

Form No.	Annual responses	Time (minutes)	Burden (hours)
Without assistance	25	180	75
Total	100	259

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Charles Mierzwa, the RRB Clearance Officer, at (312) 751-3363 or Charles.Mierzwa@RRB.GOV. Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or e-mailed to Patricia.Henaghan@RRB.GOV. Written comments should be received within 60 days of this notice.

Charles Mierzwa,
Clearance Officer.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64326; File No. SR-NASDAQ-2011-057]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ Stock Market, LLC Relating to the \$2.50 Strike Price Program

April 22, 2011.

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 April 18, 2011, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) 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 NASDAQ Stock Market LLC proposes to amend Section 6, Series of Options Open for Trading, of Chapter IV, Securities Traded on NOM, to expand the \$2.50 Strike Price Program,

which applies to NASDAQ members using the NASDAQ Options Market (“NOM”).

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nasdaq.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. 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 expand the Exchange’s ability to select option classes on individual stocks for which the intervals of strike prices will be \$2.50 to list for trading.

The Exchange recently expanded its \$2.50 Strike Price Program (“Program”) ³ to permit the listing of options with \$2.50 strike price intervals for options with strike prices between \$50 and \$100, provided the \$2.50 strike price intervals are no more than \$10 from the closing price of the underlying stock in

³ In 2007, NOM proposed to participate in the \$2.50 Strike Price Program. See Securities Exchange Act Release Nos. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (order approving File Nos. SR-Amex-98-21; SR-CBOE-98-29; SR-PCX-98-31; and SR-Phlx-98-26) (“1998 Order”) and 52893 (December 5, 2005), 70 FR 73488 (December 12, 2005) (order approving File No. SR-Amex-2005-067). NOM participates in the \$2.50 Strike Price Program on the same terms and conditions as the other options exchanges. See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080). See also Securities Exchange Act Release No. 64157 (March 31, 2011), 76 FR 18817 (April 5, 2011) (SR-Phlx-2011-15).

the primary market.⁴ The Exchange currently list [sic] series at \$2.50 strike price intervals in any multiply traded option once another exchange has selected that option to be a part of the program.

The Exchange proposes to amend Chapter IV, Section 6 at Commentary .03 to specify that it may select up to sixty (60) option classes on individual stocks for which the intervals of strike prices will be \$2.50 in addition to options selected by another exchange as part of the \$2.50 Strike Price Program.

NOM has participated in the industry wide \$2.50 Strike Price Program since NOM’s inception in 2007. Currently, other options exchanges select up to 60 option classes on individual stocks for which the intervals of strike prices will be \$2.50.⁵ In addition, each options exchange is permitted to list options with \$2.50 strike price intervals on any option class that another options exchange selects under its program. Also, significantly more options classes are trading in 2011 as compared to 2007. The Exchange proposes to specify that it may select up to 60 options classes to remain competitive with other exchanges and to offer investors additional investment choices.

Furthermore, the Exchange does not believe that this proposal would have a negative impact on the marketplace. The Exchange would compare this proposal with the \$1 Strike Price expansion, wherein NOM expanded its \$1 Strike Price Program from 55 individual stocks to 150 individual stocks on which an option series may list at \$1 strike price intervals.⁶ The Exchange believes that this proposed rule change that would, in part, result in an increase to overall options classes in the industry wide Program, is less than the \$1 Strike Price

⁴ The term “primary market” is defined in Exchange Rule 1000 in respect of an underlying stock or exchange-traded fund share as the principal market in which the underlying stock or exchange-traded fund share is traded.

⁵ The International Securities Exchange, LLC (“ISE”), NASDAQ OMX PHLX LLC (“Phlx”), and Chicago Board Options Exchange (“CBOE”) may select up to 60 option classes on individual stocks for which the intervals of strike prices will be \$2.50. See Securities Exchange Act Release Nos. 64258 (April 8, 2011), 76 FR 20764 (April 13, 2011) (SR-ISE-2011-23), 63914 (February 15, 2011) and 76 FR 9846 (February 22, 2011) (SR-Phlx-2011-15).

