

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-CBOE-2009-069 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-CBOE-2009-069. 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 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-CBOE-2009-069 and

should be submitted on or before October 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60688; File No. SR-Phlx-2009-82]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to the Maximum Number of Quoters ("MNQ") Permitted To Be Assigned in Equity Options

September 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 September 17, 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 proposes to amend Exchange Rule 507, Application for Approval as an SQT or RSQT and Assignment in Options, which governs the assignment of options to Streaming Quote Traders ("SQTs").<sup>3</sup> and Remote Streaming Quote Traders ("RSQTs"),<sup>4</sup>

<sup>22</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.

<sup>3</sup> An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit options quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Exchange Rule 1014(b)(ii)(A).

<sup>4</sup> An RSQT is a ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

by establishing a higher maximum number of quoting participants ("Maximum Number of Quoters" or "MNQ") in equity options.<sup>5</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 the proposed rule change is to provide additional liquidity in equity options on the Exchange by increasing the MNQ in equity options.<sup>6</sup>

Currently, the Exchange limits the number of participants that may be assigned to a particular equity option at any one time based upon each option's monthly national volume. Commentary .02 to Rule 507 currently sets forth tiered MNQ levels permitting assignment of trading privileges to 22 market participants for the top 5% most actively traded options; 17 market participants for next 10% most actively traded options, and 15 market participants for all other options.<sup>7</sup> The

<sup>5</sup> The Exchange notes that a separate proposed rule change has been pre-filed (the "separate filing") that would amend various Exchange rules, including certain portions of Rule 507. The instant proposed amendments to Commentary .02 of Rule 507 are not affected by, and do not affect, the proposed amendments in the separate filing. The term "no change" used in this proposal applies only to the instant proposed rule change and does not override or negate any proposed changes in the separate filing.

<sup>6</sup> Commentary .05 to Rule 507 states that the Exchange may increase the MNQ levels established in this Commentary by submitting to the SEC a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act. The Exchange may decrease the MNQ levels established in this Commentary upon SEC approval of a rule filing submitted pursuant to Section 19(b)(2) of the Exchange Act.

<sup>7</sup> When initially adopted, Commentary .02(a)-(c) established MNQ levels of 20 market participants

ranking is based upon the preceding month's national volumes.

The Exchange proposes to increase the MNQ levels from 22 to 24 market participants for equity options in the top 5% most actively traded options; from 17 market participants to 19 market participants for next 10% most actively traded options; and from 15 market participants to 17 market participants for all other options.

All new applicants for trading privileges will be subject to the process for assignment described in Rule 507. The Exchange considers all applicants for assignment in options using the objective criteria set forth in Exchange Rule 507(b). The objective criteria are used by the Exchange in determining the most beneficial assignment of options for the Exchange and the public.

After careful analysis, the Exchange believes it has the capacity to increase the MNQ as proposed. The Exchange believes that the effect of an increase in the MNQ fosters competition in that it increases the number of market participants that may quote electronically in a product. Pursuant to Commentary .05 to Rule 507, The Exchange will announce all changes regarding MNQ levels to the membership on the Exchange's Web site.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> 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, by adding depth and liquidity to the Exchange's markets in equity options.

The Exchange further believes that increasing the MNQ in equity options is pro-competitive, because it adds depth and liquidity to the Exchange's markets by permitting additional participants to compete on the Exchange.

for the top 5% most actively traded options; 15 market participants for next 10% most actively traded options, and 10 market participants for all other options. See Securities Exchange Act Release No. 55114 (January 17, 2007), 72 FR 3185 (January 24, 2007) (SR-Phlx-2006-81). These MNQ levels were subsequently increased to levels of 22, 17, and 12, respectively. See Securities Exchange Act Release No. 56261 (August 15, 2007), 72 FR 47112 (August 22, 2007) (SR-Phlx-2007-51). The MNQ levels were then increased to the current 22, 17 and 15 respectively. See Securities Exchange Act Release No. 58906 (November 6, 2008), 73 FR 67239 (November 13, 2008) (SR-Phlx-2008-76).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

## 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.

## 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 proposed rule change is designated by the Exchange as a "non-controversial" rule pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder,<sup>11</sup> because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing of the proposed rule change.<sup>12</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:

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</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.

## 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-2009-82 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-2009-82. 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 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-2009-82 and should be submitted on or before October 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>13</sup> 17 CFR 200.30-3(a)(12).