

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63658; File No. SR-Phlx-2011-02]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the \$5 Strike Price Program

January 6, 2011.

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 January 3, 2011, NASDAQ OMX PHLX LLC (“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 Commentary .05 to Exchange Rule 1012, Series of Options Open for Trading, specifically to clarify that the Exchange may list option classes designated by other securities exchanges that employ a similar \$5 Strike Price Program under their respective rules.

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 [www.sec.gov](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 self-regulatory organization 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

The purpose of this proposed rule change is to modify Commentary .05 to Exchange Rule 1012 to clarify that the Exchange may list and trade series in intervals of \$5 or greater where the strike price is more than \$200 in up to five (5) option classes on individual stocks (“\$5 Strike Price Program”) or the Exchange may list series on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar \$5 Strike Price Program under their respective rules.

The Exchange recently filed a proposed rule change to list and trade series in intervals of \$5 or greater where the strike price is more than \$200 in up to five (5) option classes on individual stocks (“\$5 Strike Price Program”).<sup>3</sup> The Exchange is now proposing to clarify that the options may be listed and traded in series that are listed by the Exchange or other securities exchanges that employ a similar \$5 Strike Price Program, pursuant to the rules of the other securities exchange. Similar reciprocity currently is permitted with the Exchange’s \$1 Strike Program, \$.50 Strike Program and \$2.50 Strike Price Program.<sup>4</sup>

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> 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. The Exchange believes that clarifying that the Exchange may list and trade options in series that are listed by the Exchange or other securities exchanges that employ a similar \$5 Strike Price Program will provide its members greater clarity on the types of options that may be listed by the Exchange.

#### 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.

#### 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 Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

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 proposed reciprocity provision is similar to reciprocity provisions in place for other option strike price programs,<sup>9</sup> which have been previously approved by the Commission.<sup>10</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>11</sup>

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s 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.

<sup>9</sup> See Rule 1012, Commentary .05(a)(i)(A) (\$1 Strike Program), Commentary .05(a)(ii) (\$0.50 Strike Program), and Commentary .05(b) (\$2.50 Strike Program).

<sup>10</sup> See, e.g., Securities Exchange Act Release No. 60694 (September 18, 2009); 74 FR 49048 (September 25, 2009) (SR-Phlx-2009-65) (approving the \$0.50 Strike Program, with reciprocity provision).

<sup>11</sup> 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).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 63339 (November 18, 2010), 75 FR 71771 (November 24, 2010) (SR-Phlx-2010-158).

<sup>4</sup> See Exchange Rule 1012 at Commentary .05.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

#### 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-2011-02 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-2011-02. 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 a.m. and 3 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-2011-02 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-445 Filed 1-11-11; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-63657; File No. SR-NASDAQ-2011-002]**

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ Stock Market, LLC Relating to the \$5 Strike Price Program**

January 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on January 3, 2011 The NASDAQ Stock Market LLC ("NASDAQ" 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 NASDAQ. 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 NASDAQ Stock Market LLC proposes to amend Chapter IV, Securities Traded on NOM, Section 6, Series of Open Contracts Open for Trading, to clarify that the Exchange may list option classes designated by other securities exchanges that employ a similar \$5 Strike Price Program under their respective rules.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaq.cchwallstreet.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 self-regulatory organization 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

The purpose of this proposed rule change is to modify Chapter IV, Section 6(d) to allow the Exchange to clarify that the Exchange may list and trade series in intervals of \$5 or greater where the strike price is more than \$200 in up to five (5) option classes on individual stocks ("\$5 Strike Price Program") or the Exchange may list series on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar \$5 Strike Price Program under their respective rules.

The Exchange recently filed a proposed rule change to list and trade series in intervals of \$5 or greater where the strike price is more than \$200 in up to five (5) option classes on individual stocks ("\$5 Strike Price Program").<sup>3</sup> The Exchange is now proposing to clarify that the options may be listed and traded in series that are listed by the Exchange or other securities exchanges that employ a similar \$5 Strike Price Program, pursuant to the rules of the other securities exchange. Similar reciprocity currently is permitted with the Exchange's \$1 Strike Program, \$5.00 Strike Program and \$2.50 Strike Price Program.<sup>4</sup>

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> 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. The Exchange believes that clarifying that the Exchange may list and trade options in series that are listed by the Exchange or other securities exchanges that employ a similar \$5 Strike Price

<sup>3</sup> See SR-NASDAQ-2010-001 [sic].

<sup>4</sup> See Chapter IV, Section 6.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>12</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.