⁶ See Securities Exchange Act No. 62451 (July 6, 2010), 75 FR 40001 (July 13, 2010) (SR-NASDAQ-2010-083).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Program increase, which also occurred among several exchanges participating in the program. The Exchange believes that this proposal would have less impact than the \$1 Strike Program increase, which did not have any negative impact on the market in terms of proliferation of quote volume or fragmentation.

The Exchange believes that the effect of the proposed expansion on the marketplace would not result in a material proliferation of quote volume or concerns with fragmentation. 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 have the necessary system capacity to handle the potential additional traffic associated with the listing and trading of classes on individual stocks in the \$2.50 Strike Price Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ 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 the effect of the proposed expansion on the marketplace would not result in a material proliferation of quote volume or concerns with fragmentation. In addition, the Exchange believes that it has the necessary system capacity to handle the potential additional traffic associated with the listing and trading of classes.

The Exchange believes the \$2.50 Strike Price Program proposal would provide the investing public and other market participants increased opportunities to better manage their risk exposure. While expansion of the \$2.50 Strike Price Program may generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes.

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

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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.¹¹ Therefore, the Commission designates the proposal operative upon filing.¹²

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.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 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 Commission has waived the five-day pre-filing requirement in this case.

¹¹ See Securities Exchange Act Release No. 64157 (March 31, 2011), 76 FR 18817 (April 5, 2011) (SR-Phlx-2011-15) (order approving expansion of \$2.50 Strike Price Program).

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).

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-NASDAQ-2011-057 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-2011-057. 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-2011-057 and should be submitted on or before May 20, 2011.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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

Cathy H. Ahn,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64338; File No. SR-Phlx-62011-13]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to NASDAQ OMX PHLX LLC's Limited Liability Company Agreement, By-Laws, Rules, Advices and Regulations

April 25, 2011.

I. Introduction

On February 16, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to alter its governance structure and to make other non-substantive conforming changes. The proposed rule change was published for comment in the *Federal Register* on March 4, 2011.³ On April 15, 2011, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend its Limited Liability Company Agreement ("LLC Agreement") and By-Laws to substantially conform them to The NASDAQ Stock Market LLC's ("NASDAQ") Second Amended Limited Liability Company Agreement ("NASDAQ LLC Agreement") and By-Laws, respectively. These conforming

changes include, among other things: (1) The elimination of the Exchange's Series A Preferred Stock and dissolution of the Member Voting Trust; (2) modifications to the Exchange's board and committee structure to harmonize it with NASDAQ's board and committee structure;⁵ (3) the elimination of foreign currency option ("FCO") participations, of which there are none outstanding; (4) the elimination of definitions, rules, and references to XLE (the Exchange's former equities trading platform); and (5) changes to other terms, names, and cross-references contained in the Exchange's LLC Agreement and By-Laws, including technical and grammatical changes to reflect the Exchange's recent conversion from a Delaware corporation to a Delaware limited liability company ("LLC"),⁶ and changes to clarify and simplify the By-Laws, Rules, Option Floor Procedure Advices and Equity Floor Procedure Advices (the latter two are collectively referred to herein as "Advices"), and Regulations of the Exchange.

