

on equitable grounds. The Applicants contend that the Credit provisions are generally beneficial to the Contract Owner. The recapture provisions of the Current Contracts temper this benefit somewhat, but unless the Contract Owner dies, the Contract Owner retains the ability to avoid the Credit recapture in the circumstances described in the application. The Applicants state that the Credit recapture provisions are necessary for NWL to offer the Credits and avoid anti-selection against it. No CDSC would be imposed in any of the circumstances under which a Credit would be recaptured.

10. The Applicants submit that it would be inequitable to NWL to permit a Contract Owner to keep his or her Credits upon his or her exercise of the Current Contract's free look provision. Because no CDSC applies to the exercise of the free look right, the Contract Owner could obtain a quick profit in the amount of the Credit at NWL's expense by exercising that right immediately after the Credits were applied to the Current Contract.

11. Likewise, the Applicants submit that it would be inequitable to permit a Contract Owner or beneficiary to keep Credits in those situations where the annuitant dies within 12 months of applying a Credit, where Credits are applied after the Contract Owner's death, or where the Contract Owner takes a surrender or withdrawal from the Current Contract without a CDSC under the terms of the Long-Term Care/Nursing Home and Terminal Illness Waiver within 12 months of applying a Credit. In these situations, NWL would be unable to recover the cost of granting the Credits because they would be redeemed out of the Current Contract before enough time passed for NWL to recoup a sufficient portion of the associated costs through the assessment of charges, particularly the daily Mortality and Expense Risk Charge and the daily Administrative Charge. The Applicants state that NWL cannot offer the proposed Credits without the ability to recapture those Credits in the circumstances described herein.

12. The Applicants state, based on the grounds presented below, that their exemptive request meets the standards set out in section 6(c) of the act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the act and that, therefore, the Commission should grant the requested order.

13. The Applicants submit that their request for an Order that is applicable

to the Contracts and Other Accounts, as well as Other Underwriters, is appropriate in the public interest. The Applicants also contend that such Order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of the Applicants' resources. The Applicants further assert that investors would not receive any benefit or additional protection by requiring the Applicants to repeatedly seek exemptive relief that would present no issue under the act that has not already been addressed in the Amended Application described herein. The Applicants submit that filing additional applications would impair their ability to effectively take advantage of business opportunities as they arise. Furthermore, the Applicants state that if they were repeatedly required to seek exemptive relief with respect to the same issues addressed in the Amended Application described herein, investors would not receive any benefit or additional protection thereby.

#### Conclusion

Applicants submit that based on the analysis presented above, the provisions for recapture of the Credit under the Contracts does not violate sections 2(a)(32) and 27(i)(2)(A) of the act and rule 22c-1 thereunder. Applicants further submit that there are equitable grounds for granting the requested relief and the exemptions requested meet the standards of section 6(c) of the act and respectfully request that the Commission issue an order of approval pursuant to section 6(c) of the act to exempt the Applicants with respect to: (1) The Contracts; (2) the Separate Account and Other Accounts that support the Contracts; and (3) NISC and Other Underwriters, from the provisions of sections 2(a)(32) and 27(i)(2)(A) of the act and rule 22c-1 thereunder, to the extent necessary to permit the recapture of all or a portion of the Credits in the circumstances described above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2010-16754 Filed 7-8-10; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an Open Meeting on July 14, 2010 at 10 a.m., in the Auditorium, Room L-002.

The Commission will consider whether to issue a concept release to solicit public comment as to whether the Commission should consider revisions to its rules to promote greater efficiency and transparency in the U.S. proxy system and enhance the accuracy and integrity of the shareholder vote.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: July 7, 2010.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2010-16888 Filed 7-7-10; 4:15 pm]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62420; File No. SR-Phlx-2010-72]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Granting Approval of Proposed Rule Change To Expand Its \$1 Strike Program to 150 Classes

June 30, 2010.

#### I. Introduction

On May 7, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to expand the Exchange's \$1 Strike Price Program<sup>3</sup> (the "\$1 Strike Program" or "Program") to allow the Exchange to select 150 individual stocks on which options may be listed at \$1 strike price intervals. The proposed rule change was published for comment in

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Phlx Rule 1012, Commentary .05(a)(i).

the **Federal Register** on May 28, 2010.<sup>4</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

## II. Description of the Proposals

The \$1 Strike Program was established as a pilot program on June 11, 2003.<sup>5</sup> The Program was subsequently made permanent in 2008,<sup>6</sup> and was last expanded in 2009.<sup>7</sup> The \$1 Strike Program currently allows the Exchange to select a total of 55 individual stocks on which option series may be listed at \$1 strike price intervals. To be eligible for inclusion in the Program, an underlying stock must close below \$50 in its primary market on the previous trading day. For each stock selected for the Program, the Exchange may list strike prices at \$1 intervals from \$1 to \$50, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day. The Exchange also may list \$1 strikes on any other option class designated by another securities exchange that employs a similar program under that exchange's rules.

