

participants, the fee would be applied to them in order to encourage better order entry practices that will benefit all market participants. The change is also equitable because it will further encourage better order entry practices across a wider group of market participants. Finally, BX believes that the fee is not unfairly discriminatory. Although the fee may apply to only a small number of market participants, it will be imposed because of the negative externalities that such market participants impose on others through inefficient order entry practices. Accordingly, BX believes that it is fair to impose the fee on these market participants in order to incentivize them to modify their behavior and thereby benefit the market. The change is likewise not unfairly discriminatory because it will negatively affect members only if they have been evading the incentives to improve order entry practices provided by the fee.

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

BX 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.¹¹ BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges, while also seeking to earn a reasonable profit from its trading and routing services. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, BX believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. With respect to the change to the Excess Order Fee, BX believes that the change, like the original fee, will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, BX believes that it is appropriate in order to allow BX to better achieve this purpose.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f) of Rule 19b-4 thereunder.¹³

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:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BX-2013-044 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-BX-2013-044. This file number should be included on the subject line if email 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 on official business days between the hours of 10:00 a.m. and 3:00 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-BX-2013-044, and should be submitted on or before August 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70116; File No. SR-Phlx-2013-79]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Delisting Series in the STOs and Opening up to Five Consecutive Weekly Expirations of STOs

August 5, 2013.

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 July 25, 2013, NASDAQ OMX PHLX LLC (the "Exchange" or "Phlx") 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 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 1012 (Series of Options Open for Trading) and Rule 1101A (Terms of

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹¹ 15 U.S.C. 78f(b)(8).

Option Contracts) to provide for the ability to open up to five consecutive expirations under the Short Term Option Program ("STO Program" or "Program")³ for trading on the Exchange, to allow for the Exchange to delist any series in the STOs that do not have open interest, and to expand the number of series in STOs under limited circumstances when there are no series at least 10% but not more than 30% away from the current price of the underlying security.

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 proposed rule change is to amend Commentary .11 to Rule 1012 for non-index options and Rule 1101A(b)(vi) for index options to provide for the ability to open up to five consecutive expirations under the STO Program for trading on the Exchange, to allow for the Exchange to delist any series in the STOs that do not have open interest, and to expand the number of series in STOs under limited circumstances when there are no series at least 10% but not more than 30%

³ STOs, also known as "weekly options" as well as "Short Term Options", are series in an options class that are approved for listing and trading on the Exchange in which the series are opened for trading on any Thursday or Friday that is a business day and that expire 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. See Rules 1000(b)(44), 1000A(b)(16), Commentary .11 to Rule 1012 and Rule 1101A(b)(vi) regarding the STO Program in various options.

away from the current price of the underlying security.⁴

Currently, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading options pursuant to its STO Program. The Exchange may also match any option classes that are selected by other securities exchanges that employ a similar STO program under their respective rules. For each option class eligible for participation in the STO Program, the Exchange may open up to 30 Short Term Option Series for each expiration date in that class.⁵

This proposal seeks to allow the Exchange to open STO series for up to five consecutive week expirations. The Exchange proposes to add in Commentary .11 of Rule 1012 and Rule 1101A(b)(vi) a maximum of five consecutive week expirations under the STO Program; however a STO expiration will not be added in the same week that a monthly options series expires or, in the case of Quarterly Option Series ("QOS"),⁶ on an expiration that coincides with an expiration of QOS on the same class. In other words, the total number of consecutive expirations will be five, including any existing monthly or quarterly expirations.⁷ This change is being proposed notwithstanding the current cap of 30 series per class under the STO Program. The Exchange notes that the STO Program has been well-received by market participants, in particular by retail investors.⁸

⁴ See Securities Exchange Act Release No. 62296 (June 15, 2010), 75 FR 35115 (June 21, 2010)(SR-Phlx-2010-84) (notice of filing and immediate effectiveness permanently establishing STO Program on the Exchange).

⁵ See Commentary .11 of Rule 1012 and Rule 1101A(b)(vi) for a discussion of these and other features of the STO Program.

⁶ See Commentary .08 of Rule 1012 and Rule 1101A(b)(iv) for a discussion of QOS.

