

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64589; File No. SR-Phlx-2011-74]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Permit the Listing of Series With \$0.50 and \$1 Strike Price Increments on Certain Options Used To Calculate Volatility Indexes

June 2, 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 May 25, 2011, NASDAQ OMX PHLX LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act, <sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 permit the listing of strike prices in \$0.50 intervals where the strike price is less than \$75, and of strike prices in \$1.00 intervals where the strike price is between \$75 and \$150 for option series used to calculate volatility indexes.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii). <sup>4</sup>

The text of the proposed rule change is available at the Exchange’s principal office, at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, the Commission’s Public Reference Room, and at the Commission’s Web site at <http://www.sec.gov>.

#### 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 add new Commentary .12 to Rule 1012 to permit the listing of strike prices in \$0.50 intervals where the strike price is less than \$75, and of strike prices in \$1.00 intervals where the strike price is between \$75 and \$150 for option series used to calculate volatility indexes.

The proposal is based on a recently approved rule change by the Chicago Board Options Exchange (“CBOE”). <sup>5</sup>

New Commentary .12 will permit the listing of strike prices in \$0.50 intervals and \$1.00 intervals within specified strike price ranges for option series used to calculate volatility indexes. Volatility indexes are calculated and disseminated by the CBOE, which also lists options on the resulting index. <sup>6</sup> At this time, the Exchange has no intention of listing volatility options or selecting options on any equity securities, Exchange-Traded Fund Shares, Trust Issued Receipts, Exchange Traded Notes, Index-Linked Securities, or indexes to be the basis of a volatility index.

To the extent that the CBOE or another exchange selects a multiply

<sup>5</sup> See Securities Exchange Act Release No. 64189 (April 5, 2011), 76 FR 20066 (April 11, 2011) (SR-CBOE-008) (order granting approval). Other Exchanges have submitted similar proposals. See also Securities Exchange Act Release No. 64325 (April 22, 2011), 76 FR 23632 (April 27, 2011) (SR-NYSEAmex-2011-26) (notice of filing and immediate effectiveness).

<sup>6</sup> For example, CBOE calculates the CBOE Gold ETF Volatility Index (“GVZ”), which is based on the VIX methodology applied to options on the SPDR Gold Trust (“GLD”). The current filing would permit \$0.50 strike price intervals for GLD options where the strike price is \$75 or less. The Exchange is currently permitted to list strike prices in \$1 intervals for GLD options (where the strike price is \$200 or less), as well as for other exchange-traded fund (“ETF”) options. See Rule 1012, Commentary .05(a)(iv).

listed product as the basis of a volatility index, proposed Commentary .12 would permit the Exchange to list and compete in all series listed by the CBOE or another Exchange for purposes of calculating a volatility index.

The Exchange has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority (OPRA) have the necessary systems capacity to handle the additional traffic associated with the listing of strike prices in \$0.50 intervals where the strike price is less than \$75, and strike prices in \$1.00 intervals where the strike price is between \$75 and \$150 for option series used to calculate volatility indexes in securities selected by the CBOE or another exchange.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act <sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act <sup>8</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, by allowing the Exchange to offer a full range of all available option series in a given class, including those selected by other exchanges to be the basis of a volatility index.

While this proposal may potentially generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is restricted to a limited number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is restricted to a limited number of classes.

##### 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.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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

*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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</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 proposal should promote competition by allowing the Exchange, without undue delay, to list and trade option series that are trading on other options exchanges. 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.

**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:

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</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 Commission has waived the five-day pre-filing requirement in this case.

<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).

*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-2011-74 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-2011-74. 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-2011-74 and should be submitted on or before June 29, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64590; File No. SR-FINRA-2011-020]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to FINRA's Trading Activity Fee Rate for Transactions in Covered Equity Securities**

June 2, 2011.

**I. Introduction**

On April 26, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change related to FINRA's Trading Activity Fee ("TAF") for transactions in Covered Securities. The proposed rule change was published for comment in the **Federal Register** on May 3, 2011.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

FINRA's proposal would amend Section 1 of Schedule A to the FINRA By-Laws to adjust the rate of FINRA's TAF for transactions in Covered Securities that are exchange-registered equity securities. Covered Securities are defined in Section 1 of Schedule A to the FINRA By-Laws as: exchange-registered securities wherever executed (except debt securities that are not TRACE-Eligible Securities); OTC Equity Securities; security futures; TRACE-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction); and all municipal securities subject to Municipal Securities Rulemaking Board reporting requirements. The rules governing the TAF also include a list of exempt transactions.<sup>4</sup> The TAF, along with the Personnel Assessment and the Gross Income Assessment fees, are used to fund FINRA's regulatory activities, including examinations; financial monitoring; and FINRA's policymaking, rulemaking, and enforcement activities.<sup>5</sup>

The current TAF rate is \$0.000075 per share for each sale of a Covered Security, with a maximum charge of

<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. 64353 (April 27, 2011), 76 FR 24942 ("Notice").

<sup>4</sup> See FINRA By-Laws, Schedule A, § 1(b)(2).

<sup>5</sup> See FINRA By-Laws, Schedule A, § 1(a).