The Exchange may not list long-term option series with \$1 strike price intervals for any class selected for the program, except as specifically permitted by Exchange rules.<sup>8</sup> The Exchange is restricted from listing any series that would result in strike prices being \$0.50 apart, except that series with strike prices of \$2, \$3, and \$4 are permitted within \$0.50 of an existing series for classes also selected to participate in the \$0.50 strike program.<sup>9</sup>

The Program includes a delisting policy that requires the Exchange, on a monthly basis, to review series that

were originally listed under the Program with strike prices that are more than \$5 from the current underlying values of the options classes in the Program. The Exchange shall delist series with no open interest in both the put and the call series having either: (i) A strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; or (ii) a strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.<sup>10</sup>

The Exchange has proposed to amend its rules to expand the \$1 Strike Program to allow each Exchange to select a total of 150 individual stocks on which option series may be listed at \$1 strike price intervals. The existing restrictions on listing series with \$1 strikes, as outlined above, will continue. The provision that each Exchange may also list series with \$1 strikes on any other option class designated by another securities exchange that employs a similar program under that exchange's rules will remain unchanged.

The Exchange represented that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of options series as proposed by this filing. In addition, the Exchange noted that, since the inception of the Program in 2003, the Exchange has not had any substantive problems, related to capacity or otherwise, attributed to the Program or the listing and trading of options at \$1 strike intervals.

## III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act<sup>12</sup> in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

Currently, the maximum number of classes on which \$1 strike intervals may

be listed is 440 (8 × 55), as there are eight exchanges that offer a \$1 strike program. Phlx has represented in its filing that market conditions have led to an increase in the number of securities trading below \$50, and that there are currently more than 2,000 options classes for which the underlying stock trades below \$50. The Exchange reports that it has, therefore, received repeated requests from its members to expand the \$1 Strike Program to a greater number of classes. However, the Exchange is constrained from doing so because it has listed \$1 strike options on the maximum number of 55 classes under its current rule.

The Commission believes that, as the price of an underlying stock declines, narrower strike price intervals on options overlying the stock may be appropriate. In this case, the Commission believes that the proposal to have \$1 strike price intervals in a limited number of active options series priced between \$1 and \$50 is consistent with the Act. The expanded \$1 Strike Program appears reasonably designed to allow investors to establish equity options positions that are better tailored to meet their investment objectives, particularly given current market conditions. The Commission also believes that continued adherence to the delisting policy should ensure the Exchange's expanded \$1 Strike Program maintains a reasonable balance between the Exchange's desire to accommodate market participants by offering a wider array of products and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes or a significant dispersal of liquidity across multiple series.

In approving the proposed rule change, the Commission has relied on the Exchange's representation that it has the necessary systems capacity to support the new options series that will be listed under this proposal. Further, the Commission expects that the Exchange will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

## IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule changes (SR-Phlx-2010-72) be, and they hereby are, approved.

<sup>4</sup> Securities Exchange Act Release No. 62151 (May 21, 2010), 75 FR 30078 ("Notice").

<sup>5</sup> See Securities Exchange Act Release No. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (SR-Phlx-2002-55) (approval of pilot program). The Strike Program was then extended several times until June 5, 2008. See Securities Exchange Act Release Nos. 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (SR-Phlx-2004-38); 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005) (SR-Phlx-2005-35); 53938 (June 5, 2006), 71 FR 34178 (June 13, 2006) (SR-Phlx-2006-36); and 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR-Phlx-2007-29).

<sup>6</sup> See Securities Exchange Act Release No. 57111 (January 8, 2008), 73 FR 2297 (January 14, 2008) (SR-Phlx-2008-01).

<sup>7</sup> See Securities Exchange Act Release No. 59590 (March 17, 2009), 74 FR 12412 (March 24, 2009) (SR-Phlx-2009-21).

<sup>8</sup> See Securities Exchange Act Release No. 61277 (January 4, 2010), 75 FR 1442 (January 11, 2009) (SR-Phlx-2009-108) (notice of filing and immediate effectiveness of a rule change permitting the Exchange to list up to 200 option classes on individual stocks with \$1 strike prices up to \$5 in LEAPS®).

