

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64741; File No. SR-Phlx-2011-65]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Regarding Opening Index Option Months and Series

June 24, 2011.

I. Introduction

On May 6, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to regarding opening index option months and series. The proposed rule change was published for comment in the **Federal Register** on May 18, 2011.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The proposal seeks to harmonize the Exchange's index option and equity option listing rules that govern the opening for trading of series and expiration months for approved options classes. The Exchange proposes to eliminate prescriptive guidelines stating which expiration months may be listed and replace them with simplified rules stating that the Exchange shall open a minimum of one expiration month and series for each class of approved stock index options, and that the Exchange may open additional series as needed (subject to certain conditions). The proposed rules are substantially identical to the rules in place for the listing of expiration months and series in stock or exchange-traded-fund ("ETF") options.⁴

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ Specifically, the Commission finds that the proposal is

consistent with Section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of a national securities exchange be 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, 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 Commission notes that it has previously approved language in exchange listing rules that provide an exchange will open at least one expiration month and one series for each class of equity and ETF options listed by the exchange.⁷

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Phlx-2011-65) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Cathy H. Ahn,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64745; File No. SR-Phlx-2011-086]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule Regarding Co-Location Fees for Additional Power and Cable Options

June 24, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 23, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

¹ 15 U.S.C. 78f(b)(5).

² See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521.

(March 18, 2008) (SR-Nasdaq-2007-004), at 14538 (approving rules for the Nasdaq Options Market, including specifically Chapter IV, Section 6(b) and (e)).

³ 15 U.S.C. 78s(b)(2).

⁴ 17 CFR 200.30-3(a)(12).

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-4.

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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule regarding co-location fees for additional power and cable options. The text of the proposed rule change is available at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the Exchange's principal office, 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 Exchange proposes to amend the Fee Schedule regarding co-location fees for additional power and cable options. The Exchange proposes to offer a new choice of a pair of power receptacles (60 amps 208 volts), which would provide enough power for a high density cabinet. The proposed fee for installation of the pair of the 60 amp 208 volt power receptacles is \$3,000. There are ten other power choices already available and this new receptacle choice is being offered as more clients are requesting higher power density cabinets. Additionally, the Exchange proposes to offer a new choice of patch cable, twinaxial (otherwise known as "Twinax") cables, in lengths of one meter to five meters. The proposed fee for the Twinax cables is \$34 + \$10 per meter. The Exchange is making the Twinax cables available as a convenience to customers, and notes that use of Exchange-provided patch cords is completely voluntary, and that such patch cords may be freely obtained

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 64480 (May 12, 2011), 76 FR 28836 ("Notice").

⁴ See Phlx Rule 1012(a)(1)(A); see also Nasdaq Rules Chapter IV, Section 6(b) and (e).

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

from other vendors for use by customers in the datacenter.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and with Section 6(b)(4) of the Act,⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange operates in a highly competitive market, in which exchanges offer co-location services as a means to facilitate the trading activities of those members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution of orders routed to it by affected members. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for co-location services.

It should be noted, however, that the costs associated with operating a co-location facility, like the costs of operating the electronic trading facility with which the co-location facility is associated, are primarily fixed costs, and in the case of co-location are primarily the costs of renting or owning data center space and retaining a staff of technical personnel. Accordingly, the Exchange establishes a range of co-location fees with the goal of covering these fixed costs, covering less significant marginal costs, such as the cost of electricity, and providing the Exchange a profit to the extent the costs are covered. Because fixed costs must be allocated among all customers, the Exchange's fee schedule reflects an effort to assess a range of relatively low

fees for specific aspects of co-location services, which, in the aggregate, will allow the Exchange to cover its costs and to the extent the costs are covered, allow the Exchange to earn a profit.

In the case of the proposed fees for a pair of the 60 amp power receptacles and the Twinax cables, the proposed fees cover the marginal costs of establishing and maintaining the electrical installation, the costs of obtaining the cable equipment from the Exchange's vendors, and allow the Exchange to earn a profit; to the extent the costs are covered. Accordingly, the Exchange believes that it is reasonable to use fees assessed on this basis as a means to recoup a share of fixed costs associated with the proposed power and cable options, provide a convenience for the customers and to the extent the costs are covered, provide a profit to the Exchange.

The Exchange also notes that the fees charged by the Exchange are generally lower or comparable to prices charged by other exchanges or unregulated vendors for similar services. For instance, NYSE Arca, Inc. charges for the power installation by including it in a higher install for the co-location cabinet.⁵ With respect to the proposed fees for Twinax cables, the fees charged by the Exchange are generally lower or comparable to prices charged by unregulated vendors for similar products. See <http://www.google.com/products/catalog?hl=en&biw=1259&bih=813&q=Twinax+cable&um=1&ie=UTF-8&tbn=shop&cid=15023972358025904938&sa=X&ei=8tDfTaOwlcHagQeVu6DUCg&ved=0CDcQ8wIwAw#>.

