

No. SR-BX-2009-079 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 No. SR-BX-2009-079. 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,<sup>9</sup> 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 such filing also will be available for inspection and copying at the principal office of BX. 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 No. SR-BX-2009-079 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61202; File No. SR-Phlx-2009-103]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify Certain Provisions of the Options Listing Procedures Plan Into Phlx's Rules

December 18, 2009.

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 December 7, 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 is filing with the Commission a proposal to amend its Rule 1012 (Series of Options Open for Trading) by adding Commentary .10 to apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange. The Exchange is also amending Options Floor Procedure Advice F-22 (Intra-Day Addition of Strike Prices) ("OFPA" or "Advice") to add a cross-reference to Commentary .10 to Rule 1012.

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.

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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposal is to implement in Phlx rules, specifically Commentary .10 to Rule 1012, changes that were recently made to the Plan for the Purpose of Developing and Implementing Procedures Designated to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934, also known as the Options Listing Procedures Plan ("OLPP"), in Amendment No. 3 thereto;<sup>3</sup> and to cross-reference Commentary .10 to Rule 1012 in OFPA F-22. The proposed rule change in Commentary .10 incorporates uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange, as a quote mitigation strategy intended to reduce the overall number of option series available for trading, which will in turn lessen the rate of increase in quote traffic ("range limitations" or "range limitation strategy").<sup>4</sup>

Rule 1012 currently indicates what series of option contracts may be open for trading after a particular class of options has been approved for trading on the Exchange. This proposal adds Commentary .10 to Rule 1012 that applies certain "range limitations" to

<sup>3</sup> See Securities Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009)(order approving Amendment No. 3 to the OLPP, which would apply uniform objective standards to the range of options series exercise or strike prices available for trading on exchanges that are sponsors of OLPP). The sponsors of OLPP include Phlx, Chicago Board Options Exchange, Incorporated; International Stock Exchange LLC; NASDAQ OMX BX, Inc.; The NASDAQ Stock Market LLC; NYSE Amex, LLC; and NYSE Arca, Inc. (together known as the "Plan Sponsor Exchanges"). The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series and replaces and supersedes the Joint-Exchange Options Plan ("JEOP"). See Securities Exchange Act Release No. 44521 (July 6, 2009), 66 FR 36809 (July 13, 2001)(order approving OLPP). See also Securities Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48954 (September 25, 1991)(order approving JEOP).

<sup>4</sup> The Exchange expects that other Plan Sponsor Exchanges will file similar rule change proposals implementing range limitations in their rules to mitigate quotes. See, for example, Securities Exchange Act Release No. 60995 (November 13, 2009), 74 FR 60008 (November 19, 2009)(SR-CBOE-2009-084)(notice of filing and immediate effectiveness).

<sup>9</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

<sup>10</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.

the addition of new series for options classes overlying equity securities, Exchange Traded Fund Shares (“ETFs”), or Trust Issued Receipts (“TIRs”).

As proposed in Commentary .10, if the price of the underlying security is less than or equal to \$20, the Exchange would not list new option series with an exercise price more than 100 percent above or below the price of the underlying security.<sup>5</sup> If the price of the underlying security is greater than \$20, the Exchange would not list new option series with an exercise price more than 50 percent above or below the price of the underlying security. The proposal provides for an objective basis upon which the underlying prices for the price range limitations described above shall be determined, specifically in regard to intra-day add-on series and next-day series additions, new expiration months and for option series to be added as a result of pre-market trading.

The proposal also allows the Exchange to designate up to five underlying securities to which, instead of the aforementioned 50 percent restriction, a 100 percent restriction would apply. These designations would be made on an annual basis and cannot be removed during the calendar year unless the option class is delisted by the Exchange, in which case the Exchange may designate another class to replace the delisted class. If a designated class is delisted by the Exchange but continues to trade on at least one other exchange, any additional series for the class which are added from that point forward would again be subject to the proposed exercise price range limitations, unless the class is subsequently designated by another exchange. The proposal also provides a procedure for the Exchange to request, if conditions warrant, additional case-by-case exceptions even when it has already so designated five underlying securities.

