

In the Commission's publication of the proposed rules for comment, the notice indicated the following:

In determining the schedule for completion of the inspections subject to new paragraph (g), the Board will implement its proposal to sequence these 49 inspections such that certain minimum thresholds will be satisfied in each of the years from 2009 to 2012. The minimum thresholds relate to U.S. market capitalization of firms' issuer audit clients. The Board will begin by ranking the 49 firms according to the total U.S. market capitalization of a firm's foreign private issuer audit clients. Working from the top of the list (highest U.S. market capitalization total) down, the 49 firms will be distributed over 2009 to 2012 such that, at a minimum, the following criteria are satisfied:

- by the end of 2009, the Board will inspect firms whose combined issuer audit clients' U.S. market capitalization constitutes at least 35 percent of the aggregate U.S. market capitalization of the audit clients of all 49 firms;
- by the end of 2010, the Board will inspect firms whose combined issuer audit clients' U.S. market capitalization constitutes at least 90 percent of that aggregate;
- by the end of 2011, the Board will inspect firms whose combined issuer audit clients' U.S. market capitalization constitutes at least 99.9 percent of that aggregate; and
- the Board will inspect the remaining firms in 2012.

In addition to meeting those market capitalization thresholds, the Board also will satisfy certain criteria concerning the number of those 49 firms that will be inspected in each year. Specifically, the Board will conduct at least four of the 49 inspections in 2009, at least 11 more in 2010, and at least 14 more in 2011. (footnotes omitted)

On February 3, 2010, the PCAOB released new and updated information about the status of its inspections of registered non-U.S. accounting firms, including reporting on the PCAOB's progress in meeting the above target thresholds.⁷ Specifically, the PCAOB reported that, as of December 31, 2009, the PCAOB had inspected five firms that would meet the proposed Rule 4003(g) criteria for deferral. However, the PCAOB inspected only two of the four firms that the PCAOB had scheduled for inspection in 2009 based on their clients' U.S. market capitalization. As a result, the PCAOB did not meet the target threshold for U.S. market capitalization for 2009. The PCAOB was unable to conduct the inspections of the remaining two firms it intended to inspect in 2009 because, on the basis of asserted restrictions under non-U.S.

law, access to information necessary to conduct the inspections was denied.

The PCAOB also reported that discussions are continuing with the relevant authorities in the affected jurisdictions in an effort to resolve their objections to PCAOB inspections. We agree that the PCAOB should continue to work toward cooperative arrangements with the appropriate local auditor oversight authorities where it is reasonably likely that appropriate cooperative arrangements can be obtained.⁸ We also recognize that formalization and finalization of such arrangements take time. However, as the Board has acknowledged, inspection is the cornerstone of the Board's regulatory oversight of audit firms.⁹ Public companies and investors rely on the integrity of the auditing work performed by firms registered with the PCAOB, and the salutary effects of briefly delaying inspection of certain of these firms decrease as the period of delay increases or there no longer appears to be a reasonable possibility of reaching appropriate cooperative arrangements.

Accordingly, we encourage the PCAOB to continue to work with deliberate speed with its foreign counterparts to finalize these cooperative arrangements. We continue to expect the PCAOB to satisfy its announced inspection schedule for 2010–2012.¹⁰ We also direct the PCAOB to work closely with Commission staff in the PCAOB's ongoing discussions with relevant authorities and efforts to meet its non-U.S. audit firm inspection schedule.¹¹

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed

⁸ *Cf.*, PCAOB Release 2009–003 (June 25, 2009) (expressing the view that “There is long-term value in accepting a limited delay in inspections to continue working toward cooperative arrangements where it appears reasonably possible to reach them.”).

⁹ *See*, PCAOB Release 2009–003 (June 25, 2009) (stating that “[I]nspection is the Board's primary tool of oversight.”).

¹⁰ As part of its semiannual disclosures, the PCAOB also discloses a list of those registered firms where inspections have not been completed by the PCAOB, even though more than four years have passed since the end of the calendar year in which the firm first issued an auditor report while registered with the PCAOB.