⁷ For example, if QOS expire week 1 and monthly options expire week 3 from now, the proposal would allow the following expirations: Week 1 QOS, week 2 STOs, week 3 monthly, week 4 STOs, and week 5 STOs. If QOS expire week 3 and monthly options expire week 5, the following expirations would be allowed: Week 1 STOs, week 2 STOs, week 3 QOS, week 4 STOs, and week 5 monthly.

⁸ Since the STO Program has been adopted, it has seen rapid acceptance among industry participants, as evidenced by the expansion of the number of classes eligible for the STO Program by various exchanges. See Securities Exchange Act Release Nos. 65775 (November 17, 2011), 76 FR 72473 (November 23, 2011) (SR-NASDAQ-2011-138); 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR-PHLX-2011-131); 66563 (March 9, 2012), 77 FR 15426 (March 15, 2012) (SR-CBOE-2012-026); 67194 (June 13, 2012), 77 FR 36597 (June 19, 2012) (SR-NYSEMKT-2012-08); and 67178 (June 11, 2012), 77 FR 36305 (June 18, 2012) (SR-NYSEArca-2012-60). Moreover, since the inception of STOs on the Exchange and other markets, STO volume has significantly grown as the

The Exchange believes that the current proposed revision to the STO Program will permit the Exchange to meet increased customer demand. The proposed revision will also provide market participants with the ability to trade and hedge in a greater number of option classes and series.

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 expirations that participate in the STO Program.

In addition, to provide for circumstances where the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange is proposing to add new language to Commentary .11 of Rule 1012 and Rule 1101A(b)(vi) to provide that the Exchange would delist series with no open interest in both the call and the put series having: (i) A strike higher than the highest price with open interest in the put and/or call series for a given expiration week; and (ii) a strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration week, so as to list series that are at least 10% but not more than 30% above or below the current price of the underlying security.

Further, in the event that all existing series have open interest and there are no series at least 10% above or below the current price of the underlying security, the Exchange may list additional series, in excess of the 30 allowed currently in the STO Program, that are at least 10% and not more than 30% above or below the current price of the underlying security. The Exchange believes that it is important to allow investors to roll existing option positions and ensure that there are always series at least 10% but not more than 30% above or below the current price of the underlying security. The proposal will give investors this needed flexibility.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5),¹⁰ in particular, in that it

volume of standard options decreased, such that currently STOs represent approximately 31% of the trading volume across all option exchanges.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms 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 STO Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in a greater number of securities. The Exchange also believes that expanding the STO Program will provide the investing public and other market participants with additional opportunities to hedge their investment, thus allowing these investors to better manage their risk exposure. While the expansion of the STO Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of expirations.

The Exchange believes that the ability to delist series with no open interest in both the call and the put series will benefit investors by devoting the STO cap to those series that are more closely tailored to the investment decisions and hedging decisions of investors.

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. To the contrary, the Exchange believes that the proposal is decidedly pro-competitive. The Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest in that it will allow Phlx to offer additional STO products to traders and investors in the same manner as other exchanges.¹³ In sum, the proposed rule change presents no novel issues, and waiver will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposal operative upon filing.¹⁴

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 under Section 19(b)(2)(B)¹⁵ of the Act to determine whether the proposed rule change 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.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 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 Exchange has satisfied this requirement.

¹³ See Securities Exchange Act Release Nos. 68190 (November 8, 2012), 77 FR 68193 (November 15, 2012) (SR-NYSEArca-2012-95); and 68191 (November 8, 2012), 77 FR 68194 (SR-NYSEMKT-2012-42). See also, Securities Exchange Act Release Nos. 68242 (November 15, 2012), 77 FR 69908 (November 21, 2012) (SR-CBOE-2012-110) (notice of filing and immediate effectiveness); 68318 (November 29, 2012), 77 FR 72426 (December 5, 2012) (SR-ISE-2012-90) (notice of filing and immediate effectiveness); and 68361 (December 5, 2012), 77 FR 73729 (December 11, 2012) (SR-BOX-2012-020) (notice of filing and immediate effectiveness).

¹⁴ 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).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

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 email to rule-comments@sec.gov. Please include File Number SR-Phlx-2013-79 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-2013-79. This file number should be included on the subject line if email 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 10:00 a.m. and 3:00 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-2013-79 and should be submitted on or before August 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill,
Deputy Secretary.

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¹⁶ 17 CFR 200.30-3(a)(12).