A. Elimination of the Series A Preferred Stock and Dissolution of the Member Voting Trust

The Exchange proposes to amend the Exchange's formation documents to eliminate the Series A Preferred Stock. In 2003, Phlx, formerly the Philadelphia Stock Exchange, Inc., filed with the Commission to amend its formation documents to form a demutualized Delaware stock corporation.⁷ At the time of demutualization, the Exchange amended its Certificate of Incorporation to designate one share of preferred stock as the "Series A Preferred Stock," the holder of which had the sole power to select and remove the On-Floor Governors,⁸ in accordance with

specified procedures.⁹ A trust agreement was created and the one and only outstanding share of Series A Preferred Stock was then held by the Phlx Member Voting Trust ("Trust"). The Exchange believes that these arrangements were necessary at the time of demutualization to preserve the ability of members to vote for and affirmatively elect certain board Governors because: (i) Under Delaware law, only stockholders can elect the directors of a Delaware corporation; and (ii) after the demutualization, Members and Member Organizations that were not owners at the time of the demutualization were not stockholders of the Exchange.¹⁰

After the Exchange's demutualization, the trustee of the Trust, pursuant to the Amended Trust Agreement, had the power to vote the share of Series A Preferred Stock to elect the Member Governor and the Designated Independent Governors,¹¹ as directed by the vote of the Member Organization Representatives of Member Organizations entitled to vote pursuant to Article III of the By-Laws. According to the Exchange, this process was designed to facilitate the exercise by Members and Member Organizations of their rights to fair representation in the selection and removal of certain Governors of the Exchange and to facilitate the administration of the affairs of the Exchange in accordance with the Act.¹² In particular, the Trust ensured that the candidates for Governor elected by vote of the Members were, in turn, validly elected to the Board of Governors pursuant to Delaware law and that the Members' vote could not be overridden.

In 2008, the Exchange was acquired by and became a wholly-owned subsidiary of The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). The Exchange represents that, since the acquisition by NASDAQ OMX, there are no longer any other common

⁵ To align itself with the terminology used by NASDAQ, the Exchange proposes to rename the Board of Governors to now be the Board of Directors ("Board"). As a result, all references to "Governors" would be changed to "Directors" in the By-Laws, Rules, Advices, and Regulations of the Exchange. See Notice, *supra* note 3, 76 FR at 12181, 12185, 12189.

⁶ See Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR-Phlx-2010-104). As a result of the conversion, all references to Incorporation would be changed to LLC in the By-Laws, Rules, Advices, and Regulations of the Exchange. The specific proposed rule changes relating to this amendment are discussed in detail in the Notice. See Notice, *supra* note 3, 76 FR at 12181, 12189.

⁷ See Securities Exchange Act Release No. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73).

⁸ "On-Floor Governors" were the Governors elected by the Exchange's Members and Member Organizations. See Securities Exchange Act Release No. 53734 (April 27, 2006), 71 FR 26589 (May 5, 2006) (SR-Phlx-2005-93); e-mail from Angela S. Dunn, Assistant General Counsel, Office of the General Counsel, NASDAQ OMX ("Dunn"), to

Ronesha A. Butler, Special Counsel, Division of Trading and Markets, Commission ("Butler"), dated April 20, 2011 ("Dunn Email"). See also *supra* note 7 (discussing On-Floor Governors).

⁹ See *supra* note 7.

¹⁰ See Notice, *supra* note 3, 76 FR at 12181.

¹¹ After the Exchange's demutualization, the term "On-Floor Governors" was eliminated and replaced by the Member Governor and the Designated Independent Governors. See Dunn Email, *supra* note 8. "Member Governor" means a Governor who is a Member or a general partner or an executive officer (vice-president and above) of a Member Organization and is duly elected to fill the one vacancy on the Board of Governors allocated to the Member Governor. See By-Laws Article I. "Designated Independent Governors" means those Independent Governors who are elected by the holder of the Series A Preferred Stock. See *id.*

¹² See Notice, *supra* note 3, 76 FR at 12181.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 63981 (February 25, 2011), 76 FR 12180 (March 4, 2011) ("Notice").

⁴ In Amendment No. 1, the Exchange amended the text of Rules 607, 862, 1012, 1017, 1058, 1079, 1080, 1082, and 3202 to reflect separate and unrelated intervening proposed rule changes that became effective after this proposal was published for comment. Because Amendment No. 1 is technical in nature, the Commission is not required to publish it for comment.