¹¹ Separately, in the Commission's order approving the PCAOB's budget and annual accounting support fee for calendar year 2010, the Commission directed the PCAOB to include in its quarterly reports to the Commission information about the timing of the PCAOB's international inspection program and updates on the PCAOB's efforts to establish cooperative arrangements with respective non-U.S. authorities for inspections required in those countries. *See* SEC Release No. 34–61212 (December 22, 2009); 74 FR 68875 (December 29, 2009).

amendment of the Board's rules governing inspections of registered public accounting firms are consistent with the requirements of the Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors.

It is therefore ordered, pursuant to section 107 of the Act and section 19(b)(2) of the Exchange Act, that the proposed rule amendment (File No. PCAOB 2009–01) be and hereby is approved.

By the Commission.
Elizabeth M. Murphy,
Secretary.

[FR Doc. 2010–5046 Filed 3–9–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61630; File No. SR–Phlx–2010–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. To Permit the Concurrent Listing of \$3.50 and \$4 Strikes for Classes Participating in the \$0.50 Strike Program and the \$1 Strike Program

March 2, 2010.

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 February 19, 2010, 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 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 Commentary .05 to Rule 1012 (Series of Options Open for Trading) to permit the concurrent listing of \$3.50 and \$4 strikes for classes that participate in both the \$0.50 Strike Price Program (“\$0.50 Strike Program”)³ and the \$1

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The \$0.50 Strike Program was initially approved on September 18, 2009. *See* Securities Exchange Act Release No. 60694 (September 18, 2009), 74 FR 49048 (September 25, 2009) (SR–Phlx–2009–65) (order approving).

⁷ *See* http://pcaobus.org/News/Releases/Pages/02032010_Progress_IntlInspections.aspx. The PCAOB also noted that it intends to update its progress report semiannually to reflect information current as of June 30 and December 31.

Strike Price Program (“\$1 Strike Program”).⁴ The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).⁵

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend Commentary .05 to Rule 1012 to permit the concurrent listing of \$3.50 and \$4 strikes for classes that participate in both the \$0.50 Strike Program and the \$1 Strike Program.

The Exchange recently implemented a rule change that permits strike price intervals of \$0.50 for options on stocks trading at or below \$3.00 pursuant to the \$0.50 Strike Program.⁶ As part of the filing to establish the \$0.50 Strike Program, the Exchange contemplated that a class may be selected to participate in both the \$0.50 Strike Program and the \$1 Strike Program.

⁴ The \$1 Strike Program was initially approved as a pilot on June 11, 2003. See Securities Exchange Act Release Nos. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (SR-Phlx-2002-55) (order approving). The program was subsequently made permanent and expanded. See Securities Exchange Act Release Nos. 57111 (January 8, 2008), 73 FR 2297 (January 14, 2008) (SR-Phlx-2008-01) (notice of filing and immediate effectiveness); 59590 (March 17, 2009), 74 FR 12412. (March 24, 2009) (SR-Phlx-2009-21) (notice of filing and immediate effectiveness); and 61277 (January 4, 2010), 75 FR 1442 (January 11, 2010) (SR-Phlx-2009-108) (notice of filing and immediate effectiveness).

⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁶ See Securities Exchange Act Release No. 60694 (September 18, 2009), 74 FR 49048 (September 25, 2009) (SR-Phlx-2009-65) (order approving); and Commentary .05(a)(ii) to Rule 1012.

Under the \$1 Strike Program, new series with \$1 intervals are not permitted to be listed within \$0.50 of an existing \$2.50 strike price in the same series, except that strike prices of \$2 and \$3 are permitted to be listed within \$0.50 of a \$2.50 strike price for classes also selected to participate in the \$0.50 Strike Program.⁷ Under the Exchange’s current Rule 1012, for classes selected to participate in both the \$0.50 Strike Program and the \$1 Strike Program, the Exchange may either: (a) List a \$3.50 strike but not list a \$4 strike; or (b) list a \$4 strike but not list a \$3.50 strike. For example, if a \$3.50 strike for an option class in both the \$0.50 and \$1 Strike Programs was listed, the next highest permissible strike price would be \$5.00. Alternatively, if a \$4 strike was listed, the next lowest permissible strike price would be \$3.00. The intent of the \$0.50 Strike Program was to expand the ability of investors to hedge risks associated with stocks trading at or under \$3 and to provide finer intervals of \$0.50, beginning at \$1 up to \$3.50. As a result, the Exchange believes that the current filing is consistent with the purpose of the \$0.50 Strike Program and will permit the Exchange to fill in any existing gaps resulting from having to choose whether to list a \$3.50 or \$4 strike for options classes in both the \$0.50 and \$1 Strike Programs.

