they are listed until expiration. There may be up to six expiration months. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine months.

Section (a)(i)(D) also provides in its last two sentences that such option series will open for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first, and that no quotations need to be posted for such option series until they are opened for trading. The Exchange proposes to delete the outdated provision of Section (a)(i)(D) regarding the time of opening as inconsistent with, and unnecessary in view of, Rule 1017, Openings in Options, which governs in detail all openings on the Exchange, including openings in long term option series.³ The Exchange proposes to delete the Section (a)(i)(D) provision that no quotations need to be posted for such option series until they are opened for

³ The Exchange recently amended Rule 1017, Openings in Options, which clarified the manner in which the opening process occurs on Phlx. See Securities Exchange Act Release No. 80820 (May 31, 2017), 82 FR 26171 (June 6, 2017) (SR-Phlx-2017-40).

trading as superfluous, given that no quotations need to be posted for **any** series of options traded on the Exchange until they are opened for trading.⁴

Rule 1017 does provide in great detail for a fully automated opening of trading when there is buying or selling interest in all options series, including long term option series. Generally speaking, the fully automated opening process begins when either (1) a “valid width” specialist quote is submitted, (2) valid width quotes are received from at least two Exchange market makers within two minutes of the opening trade or quote in the underlying security or (3) after two minutes of the opening trade or quote in the underlying, valid width quotes are received from one Exchange market maker. If an opening imbalance exists outside of an acceptable range, the system will initiate an imbalance process. During this process the Exchange will consider interest on the Exchange as well as interest on away exchanges. If there is not an opening imbalance outside of an acceptable range on the Exchange, the system will verify that a “quality opening market” exists in order to validate the opening price prior to executing interest on the opening. A quality opening market is a bid/ask spread with an acceptable differential as defined by the Exchange. The bid/ask spread is made up of the best available bid, on the Exchange as well as away markets, and the best available offer, on the Exchange as well as away market. The acceptable bid/ask spread differentials can be found on the Exchange’s website.

⁴ The Exchange interprets “posted” in Section (a)(i)(D) as meaning published on the Options Price Reporting Authority (“OPRA”). Rule 1017(d)(iii) provides that “[t]he Specialist assigned in a particular equity or index option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index.” The quote resulting from the Specialist’s obligation under Rule 1017(d)(iii) is considered in the opening process of Rule 1017, and the Exchange publishes a quote in the option series once the option has been opened pursuant to that rule.

Rule 1017 does not provide for the opening of long term option series 40 minutes prior to the close. The Exchange proposes to remove this inconsistent anachronism, still found in Rule 1012(A)(i)(D), as the Exchange no longer believes that long term options warrant special opening treatment but should open like other options under Rule 1017, pursuant to a fully automated process in which options open once certain precise conditions have been met. Although removing the provision that long term option series must open forty minutes prior to the close of trading even if there is no buying or selling interest, the Exchange believes it will be rare for a long term option series not to have buying or selling interest in any event, due to Exchange members' quoting obligations.

A number of exchanges' long term options series rules contain the same provisions contained in the last two sentences of Rule 1012(A)(i)(D). These provisions appear to have been put in place due to the fact that long-term series are usually very inactively traded.⁵ Although long term options series continue to be inactively traded, the Exchange no longer believes it is necessary to accommodate long term options openings in this manner, and prefers to have the procedures specified in Rule 1017 apply uniformly across options classes for the sake of efficient operation of the Exchange and the minimization of investor confusion. The Exchange believes it is counterintuitive to impose such requirements with respect to long-term series when the

⁵ See, e.g., Securities Exchange Act Release No. 30010 (November 27, 1991), 56 FR 63747 (December 5, 1991) (SR-NYSE-91-33) (Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Listing of Long-Term Equity Options), in which the Commission found that the New York Stock Exchange's proposal to open the long-term series for trading either when there is buying or selling interest or 40 minutes prior to the close (whichever occurs first) was consistent with the approach taken by the other options exchanges and was consistent with the Act because long-term series are usually very inactively traded. See also Chicago Board Options Exchange Rule 5.8(b) and NYSE Arca Rule 6.3(e)(i), which contain the same provisions the Exchange proposes to delete.

requirements do not apply for other series that may be opened pursuant to Rule 1017. Further, the Exchange has no systemic means to force an option to open forty minutes prior to the close.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ 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 eliminating an outdated provision regarding opening of long term option series, thereby eliminating an internal inconsistency in the Exchange's rulebook. The language the Exchange is proposing to remove is inconsistent with Rule 1017. Permitting opening of long term options series in the same manner as all other options, under the fully automated process set forth in Rule 1017 will result in operational efficiencies for the Exchange and will minimize potential investor confusion regarding the Exchange's opening 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. The opening process for long term option series will continue to operate in the same manner as today, pursuant to Rule 1017. The proposal does not change the intense competition that exists among the options markets for options business including on the opening. Nor does the Exchange believe that the proposal will impose any burden on intra-market competition; the opening process involves many types of participants and interest. The proposal merely removes an outdated rule provision that is inconsistent with Rule 1017.

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

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 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)(iii) of the Act⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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:

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 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. The Exchange has satisfied this requirement.

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-2017-96 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PHLX-2017-96. 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 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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-PHLX-2017-96, 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.¹⁰

Eduardo A. Aleman
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).