

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63700; File No. SR-Phlx-2011-04)

January 11, 2011

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Option Expiration Months and Series of Options Open for Trading on the Exchange

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 4, 2011, NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (the “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 is filing with the Commission a proposal to amend Exchange Rule 1012 (Series of Options Open for Trading) to clarify that the Exchange will open at least one expiration month and one series for each class of stock options or Exchange Traded Fund Share (“ETF”) options open for trading on the Exchange; and that the Exchange may open additional series of stock options or ETF options under certain circumstances. The proposed change is based directly on the recently approved rules of another options exchange, namely Chapter IV, Sections 6 and 8 of the NASDAQ Options Market.

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

---

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

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

of the Exchange, on the Commission’s website 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 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 amend Exchange Rule 1012 to clarify that the Exchange will open at least one expiration month and one series for each class of stock options or ETF options open for trading on the Exchange; and that the Exchange may open additional series of stock options or ETF options under certain circumstances. The proposed change is based directly on the recently approved rules of another options exchange, namely Chapter IV, Sections 6 and 8 of the NASDAQ Options Market.

The NASDAQ OMX Group, Inc. (“NASDAQ OMX”) owns several U.S. registered securities exchanges that are self-regulatory organizations – Phlx, with its equity, securities, and options exchanges; The NASDAQ Stock Market LLC (“NASDAQ”) and the NASDAQ Options Market (“NOM”); and NASDAQ OMX BX, Inc. (“BX”). In 2008, the Commission approved

the establishment of NOM and rules pertaining thereto<sup>3</sup> that, among others, included NOM Chapter IV, Section 6 regarding series of options contracts open for trading<sup>4</sup> and Section 8 regarding long-term options contracts.<sup>5</sup> The rule changes proposed by the Exchange to Phlx Rule 1012(a) and Commentary .03 are, to the extent practicable, identical to specified rule provisions in NOM Chapter IV, Sections 6 and 8 as discussed below.

---

<sup>3</sup> See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (order approving rules for trading of options on the NASDAQ Options Market, including Chapter IV, Sections 6 and 8).

<sup>4</sup> NOM Chapter IV, Sec 6 states, in relevant part: (b) At the commencement of trading on NOM of a particular class of options, NOM will open a minimum of one (1) series of options in that class. The exercise price of the series will be fixed at a price per share, relative to the underlying stock price in the primary market at about the time that class of options is first opened for trading on NOM.

(c) Additional series of options of the same class may be opened for trading on NOM when Nasdaq deems it necessary to maintain an orderly market, to meet Customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. The opening of a new series of options shall not affect the series of options of the same class previously opened. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, Nasdaq, in its discretion, may add a new series of options on an individual stock until five (5) business days prior to expiration.

<sup>5</sup> NOM Chapter IV, Sec 8 states: (a) Notwithstanding conflicting language in Section 5 of this Chapter IV (Series of Options Contracts Open for Trading), Nasdaq may list long-term options contracts that expire from twelve (12) to thirty-nine (39) months from the time they are listed. There may be up to six (6) additional 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 (9) months.

(b) After a new long-term options contract series is listed, such series will be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the close, whichever occurs first. No quotations will be posted for such options series until they are opened for trading.

The Exchange believes that its proposal is proper, and indeed desirable, in light of its objective to continue to harmonize the listing rules of the two options exchanges under the NASDAQ OMX umbrella and thereby maximize operating efficiencies.

Rule 1012 has developed in the latter portion of the last century to indicate when, among other things, the Exchange may open months and series, including long-term series, in classes of stock options, ETF options, and foreign currency options (“FCOs”)<sup>6</sup> that have been approved for listing and trading on the Exchange. Rule 1012(a) indicates how the Exchange initially fixes expiration months and series in these options.<sup>7</sup> The Exchange now conforms portions of its older Rule 1012 to the more recently-approved NOM rules in Chapter IV, Sections 6 and 8.

First, the Exchange proposes to state in Rule 1012(a)(i)(A) that at the commencement of trading on the Exchange of a particular class of stock or ETF options, the Exchange will open at least one expiration month and series for each class of options open for trading on the Exchange, thereby replacing the current language in subsection (a)(i)(A) about opening not less than three expiration months in every option class open for trading. The proposed language regarding one expiration month is taken directly from NOM Chapter IV, Section 6(e). The proposed language

---

<sup>6</sup> FCOs are also known as World Currency Options and in Rule 1012 are known as U.S. Dollar-Settled Foreign Currency Options.

