SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62151; File No. SR-Phlx-2010-72)

May 21, 2010

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. to Make Changes to Expand the $1 Strike Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4[2] thereunder, notice is hereby given that on May 7, 2010, 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 is filing with the Commission a proposal to modify Commentary .05 to Phlx Rule 1012 (Series of Options Open for Trading) to expand the Exchange's $1 Strike Price Program (the "$1 Strike Program" or "Program")[3] to allow the Exchange to select 150 individual stocks on which options may be listed at $1 strike price intervals.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 The $1 Strike Program was initially approved on June 11, 2003 as pilot, and was then extended several times until June 5, 2008. See Securities Exchange Act Release Nos. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003)(SR-Phlx-2002-55)(approval of pilot program); 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). The program was subsequently expanded and made permanent in 2008. See Securities Exchange Act Release No. 57111 (January 8, 2008), 73 FR 2297 (January 14, 2008)(SR-Phlx-2008-01). The program was last expanded in 2009. See Securities Exchange Act Release No. 59590 (March 17,

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.

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 modify Commentary .05 to Phlx Rule 1012 to allow the Exchange to select 150 individual stocks on which options may be listed at $1 strike price intervals.

Currently, the $1 Strike Program allows Phlx to select a total of 55 individual stocks on which option series may be listed at $1 strike price intervals. In order to be eligible for selection into the Program, the underlying stock must close below $50 in its primary market on the previous trading day. If selected for the Program, the Exchange may list strike prices at $1 intervals from $3 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

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2009), 74 FR 12412 (March 24, 2009)(SR-Phlx-2009-21). The $1 Strike Program is found in Commentary .05 to Rule 1012.

the previous day. The Exchange may also list $1 strikes on any other option class designated by another securities exchange that employs a similar Program under their respective rules.

The restrictions in the current $1 Strike Program remain and are not proposed to be modified by this filing. The Exchange may not list $1 strike intervals on any issue where the strike price is greater than $50. The Exchange may not list long-term option series ("LEAPS")[4] at $1 strike price intervals for any class selected for the Program, except as specified in subparagraph (C) of Commentary .05.[5] The Exchange is also restricted from listing series with $1 intervals within $0.50 of an existing strike price in the same series, except that strike prices of $2, $3, and $4 shall be permitted within $0.50 of an existing strike price for classes also selected to participate in the $0.50 Strike Program.[6]

4 LEAPS are long-term options that generally have up to thirty-nine months from the time they are listed until expiration. Commentary .03 to Rule 1012. Long-term FLEX options and index options are considered separately in Rules 1079(a)(6) and 1101A(b)(iii), respectively.

5 Subsection (C) of Commentary .05 states that: The Exchange may list $1 strike prices up to $5 in LEAPS(R) in up to 200 option classes on individual stocks. 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).

6 Regarding the $0.50 Strike Program, which allows $0.50 strike price intervals for options on stocks trading at or below $3.00, see Commentary .05(a)(ii) to Rule 1012 and Securities Exchange Act Release No. 60694 (September 18, 2009), 74 FR 49048 (September 25, 2009)(SR-Phlx-2009-65)(order approving). See also Securities Exchange Act Release No. 61630 (March 2, 2010), 75 FR 11211 (March 10, 2010)(SR-Phlx-2010-26)(notice of filing and immediate effectiveness allowing concurrent listing of $3.50 and $4 strikes for classes that participate in both the $0.50 Strike Program and the $1 Strike Program).

The $1 Strike Program has been extremely successful since it was initiated as a pilot program in 2003, with no substantive problems attributed to the Program or listing and trading options at $1 strike intervals. During the time that the $1 Strike Program was a pilot, the Exchange submitted three pilot reports to the Commission in which the Exchange discussed, among other things, the strength and efficacy of the Program based upon the steady increase in volume and open interest of options traded on the Exchange at $ 1 strike price intervals; and that the Program had not and, in the future, should not create capacity problems for the Phlx or the Options Price Reporting Authority ("OPRA") systems.[7] This has not changed. Moreover, the number of $1 strike options traded on the Exchange has continued to increase since the inception of the Program such that these options are now among some of the most popular products traded on the Exchange.

There are now approximately 326 $1 strike price option classes listed (and traded) across all options exchanges including Phlx; 55 of which are classes chosen by Phlx for the $1 Strike Program. The Exchange has received repeated requests from its members to list more issues at $1 strike intervals, that is, to expand the $1 Strike Program. However, the Exchange is constrained from doing so because it has reached the limit of 55 individual stocks on which option series may be listed at $1 strike price intervals per Commentary .05 to Rule 1012. It is for this reason that the Exchange proposes to expand the Program to allow Phlx to select a total of 150 individual stocks on which option series may be listed at $ 1 strike price intervals. The proposal would expand $1 strike offerings

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7 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).

to market participants (e.g. traders and retail investors) and thereby enhance their ability to tailor investing and hedging strategies and opportunities in a volatile market place. The $1 Strike Program (including the existing restrictions such as not listing any series that would result in strike prices being $0.50 apart) would otherwise remain unchanged.

