

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Elizabeth M. Murphy,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69920; File No. SR-Phlx-2013-73]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 1012 To Permit the Exchange To List Additional Strike Prices Until the Close of Trading on the Second Business Day Prior to Monthly Expiration

July 2, 2013.

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 July 1, 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) to permit the Exchange to list additional strike prices until the close of trading on the second business day prior to the expiration of a monthly, or standard, option in the event of unusual market conditions.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.cchwallstreet.com>, 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 Rule 1012(a)(i)(B) to permit the Exchange to add additional strikes until the close of trading on the second business day prior to a monthly expiration in the event of unusual market conditions.

This is a competitive filing that is based on two recently approved filings submitted by NYSE MKT LLC (“NYSE MKT”) and NYSE, Arca, Inc. (“NYSE Arca”) and an immediately effective filing submitted by Chicago Board Options Exchange, Incorporated (“CBOE”).<sup>3</sup> The NYSE MKT and NYSE Arca filings both made changes to their respective rules governing the last day on which strikes may be added for individual stock and exchange traded fund (“ETF”) options. Similar to current Rule 1012(a)(i)(B), NYSE MKT, NYSE Arca, and CBOE had rules that permitted the opening of additional series of individual stock and ETF options until the first calendar day of the month in which the option expires or until the fifth business day prior to expiration if unusual market conditions exist. NYSE MKT, NYSE Arca, and CBOE amended their rules to permit the opening of additional series of individual stocks and ETF options until the close of trading on the second business day prior to the expiration of a monthly, or standard, option in the event of unusual market conditions. The Exchange is proposing to amend its rules in respect of equity and ETF

options to permit the opening of additional strike prices until the close of trading on the second business day prior to the expiration of a standard (monthly) option.

Options market participants generally prefer to focus their trading in strike prices that immediately surround the price of the underlying security. However, if the price of the underlying stock or ETF moves significantly, there may be a market need for additional strike prices to adequately account for market participants’ risk management needs in a stock or ETF. In these situations, the Exchange has the ability to add additional series at strike prices that are better tailored to the risk management needs of market participants. The Exchange may make the determination to open additional series for trading when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the market price of the underlying stock or ETF moves more than five strike prices from the initial exercise price or prices.<sup>4</sup>

If the market need occurs prior to five business days prior to expiration, then the market participants may have access to an option contract that is more tailored to the movement in the underlying stock or ETF. Under current Rule 1012, however, the Exchange is unable to open additional series in response to unusual market conditions that occur between five and two days prior to expiration and market participants may be left without a contract that is tailored to manage their risk. Because of the current five days before expiration restriction, investors may be unable to tailor their hedging activities in options and effectively manage their risk going into expiration.

The Exchange proposes to permit the listing of additional strikes until the close of trading on the second business day prior to expiration in unusual market conditions. Since expiration of standard options on individual stocks and ETFs is on a Saturday, the close of trading on the second business day prior to expiration will typically fall on a Thursday. However, in cases where Friday is a holiday during which the Exchange is closed, the close of trading on the second business day will occur on a Wednesday. The Exchange will continue to make the determination to open additional series for trading when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when certain price movements take place in the underlying market. The proposed change will

<sup>3</sup> See Securities Exchange Act Release Nos. 68460 (December 18, 2012), 77 FR 76145 (December 26, 2012) (SR-NYSEMKT-2012-41) (approval order) (“NYSE MKT filing”); 68461 (December 18, 2012), 77 FR 76155 (December 26, 2012) (SR-NYSEArca-2012-94) (approval order) (“NYSE Arca filing”); and 68606 (January 9, 2013), 78 FR 3065 (January 15, 2013) (SR-CBOE-2012-131) (notice of filing and immediate effectiveness) (“CBOE filing”).

<sup>4</sup> See Rule 1012(a)(i)(B).

