

Exchange believes that this proposal clearly evidences such competition. NASDAQ is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. NASDAQ continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with NASDAQ or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this non-core data information is highly competitive and continually evolves as products develop and change.

*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.<sup>16</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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2011-130 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-NASDAQ-2011-130. 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-NASDAQ-2011-130 and should be submitted on or before November 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65528; File No. SR-NASDAQ-2011-138]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Regarding Expansion of the Short Term Option Series Program**

October 11, 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 September 28, 2011, The NASDAQ Stock Market LLC ("NASDAQ") 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 NASDAQ. 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 is filing with the Commission a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to expand the Short Term Option Series Program ("STO Program" or "Program")<sup>3</sup> so that the Exchange may select thirty option classes on which Short Term Option Series<sup>4</sup> may be opened; and may open certain Short Term Option Series that are opened by other securities exchanges.

The Exchange requests that the proposal be approved on an accelerated basis.

The text of the proposed rule change is available from NASDAQ's Web site at <http://nasdaq.cchwallstreet.com/>

<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. 62297 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR-NASDAQ-2010-073) (notice of filing and immediate effectiveness permanently establishing Short Term Option Series Program on NASDAQ). Short term options are generally known as "STOs" or "weeklies." The Exchange's STO program was last expanded in 2011, following the lead of other markets that have STO programs. See Securities Exchange Act Release No. 64826 (July 6, 2011), 76 FR 40969 (July 12, 2011) (SR-NASDAQ-2011-090) (notice of filing and immediate effectiveness regarding expansion of STO Program).

<sup>4</sup> Short Term Option Series are series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. NOM chapter 1, Section 1(a)(59) and Chapter XIV, Section 2(n).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

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

Filings/, 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

The purpose of this proposed rule change is to amend chapter IV, section 6 and chapter XIV, Section 11 to expand the STO Program so that the Exchange may select thirty option classes on which Short Term Option Series may be opened; and may open Short Term Option Series that are opened by other securities exchanges (the "STO Exchanges") in option classes selected by such exchanges under their respective short term option rules.<sup>5</sup>

The STO Program is codified in NOM Chapter IV, Supplementary Material .07 to Section 6 and Chapter XIV, Section 11(h). These sections state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than fifteen option classes that expire on the Friday of the following business week that is a business day. In addition to the fifteen-option class limitation, there is also a limitation that no more than

twenty series for each expiration date in those classes that may be opened for trading.<sup>6</sup> Furthermore, the strike price of each short term option has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the short term options are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange does not propose any changes to these additional Program limitations. The Exchange proposes only to increase from fifteen to thirty the number of option classes that may be opened pursuant to the Program and to give the Exchange the ability to open STO Series that are opened by STO Exchanges that, like the Exchange, have short term option programs.<sup>7</sup>

The principal reason for the proposed expansion is market demand for additional STO classes and series. There is continuing strong customer demand for having the ability to execute hedging and trading strategies via STOs,<sup>8</sup> particularly in the current fast and volatile multi-faceted trading and investing environment that extends across numerous markets and

<sup>6</sup> However, if the Exchange opens less than twenty (20) short term options for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers (market-makers trading for their own account shall not be considered when determining customer interest under this provision). Chapter IV, Supplementary Material .07(c) to Section 6 and Chapter XIV, Section 11(h)(iii).

<sup>7</sup> See *supra* note 5. The Exchange notes that the provision allowing the Exchange to open weeklies series that are opened by STO Exchanges is parallel to the provision that allows the Exchange to open weeklies classes that are opened by STO Exchanges.

<sup>8</sup> The Exchange noted, in its last STO Program filing, that a retail investor had recently requested another exchange (Phlx) to reinstate a short term option class that the exchange had to remove from trading because of the five-class option limit within the Program. The investor told Phlx that he had used the removed class as a powerful tool for hedging a market sector, and that various strategies that the investor put into play were disrupted and eliminated when the class was removed. See Securities Exchange Act Release No. 64826 (July 6, 2011), 76 FR 40969 (July 12, 2011) (SR-NASDAQ-2011-090) (notice of filing and immediate effectiveness).

platforms.<sup>9</sup> The Exchange has observed increased demand for STO classes and/or series, particularly when market moving events such as significant market volatility, corporate events, or large market, sector, or individual issue price swings have occurred.

