

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60637; File No. SR-Phlx-2009-77)

September 9, 2009

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Regarding Listing Certain Options at \$1 Strike Price Intervals Below \$200 and Listing Certain Options at \$2.50 Strike Price Intervals Below \$200.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on September 4, 2009, 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, 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 Phlx Rules 1012 (Series of Options Open for Trading) and 1101A (Terms of Option Contracts) regarding listing certain options at \$1 strike price intervals below \$200. The proposal also amends Rule 1101A regarding listing certain options on indexes at \$2.50 strike price intervals below \$200.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the principal office of the Exchange, 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 rule changes proposed herein are consistent with existing rules and practices that allow Phlx and other options exchanges to list and trade Mini-NDX (MNX) and other index options at \$1 strike price intervals,³ and to trade index options at \$2.50 strike price intervals.⁴

³ Regarding \$1 strike price intervals for MNX, see Securities Exchange Act Release Nos. 58924 (November 10, 2008), 73 FR 68464 (November 18, 2008)(SR-CBOE-2008-96)(approval order); 58997 (November 21, 2008), 73 FR 72887 (December 1, 2008)(SR-ISE-2008-88)(notice of filing and immediate effectiveness); 59129 (December 22, 2008), 73 FR 79945 (December 30, 2008)(SR-BSE-2008-57)(notice of filing and immediate effectiveness); and 60156 (June 22, 2009), 74 FR 31077 (June 29, 2009)(SR-Phlx-2009-46)(notice of filing and immediate effectiveness). Regarding \$1 and smaller strike price intervals for other index options, see Securities Exchange Act Release Nos. 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997)(SR-CBOE-1997-26)(approval order regarding \$0.50 strike price intervals for DJIA options); and 58207 (July 29, 2008), 73 FR 43963 (July 22, 2008)(SR-CBOE-2008-26)(approval order regarding \$1 strike price intervals for BXM options).

⁴ Regarding \$2.50 strike price intervals, see Securities Exchange Act Release Nos. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995)(approving File Nos. SR-Phlx-95-08, SR-Amex-95-12, SR-PSE-95-07, SR-CBOE-95-19, and SR-NYSE-95-12 and approving the \$2.50 pilot program); and 40662 (November 12, 1998),

The purpose of the proposed rule change is to amend Phlx Rules 1012 and 1101A so that the Exchange may list eight index options at \$1 strike price intervals below \$200. The purpose is also to amend Rule 1101A so that the Exchange may list options on two indexes at \$2.50 strike price intervals below \$200.

The indexes underlying options in respect of which the Exchange is proposing \$1 strike price intervals in this filing, which are also known as sector indexes, are: PHLX Gold/Silver Index (option symbol XAU), PHLX Housing Index (option symbol HGX), PHLX Oil Service Index (option symbol OSX), SIG Oil Exploration & Production IndexTM (option symbol EPXSM),⁵ PHLX Semiconductor Index (option symbol SOX), KBW Bank Index (option symbol BKX),⁶ SIG Energy MLP IndexSM (option symbol SVOTM), and Reduced Value Russell 2000® Index (option symbol RMN)⁷ (these eight indexes are together known as the “\$1 Indexes” and individually as the “\$1 Index”). The indexes underlying options in respect of which the Exchange is proposing \$2.50 strike

63 FR 64297 (November 19, 1998)(approving File Nos. SR-Amex-98-21, SR-CBOE-98-29, SR-PCX-98-31, and SR-Phlx-98-26 and permanently approving the \$2.50 pilot).

⁵ The SIG Indexes noted herein are trademarks of SIG Indices, LLLP.

⁶ The KBW Bank Index is also known as the PHLX/KBW Bank Index. See SR-Phlx-2009-58 (clarifying the name as KBW Bank Index).

⁷ Reduced Value Russell 2000® Options are also known as mini-Russell options. Russell 2000® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company’s publication of the Russell Indexes nor its licensing of its trademarks for use in connection with securities or other financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties of merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein.

price intervals are the NASDAQ China IndexSM (option symbol CNZ) and the Reduced Value Russell 2000® Index (option symbol RMN).