<sup>11</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.

provide an additional four days to the Exchange to gauge market impact of the underlying stock or ETF and to react to any market conditions that would render additional series prior to expiration beneficial to market participants. The Exchange believes that the impact on the market from the proposed change will be very minimal to market participants; however, it will be extremely beneficial when unusual market conditions occur during the five to two days leading up to expiration. As a result, the proposal would allow participants to adjust their risk exposure when an unusual market event occurred on trading days 2, 3, 4, or 5 prior to expiration.

This proposal does not raise any capacity concerns on the Exchange, because the changes have no material difference in impact from the current rules. The Exchange notes the proposed change allows for new strikes that would otherwise be permitted to add under existing rules either on the fifth day prior or immediately after expiration.<sup>5</sup> A strike which opens two days prior to expiration will have minimal impact on quoting, as it adds two series out of hundreds of thousands, and only for a small number of days.<sup>6</sup> Thus, any additional strikes that may be added under the proposed change would have no measurable effect on systems capacity. The Exchange understands that The Options Clearing Corporation ("OCC") is able to accommodate the proposal and would have no operational concerns with adding new series on any day except the last day of trading an expiring series.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.<sup>7</sup> In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in

<sup>5</sup> Any new strikes added under this proposal for options on equities or ETFs would be added in a manner consistent with the range limitations described in Rule Commentary .10 to Rule 1012.

<sup>6</sup> In the case of a multi-stock event where multiple stocks may be subject to unusual market conditions, a strike which opens two days prior to expiration will also have minimal impact on quoting, as it adds two series per stock out of hundreds of thousands, and only for a small number of days.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that providing an additional four days to the Exchange to gauge market impact and to react to any market conditions prior to expiration is beneficial and will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions prior to expiration. The Exchange also believes that the additional four days will provide the investing public and other market participants with additional opportunities to hedge their investments thus allowing these investors to better manage their risk exposure with additional in the money series. While the four additional days may generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to the narrow situations when an unusual market event occurred on trading days 2, 3, 4, or 5 prior to expiration. The Exchange also believes that the proposed rule change will ensure competition because the Exchange will be able to list additional equity and ETF series up to the second day before expiration in the same manner that NYSE MKT, NYSE Arca, and CBOE are currently able to do.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to recently approved NYSE MKT and NYSE Arca filings, and an immediately effective CBOE filing. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges.

### *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 Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

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 open additional series of individual stocks and ETF options until the close of trading on the second business day prior to a monthly expiration in unusual market conditions in the same manner as NYSE MKT, NYSE Arca and CBOE. 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.<sup>11</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 under Section 19(b)(2)(B)<sup>12</sup> 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. Comments may be submitted by any of the following methods:

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 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.

<sup>11</sup> 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).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

*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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-73 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-2013-73. 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-2013-73 and should be submitted on or before July 30, 2013.

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

**Elizabeth M. Murphy,**  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69908; File No. SR-NASDAQ-2013-089]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend Fee Pilot Program for NASDAQ Last Sale**

July 2, 2013.

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 June 28, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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 the Substance of the Proposed Rule Change**

NASDAQ is proposing to extend for three months the fee pilot pursuant to which NASDAQ distributes the NASDAQ Last Sale ("NLS") market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the "NASDAQ Last Sale for NASDAQ" and "NASDAQ Last Sale for NYSE/NYSE MKT" data feeds containing last sale activity in U.S. equities within the NASDAQ Market Center and reported to the FINRA/NASDAQ Trade Reporting Facility ("FINRA/NASDAQ TRF"), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority ("FINRA"). The purpose of this proposal is to extend the existing pilot program for three months, from July 1, 2013 to September 30, 2013.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors.

Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by millions of investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**7039. NASDAQ Last Sale Data Feeds**

(a) For a three month pilot period commencing on [April] July 1, 2013, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1)-(2) No change.

(b)-(c) No change.

\* \* \* \* \*

**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 Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data at no cost to millions of internet users and television viewers. NASDAQ now proposes a three-month extension of that pilot program, subject to the same fee structure as is applicable today.

NLS consists of two separate "Level 1" products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the "NASDAQ Last Sale for NASDAQ" data product is

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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