<sup>7</sup> Rule 1012(a)(i) states, in relevant part: At the commencement of trading on the Exchange of a particular class of stock or Exchange-Traded Fund Share options, series of options therein having three different expiration months will normally be opened, the first such expiration month being within approximately three months thereafter, the second such month being approximately three months after the first and the third being approximately three months after the second. Additional series of stock or Exchange-Traded Fund Share options of the same class may be opened for trading on the Exchange at or about the time a prior series expires and the expiration month of each such series shall normally be approximately nine months following the opening of such series. The exercise price of each series of stock or Exchange-Traded Fund Share options opened for trading on the Exchange shall be fixed at a price per share which is reasonably close to the price per share at which the underlying stock or Exchange-Traded Fund Share is traded in the primary market at or about the time such series of options is first opened for trading on the Exchange.

regarding one expiration series is taken directly from NOM Chapter IV, Section 6(b). These NOM rules have been continually in use for years.<sup>8</sup> The Exchange notes that the proposed change affords additional flexibility so that multiple option classes and series are not mandated if they are not needed, thereby potentially reducing the proliferation of classes and series.

Second, the Exchange proposes to add new language in Rule 1012 (a)(i)(B) to state that it may open additional option series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Additionally, due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until five (5) business days prior to expiration. The language for this proposed rule change is likewise taken directly from NOM rules, specifically Chapter IV, Section 6(c).<sup>9</sup> The Exchange notes that the proposed language establishes specific criteria that are not all currently elucidated in Rule 1012<sup>10</sup> for adding new series to an existing option class up to five business days prior to expiration.<sup>11</sup>

Moreover, Rule 1012 has developed over several decades to include stock options, ETF options and FCOs traded on the Exchange. As such, discussion regarding these various types of options is sometimes commingled within Rule 1012. The Exchange is now proposing to clarify

---

<sup>8</sup> See supra note 3.

<sup>9</sup> The Exchange also proposes to transfer language from subsection (a)(iv) of Rule 1012 into subsection (a)(i)(B), stating that the opening of a new series of options shall not affect the series of options of the same class previously opened. Similar language is present in NOM Chapter IV, Section 6(c).

<sup>10</sup> See supra note 7.

<sup>11</sup> The Exchange has been following the practice of not adding new series of options on individual stocks within five days of expiration.

the rule by splitting out discussion regarding stock options and ETF options, which are similarly treated within the rule. Specifically, the Exchange proposes to relocate the criteria for additional series of stock and ETF options from its present location in subsection (a)(iv), where it is applicable to FCOs as well as stock and ETF options, to subsection (a)(i)(B), where it would be applicable only to stock and ETF options.<sup>12</sup> Subsection (a)(iv) as proposed would be renamed (a)(iii)(E) and would pertain only to FCOs.

The Exchange's proposal is being done to conform and harmonize certain Phlx rules to recently-approved Nasdaq Options Market rules regarding opening initial months and series and adding series of stock options and ETF options. The Exchange believes that harmonization of the rules of the two options exchanges under the NASDAQ OMX umbrella would be beneficial to the Exchange and its traders, market participants, and public investors in general.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange proposes to clarify that it will open at least one expiration month and one series for each class of stock options or ETF options

---

<sup>12</sup> In a similar vein, Commentary .03 is moved to new subsection (a)(i)(D) so that it would be in the section of the rule applicable only to stock and ETF options. Commentary .03 is conformed to the language of NOM Chapter IV, Section 8 by removing the superfluous language from the rule: There may be up to six Traded Fund Share options series, options having up to thirty-nine months from the time they are listed until expiration.

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

<sup>14</sup> 15 U.S.C. 78f(b)(5).

open for trading on the Exchange and clarify under what circumstances it may open additional series of stock options or ETF options, and thereby harmonize the rules of Phlx and NOM. The harmonization of the rules of the two options exchanges would be beneficial to the Exchange and its traders, market participants, and public investors in general.

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>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</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 rule change is substantially similar to that

---

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

<sup>16</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.

of another exchange that has been approved by the Commission.<sup>17</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>18</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.

#### 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-2011-04 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-2011-04. 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

---

<sup>17</sup> See supra note 3.

<sup>18</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).



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; 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-2011-04 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.<sup>19</sup>

Elizabeth M. Murphy  
Secretary

---

<sup>19</sup> 17 CFR 200.30-3(a)(12).