In addition, the Exchange may request, on a case-by-case basis, an exemption when it desires to list a series from the 100 percent range limitation. This procedure would enable the Exchange to list options series with strike prices that are more than 100 percent above or below the price of an underlying security, if unanimously agreed upon by all exchanges that list options overlying the security.<sup>6</sup>

<sup>5</sup> This restriction would not prohibit the listing of at least three options series per expiration month in an option class.

<sup>6</sup> Application of any of the aforementioned exceptions and/or exemptions to the strike price range limitations for an underlying security would

The Exchange notes that the proposal would not restrict its ability to list options series in two situations. First, the Exchange would not be restricted from listing options series that have been properly listed by another exchange. And second, the proposal expressly eliminates the applicability of range limitations with regard to the listing of \$1 strike prices in option classes participating in the \$1 Strike Program, and the listing of series of FLEX options.<sup>7</sup>

The Exchange believes that the proposed rule change implementing range limitation strategies for equity, ETF, and TIR options should be beneficial in reducing quote traffic on the Exchange and in the options industry.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</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 believes that codifying certain range limitation provisions of the OLPP, as amended, serves to foster investor protection.

### 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

be available to all exchanges listing options on such security.

<sup>7</sup> For the \$1 Strike Program, see Commentary .05 to Rule 1012. For FLEX Options, see Rule 1079.

<sup>8</sup> The Exchange's belief regarding reduction of quote traffic in the options industry is based, as discussed previously, on the expectation that other options exchanges will file similar rule change proposals. According to a recent study, if all options exchanges implement range limitations of the type proposed herein, the options industry would expect an approximate four percent reduction in the number of series traded, with only a nominal reduction in trading volume. See Securities Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (order approving Amendment No. 3 to the OLPP).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

### 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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>11</sup> of the Act and Rule 19b-4(f)(6)(iii) thereunder<sup>12</sup> because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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-2009-103 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.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii). 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 the 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 the pre-filing requirement.

All submissions should refer to File Number SR-Phlx-2009-103. 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 self-regulatory organization. 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-2009-103 and should be submitted on or before January 19, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61189; File No. SR-FINRA-2009-089]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed FINRA Rule 6490 (Processing of Company-Related Actions), To Clarify the Scope of FINRA's Authority When Processing Documents Related to Announcements for Company-Related Actions for Non-Exchange Listed Securities and To Implement Fees for Such Services

December 17, 2009.

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 December 7, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. 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

FINRA is proposing to adopt proposed FINRA Rule 6490 (Processing of Company-Related Actions), to clarify the scope of FINRA's regulatory authority and discretionary power when processing documents related to announcements for company-related actions for non-exchange listed equity and debt securities and to implement fees for such services.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, 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, FINRA 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. FINRA 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

FINRA is proposing to: (1) Adopt FINRA Rule 6490 (Processing of Company-Related Actions) to clarify the scope of FINRA's regulatory authority and discretionary power when processing documents related to announcements for company-related actions for non-exchange listed equity and debt securities; and (2) implement fees for such services.

#### FINRA's Current Role in the OTC Market

FINRA performs several critical functions with respect to the over-the-counter (OTC) market, including the operation of the OTC Bulletin Board (OTCBB), which provides a mechanism for FINRA members to quote certain SEC-registered OTC equity securities, and the OTC Reporting Facility (ORF), which provides a mechanism for FINRA members to trade report, for both regulatory and dissemination purposes, transactions in OTC equity securities.

In addition to these functions, FINRA performs other more limited functions relating to the processing of non-exchange listed issuer company actions in the OTC market. Specifically, in furtherance of FINRA's obligations to foster cooperation and coordination of the clearing, settling and processing of transactions in equity and debt securities of issuers with a class of publicly traded, non-exchange listed securities, FINRA reviews and processes documents related to announcements for company-related actions pursuant to Rule 10b-17 (Untimely Announcements of Record Dates) of the Act ("SEA Rule 10b-17").

OTC issuers provide notice to FINRA to affect a full range of company-related actions pursuant to SEA Rule 10b-17, including dividends or other distributions in cash or kind, stock splits or reverse stock splits, or rights or other subscriptions offerings ("SEA Rule 10b-17 Actions"). In addition, FINRA processes documents related to other company actions, including the issuance or change to a trading symbol or company name, mergers, acquisition, dissolutions or other company control transactions, bankruptcy or liquidations ("Other Company-Related Actions"; and together with SEA Rule 10b-17 Actions, collectively referred to hereinafter as

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

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

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