Currently, there are more than 2,000 options trading on issues priced below $50 (generally, the "low cost options") that are outside the $1 Strike Program. These include high volume options such as, for example, Winstream Corp, The Mosaic Company, and General Growth PPTYS Inc. that traded 26,013 contracts, 9,826 contracts, and 20,107 contracts (23-day average volume), respectively. Because of the numerical limitation on how many issues may be chosen by the Exchange to be in the $1 Strike Program, however, these low cost options must trade at $2.50 or wider strike price increments.

The wide strike price increments for low cost options, when compared to the price of underlying issues, often lead to significant negative impact on investors. As an example:

- Sanofi Aventis (SNY), which has recently traded at a low of about $33 per share, is not currently in the $1 Strike Program. This means that options on Sanofi Aventis are offered at strike price intervals of $2.50. If an investor desired to protect 100 shares of Sanofi Aventis in the event of a 10% drop in the SNY share price for an intermediate time period, the investor ideally would want the ability to choose between buying a September 30 SNY put option, September 29 put option, or September 28 put option. Today, however, at $2.50 strike price intervals the investor would only have the choice of buying September 30 put options offered at $1.65 or September 25 puts offered at $0.45 (approximate numbers). Having the ability (choice) to buy 28 strike or 29 strike puts could significantly lower the investor's monetary outlay to purchase the desired insurance premium. This is because, as opposed to September 30 puts priced at $1.65, September 29 puts would be priced at approximately $1.10 and September 28 puts would be priced at approximately $0.90, which would potentially reduce the hedging cost to the investor by about a third. Clearly, options on Sanofi Aventis priced at $1 intervals could significantly improve the menu of hedging choices to the benefit of an investor in this issue.

- Tenaris S A (TS), which has recently traded at about $38 per share, is not currently in the $1 Strike Program. As such, strike intervals for TS are mostly in $5 (as well as $2.50) increments. If an investor sought to enhance his yield from owning 100 shares of Tenaris S A, the investor could sell a call option with a strike price approximately 10% higher than the current underlying issue price. Ideally, the investor could choose between the September 45 calls, the September 44 calls, or the September 43 calls. Not being in the $1 Strike Program, however, the September 44 and September 43 call strikes would not be available. And, like the Sanofi Aventis example, the lack of the September 44 and September 43 strikes would limit the investor's choices to maximize returns or execute the simplest of strategies.

By expanding the $1 Strike Program, such investors would be able to better enhance returns and manage risk. The Exchange feels that, having received requests to expand the Program and in light of the disparity between non $1 strike prices and stock prices underlying low-cost options, expanding the Program as requested would be greatly beneficial to investors and the financial community.

As stated in the Commission order that initially approved Phlx's Program and in subsequent Program extension and expansion approval orders and filings (the "prior orders"),[8] the Exchange believes that $1 strike price intervals provide investors with significantly greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment, trading and risk management objectives. These prior orders recognized, as we have noted pursuant to this proposal, that member firms representing customers have repeatedly requested that Phlx seek to expand the Program in terms of the number of classes on which option series may be listed at $1 strike price intervals. In addition, market conditions have led to an increase in the number of securities trading below $50, further warranting the proposed comparatively modest expansion of the $1 Strike Program.[9]

The Exchange notes that, in addition to options classes that are trading pursuant to the $1 strike programs of options exchanges, there are also options trading at $1 strike intervals on approximately 282 Exchange Traded Fund Shares ("ETFs"),[10] ETF options

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8 See supra note 3.

9 See, c.f., Securities Exchange Act Release No. 59590 (March 17, 2009), 74 FR 12412 (March 24, 2009)(SR-Phlx-2009-21)(more than five-fold increase in the number of individual stocks on which options may be listed at $1 intervals).

10 Options on ETFs have been trading for about a decade. See Securities Exchange Act Release Nos. 34- (July 1, 1998), 63 FR 37426 (July 10, 1998)(SR-AMEX-96-44)(approval order regarding, among other things, $1 strike price intervals for ETFs); and 44055 (March 8, 2001), 66 FR 15310 (March 16, 2001)(SR-Phlx-01-32)(notice of filing and immediate effectiveness regarding, among other things, $1 strike price intervals for ETFs). See also Commentary .05 to Rule 1012(a)(iv) allowing $1 strike price intervals for ETF options where the strike price is $200 or less.

trading at $1 intervals has not, however, negatively impacted the system capacity of the Exchange or OPRA.

With regard to the impact of this proposal on system capacity, Phlx has analyzed its capacity and represents that it and OPRA have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of an expanded number of series in the $1 Strike Program.

The Exchange believes that the $1 Strike Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals. For these reasons, the Exchange requests an expansion of the current Program and the opportunity to provide investors with additional strikes for investment, trading, and risk management purposes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] 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 expanding the current $ 1 Strike Program will result in a continuing benefit

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[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

to investors by giving them more flexibility to closely tailor their investment decisions in greater number of securities.

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-2010-72 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-2010-72. 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-2010-72 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.[13]

Florence E. Harmon
Deputy Secretary

[13] 17 CFR 200.30-3(a)(12).