Therefore, the Exchange is submitting the current filing to permit the listing of concurrent \$3.50 and \$4 strikes for classes that are selected to participate in both the \$0.50 Strike Program and the \$1 Strike Program. To effect this change, the Exchange is proposing to amend Commentary .05(a)(i)(B) to Rule 1012 by adding \$4 to the strike prices of \$2 and \$3 currently permitted if a class participates in both the \$0.50 Strike Program and the \$1 Strike Program.

The Exchange is also proposing to amend the current rule text to delete references to “\$2.50 strike prices” (and the example utilizing \$2.50 strike prices) and to replace those references with broader language, e.g., “existing strike prices.”

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ 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

⁷ See Commentary .05(a)(i)(C) of Rule 1012.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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 permitting the Exchange to list more granular strikes on options overlying lower priced securities, which the Exchange believes will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)¹⁰ of the Act and Rule 19b-4(f)(6)(iii) thereunder¹¹ 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

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.

The Exchange has requested that the Commission waive the 30-day operative delay to permit the Exchange to compete with other exchanges whose rules permit concurrent listing of \$3.50 and \$4 strikes for classes similarly

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

participating in both a \$0.50 strike program and a \$1 strike program. The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will encourage fair competition among the exchanges. Therefore, the Commission designates the proposal operative upon filing.¹²

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-2010-26 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-2010-26. 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. 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-2010-26 and should be submitted on or before March 31, 2010.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-5078 Filed 3-9-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61645; File No. SR-NASDAQ-2010-029]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

March 4, 2010.

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 February 26, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("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

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on March 1, 2010. The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com/>, at NASDAQ'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, NASDAQ 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. NASDAQ 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

NASDAQ is making minor modifications to its pricing schedule for execution and routing of orders through the NASDAQ Market Center. First, NASDAQ is increasing the fee for members using the STGY, SCAN, SKNY, SKIP, or DOTI routing strategies.³ For orders using these strategies that execute in destinations other than the New York Stock Exchange ("NYSE") (or NASDAQ OMX BX, in the case of DOTI orders), NASDAQ will increase the fee from \$0.0029 to \$0.0030 per share executed.⁴

Second, NASDAQ is eliminating a temporary pricing incentive designed to encourage use of Mid-Point Pegged Orders in the NASDAQ Market Center. Currently, members providing an average daily volume of more than 95 million shares of liquidity during a month pay no fee for the use of Mid-Point Pegged Orders. As a result of the change, all members will pay the same rates for executions of Mid-Point Pegged Orders as they pay for executions of other orders in the NASDAQ Market Center: either \$0.0028 or \$0.0030 per share executed, depending on the type of security traded and the member's trading volumes.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(4) of the

³ Orders designated to use these routing strategies check the NASDAQ book for the full size of the order prior to routing. The terms and conditions of NASDAQ's routing strategies are described in NASDAQ Rule 4758.

⁴ For DOTI orders that execute in NASDAQ OMX BX, NASDAQ will continue to pass through fees and rebates associated with order execution on that venue. SCAN, SKNY, STGY, and SKIP orders executed at NASDAQ OMX BX are currently charged \$0.0029, however, and will now be charged \$0.0030. DOTI, STGY, SCAN, SKNY, and SKIP orders that execute at NYSE are charged \$0.0018 per share executed if they access liquidity at NYSE, or receive a \$0.0010 per share executed credit if they add liquidity at NYSE. These fees and credits are unchanged.

⁵ 15 U.S.C. 78f.

¹² 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).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.