Strike price intervals for options on indexes are established in Rule 1101A(a) at three levels: (a) at no less than \$5 generally, (b) at no less than \$2.50 for options on indexes that are specifically listed in the rule; and (c) at no less than \$1 for Reduced Value Nasdaq 100® Options (MNX), which are based on 1/10th the value of the Nasdaq 100® Index (NDX).⁸ Thus, the \$1 Indexes can be listed at \$2.50 strike price intervals, as long as the strike price is below \$200.⁹

The Exchange now proposes, in Commentary .03 to Rule 1101A, that the minimum strike price interval for \$1 Indexes will be \$1 or greater, as long as the strike price is below \$200. The Exchange believes that \$1 strike price intervals in these option series will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

For initial series, the Exchange would list at least two strike prices above and two strike prices below the current value of the \$1 Index at or about the time a series is opened for trading on the Exchange. As part of this initial listing, the Exchange would list strike prices that are within five (5) points from the closing value of the \$1 Index on the preceding day.

⁸ Rule 1101A(b)(v) also discusses, among other things, that the strike prices of options pursuant to the Quarterly Options Series Program (“Quarterly Options Series”) will be fixed at a price per share, with at least two, but not more than five, strike prices above and at least two, but not more than five, strike prices below the value of the underlying security at the time that a Quarterly Options Series is opened for trading on the Exchange. For strike price intervals for non-index options, see Rule 1012.

⁹ See subsections (v), (vi), (vii), (viii), (xxii), (xxiii), and proposed subsections (xxxii) and (xxxiv) of Rule 1101A(a).

As for additional series, the Exchange would be permitted to add series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the underlying \$1 Index moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing value of the \$1 Index. The Exchange would also be permitted to open additional strike prices that are more than 30% above or below the current \$1 Index value provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account would not be considered when determining customer interest. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series in \$1 Index options. In all cases, however, \$1 strike price intervals may be listed on \$1 Index options only where the strike price is less than \$200.¹⁰

The Exchange confirms that it shall not list LEAPS on \$1 Index options at intervals less than \$2.50.¹¹

The Exchange is also proposing to set forth a delisting policy with respect to \$1 Index options. Specifically, for each \$1 Index the Exchange will regularly review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of the \$1 Index and may delist series with no open interest in both the put and the call series having a: (i) strike higher than the highest strike price with open interest in the

¹⁰ And, as noted, if the strike price is \$200 or above, the Exchange may list Index options at \$2.50 or higher strike prices. Rule 1101A.

¹¹ This is consistent with Rule 1101A(a).

put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in \$1 Index options in series eligible for delisting may be granted.

The Exchange also proposes to clarify Commentary .09 to Rule 1012 with an internal cross reference stating that the intervals between strike prices for options on the Reduced Value Russell 2000® Index would be determined in accordance with proposed new Commentary .03 to Rule 1101A.¹²

Phlx has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with listing and trading \$1 or greater strikes in \$1 Index options.

The Exchange has received numerous requests this year from traders of the \$1 Index options for trading in \$1 strike price increments. The Exchange believes that allowing the listing of these options at \$1 increments as proposed, particularly in the current economic climate with downward pressure on pricing of the \$1 Indexes discussed

¹² The language of proposed Commentary .09 to Rule 1012 and proposed subsection (xxxvi) of Rule 1101A(a) in respect of Nasdaq 100® Options is conformed.

herein,¹³ should enable traders of such options and their customers to make more accurate and tailored trading and hedging decisions.¹⁴

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁶ 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 \$1 Index options at \$1 or greater strike price intervals.

¹³ During the preceding year, each of the \$1 Indexes have lost 50% or more in value, and four lost more than 65% in value. While there has been some recovery so that as of August 2009 the average overall value loss was around 23%, the significant losses continue, with two of the indexes continuing to show greater than 40% value losses.

¹⁴ More than a decade ago, the Commission approved \$1 strike price intervals for options on different products that are sometimes used by traders and their customers in lieu of options on index funds, namely options on Exchange Traded Fund Shares (“ETFs”). See Securities Exchange Act Release Nos. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998)(SR-Amex-96-44)(approval order regarding \$1 strike price intervals for ETFs); 44055 (March 8, 2001), 66 FR 15310 (March 16, 2001)(notice of filing and immediate effectiveness). See also Commentary .05 to Rule 1012.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

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

Within 35 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 will: (a) by order approve 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. Please include File Number SR-Phlx-2009-77 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-2009-77. 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 inspection and copying 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-2009-77 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.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).