In order that the Exchange not exceed the fifteen option class and twenty option series restriction, the Exchange has had to turn away STO customers (traders and investors) because it could not list, or had to delist, STOs or could not open adequate STO Series because of restrictions in the STO Program. This has negatively impacted investors and traders, particularly retail public customers, who have on several occasions requested the Exchange not to remove short term option classes or add short term option classes, or have requested the Exchange to open STO series so that they could execute trading/hedging strategies.

Following is an example of the impact of inadequate STO opportunities. An investor or trader executing a hedging or trading strategy using STOs may need to close his NFLX 240 strike STOs on the Exchange to roll into the 120 strike options. The 120 strike is not offered on the Exchange because of STO Program restrictions; however, it is offered on another exchange. If the trader wants to execute the strategy on the Exchange, he could not do so because the 120 strike order could not be opened on the Exchange and would be rejected. To execute the strategy, the investor would have to close his 240 strike position on the Exchange and then open a 120 strike position on the other exchange that offers the strike. This could ostensibly increase the cost and "legging risk"<sup>10</sup> of executing the roll strategy, and negatively impact the time advantage of executing one complex order to roll the position on the Exchange.<sup>11</sup>

Furthermore, the STO option fragmentation may cause confusion for retail customers and discourage them from using complex STO orders when they could be the most advantageous for effective execution of trading and hedging strategies. The Exchange feels that it is essential that such negative, potentially costly and time-consuming impacts on retail investors are eliminated by modestly expanding the

<sup>9</sup> These include, without limitation, options, equities, futures, derivatives, indexes, exchange traded funds, exchange traded notes, currencies, and over the counter instruments.

<sup>10</sup> The risk of not being able to fulfill a particular leg of a strategy or spread at the price required.

<sup>11</sup> Such roll strategies are often executed toward the end of the lifecycle of a weekly option, when theta (time value) decay is increasingly significant and price movement may be accelerated.

<sup>5</sup> For the filings of STO Exchanges regarding permanent approval of STO programs, see Securities Exchange Act Release Nos. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR-CBOE-2009-018) (approval order); 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR-ISE-2010-72) (approval order); 62297 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR-NASDAQ-2010-073) (notice of filing and immediate effectiveness); 62296 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR-Arca-2010-059) (notice of filing and immediate effectiveness); 62296 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR-Amex-2010-062) (notice of filing and immediate effectiveness); 62505 (July 15, 2010), 75 FR 42792 (July 22, 2010) (SR-BX-2010-047) (approval order); and 62597 (July 29, 2010), 75 FR 47335 (August 5, 2010) (SR-BATS-2010-020) (notice of filing and immediate effectiveness).

Program to enable additional classes and series to be traded. The change proposed by the Exchange should greatly minimize the potential fragmented nature of the short term options program and allow execution of more trading and hedging strategies on the Exchange.<sup>12</sup>

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes in the Program.

The Exchange believes that the STO Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Furthermore, the Exchange has had to eliminate option classes and reject trading requests on numerous occasions because of the limitations imposed by the Program. For these reasons, the Exchange requests an expansion of the current Program and the opportunity to provide investors with additional short term option classes and series for investment, trading, and risk management purposes.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>14</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. The Exchange believes that expanding the current STO Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any

<sup>12</sup> In addition to the noted cost and time-value impact, there is also a competitive impact. First, the proposal would enable the Exchange to provide market participants with an opportunity to execute their strategy wholly on their preferred market, namely the Exchange. And second, the proposal would diminish the potential for foregone market opportunity on the Exchange caused by being forced to delist one STO Series in order to list another or to meet market demand.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR–NASDAQ–2011–138 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–NASDAQ–2011–138. 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 such 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 publicly available. All submissions should refer to File Number SR–NASDAQ–2011–138 and should be submitted on or before November 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Elizabeth M. Murphy,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65529; File No. SR–Phlx–2011–131]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Expand the Short Term Option Program

October 11, 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 September 28, 2011, NASDAQ OMX PHLX LLC (“Phlx” or “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

The Exchange is filing with the Commission a proposal to amend Rule

<sup>15</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.