<sup>9</sup> See Phlx Rule 1012, Commentary .05(a)(ii).

<sup>10</sup> Notwithstanding the delisting policy, the Exchange may grant member requests to add strikes and/or maintain strikes in series of options classes traded pursuant to the Program that are eligible for delisting.

<sup>11</sup> In approving these proposed rule changes, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Elizabeth M. Murphy,  
Secretary.

[FR Doc. 2010-16682 Filed 7-8-10; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62377; File No. SR-NYSEArca-2010-55]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. To Amend the Bylaws of NYSE Euronext To Adopt a Majority Voting Standard in Uncontested Elections of Directors

#### Correction

In notice document 2010-16106 beginning on page 38576 in the issue of July 2, 2010, make the following correction:

On page 38579, in the final line of the first paragraph, "June 23, 2010" should read "July 23, 2010".

[FR Doc. C1-2010-16106 Filed 7-8-10; 8:45 am]

BILLING CODE 1505-01-D

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62444; File No. SR-ISE-2010-72]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the International Securities Exchange, LLC To Expand and Permanently Establish Its Short Term Option Series Program

July 2, 2010.

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 July 1, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 Exchange has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 its rules regarding the Short Term Option Series Program. The text of the proposed rule change is available on the Exchange's Web site <http://www.ise.com>, 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.

#### 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 self-regulatory organization 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

On July 12, 2005, the Commission approved the Short Term Option Series Program (the "Program") on a pilot basis that allows ISE to list and trade Short Term Option Series.<sup>5</sup> The Program was subsequently extended<sup>6</sup> and the current Program is set to expire on July 12, 2010.<sup>7</sup> The Commission has also approved permanent establishment of the Program in 2009 on behalf of the Chicago Board Options Exchange ("CBOE").<sup>8</sup> Thereafter, CBOE amended its rules to permit opening Short Term Options Series not just on Friday but also on Thursday.<sup>9</sup>

The Purpose of this proposed rule change is to amend ISE rules to (1) make the Program permanent, (2) increase to

twenty the number of series the Exchange may open for each expiration date in a class, and (3) permit the Exchange to open a Short Term Options Series for trading on any Thursday or Friday. The Exchange's proposal is based on the short term options program currently in place at the CBOE.<sup>10</sup> The Exchange also proposes to make non-substantive changes to reorganize the rule text related to the Program so that applicable terms are located within a single section. These non-substantive changes do not change the substance of the Program.

Under the terms of the Program currently in place, after an option class has been approved for listing and trading on the Exchange, ISE may open for trading on any Friday that is a business day ("Short Term Option Opening Date") series of options on that class that expire on the next Friday that is a business day ("Short Term Option Expiration Date"). If the Exchange is not open for business on a Friday, the Short Term Option Opening Date is the first business day immediately prior to that Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date is the first business day immediately prior to that Friday. Further, the Exchange can select up to five options classes on which Short Term Option Series may be opened on any Short Term Option Series Opening Date. The Exchange is also allowed to list Short Term Option Series on any option class that is selected by other securities exchanges that employ a similar program under their respective rules. Further, for each option class eligible for participation in the Program, the Exchange may open up to five Short Term Option Series for each expiration date in that class. The strike price of each Short Term Option Series is fixed at a price per share, with at least two strike prices above and two strike prices below the value of the underlying security at about the time that Short Term Option Series is opened for trading on the Exchange.

As noted above, pursuant to Commission approval, CBOE has made its short term options program permanent. On the basis of the CBOE's approval, the Exchange proposes to also make permanent its short term options series program.

Additionally, the Exchange also proposes to amend its rules such that after an options class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on that

<sup>5</sup> See Securities Exchange Act Release No. 52012 (July 12, 2005), 70 FR 41246 (July 18, 2005).

<sup>6</sup> See Securities Exchange Act Release Nos. 54117 (July 12, 2006), 71 FR 40564 (July 17, 2006); 56047 (July 11, 2007), 72 FR 39106 (July 17, 2007); and 58020 (June 25, 2008), 73 FR 38000 (July 2, 2008).

<sup>7</sup> See Securities Exchange Act Release No. 60281 (July 10, 2009), 74 FR 34811 (July 17, 2009).

<sup>8</sup> See Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009).

<sup>9</sup> See Securities Exchange Act Release No. 62170 (May 25, 2010), 75 FR 30889 (June 2, 2010).

<sup>10</sup> See CBOE Rules 5.5 and 24.9.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).