Furthermore, because the proposed services are available to all members through optional co-location services, the Exchange's fees for proposed co-location services are reasonable and equitably allocated across the membership. All co-location customers are offered the same range of products and services and there is no differentiation among customers with regard to the fees charged for a particular product, service, or piece of equipment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁶ 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2011-86 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-2011-86. 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

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4).

⁵ See Release No. 63275 (November 8, 2010) at page 4, 75 FR 70048 (November 16, 2010)(SR-NYSEArca-2010-100).

⁶ 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

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 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 offices 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-2011-86, and should be submitted on or before July 21, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011-16433 Filed 6-29-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64746; File No. SR-NYSEAmex-2011-45]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Operation of the Pilot Program That Allows Nasdaq Stock Market Securities To Be Traded on the Exchange Pursuant to a Grant of Unlisted Trading Privileges

June 24, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 21, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 proposes to amend NYSE Amex Equities Rule 500 to extend the operation of the pilot program that

allows Nasdaq Stock Market ("Nasdaq") securities to be traded on the Exchange pursuant to a grant of unlisted trading privileges. The pilot is currently scheduled to expire on August 1, 2011; the Exchange proposes to extend it until the earlier of Securities and Exchange Commission ("Commission") approval to make such pilot permanent or January 31, 2012. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex Equities Rules 500-525, as a pilot program, govern the trading of any Nasdaq-listed security on the Exchange pursuant to unlisted trading privileges ("UTP Pilot Program").³ The Exchange hereby seeks to extend the operation of the UTP Pilot Program, currently scheduled to expire on August 1, 2011, until the earlier of Commission approval to make such pilot permanent or January 31, 2012.

The UTP Pilot Program includes any security listed on Nasdaq that (i) is designated as an "eligible security" under the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended ("UTP Plan"),⁴ and (ii) has

³ See Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR-NYSEAmex-2010-31). See also Securities Exchange Act Release No. 62857 (September 7, 2010), 75 FR 55837 (September 14, 2010) (SR-NYSEAmex-2010-89) and 63601 (December 22, 2010), 75 FR 82117 (December 29, 2010) (SR-NYSEAmex-2010-124).

⁴ See Securities Exchange Act Release No. 58863 (October 27, 2008), 73 FR 65417 (November 3,

been admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Securities Exchange Act of 1934, as amended (the "Act"),⁵ (collectively, "Nasdaq Securities").⁶

The Exchange notes that its New Market Model Pilot ("NMM Pilot"), which, among other things, eliminated the function of specialists on the Exchange and created a new category of market participant, the Designated Market Maker ("DMM"),⁷ is also scheduled to end on August 1, 2011.⁸ The timing of the operation of the UTP Pilot Program was designed to correspond to that of the NMM Pilot. In approving the UTP Pilot Program, the Commission acknowledged that the rules relating to DMM benefits and duties in trading Nasdaq Securities on the Exchange pursuant to the UTP Pilot Program are consistent with the Act⁹ and noted the similarity to the NMM Pilot, particularly with respect to DMM obligations and benefits.¹⁰ Furthermore, the UTP Pilot Program rules pertaining to the assignment of securities to DMMs are substantially similar to the rules implemented through the NMM Pilot.¹¹ The Exchange has similarly filed to extend the operation of the NMM Pilot until the earlier of Commission approval to make the NMM Pilot permanent or January 31, 2012.¹²

Extension of the UTP Pilot Program in tandem with the NMM Pilot, both from August 1, 2011 until the earlier of Commission approval to make such pilots permanent or January 31, 2012,

2008). The Exchange's predecessor, the American Stock Exchange LLC, joined the UTP Plan in 2001. See Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 27, 2007) (S7-24-89). In March 2009, the Exchange changed its name to NYSE Amex LLC. See Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR-NYSEALTR-2009-24).
⁵ 15 U.S.C. 78l.

⁶ "Nasdaq Securities" is included within the definition of "security" as that term is used in the NYSE Amex Equities Rules. See NYSE Amex Equities Rule 3. In accordance with this definition, Nasdaq Securities are admitted to dealings on the Exchange on an "issued," "when issued," or "when distributed" basis. See NYSE Amex Equities Rule 501.

⁷ See NYSE Amex Equities Rule 103.

⁸ See Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR-NYSEAmex-2009-65). See also Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR-NYSEAmex-2009-83); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR-NYSEAmex-2010-28); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR-NYSEAmex-2010-86); and 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR-NYSEAmex-2010-123).

⁹ 15 U.S.C. 78c.

¹⁰ See *supra* note 1, at 41271.

¹¹ *Id.*

¹² See SR-NYSEAmex-2010-122.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78a.

² 17 CFR 240.19b-4.