current market maker quoter functionality, does not ensure that the market maker is satisfying the requirements of the Market Access Rule or Regulation SHO, including the satisfaction of the locate requirement of Rule 203(b)(1) or an exception thereto. The Commission also notes that, in the event a Market Maker Peg Order is executed against such that the Market Maker Peg Order is reduced in size to below one round lot, the market maker would need to perform the necessary regulatory checks pursuant to the Market Access Rule and Regulation SHO prior to entering a new Market Maker Peg Order.

The Commission also believes that providing Exchange market makers with a transition period will serve to minimize the potential market impact caused by the implementation of the Market Maker Peg Order. In addition, by allowing market makers to enter a Market Maker Peg Order that is priced more aggressively than the Designated Percentage, the proposed rules are reasonably designed to provide that quotations submitted by market makers to the Exchange, and displayed to market participants, bear some relationship to the prevailing market price.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change, as modified by Amendment No.1, (SR–BATS–2012–026) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–21769 Filed 9–4–12; 8:45 am]

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[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67753; File No. SR–Phlx–2012–78]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Regarding Strike Price Intervals in the Short Term Options Program

August 29, 2012.

## I. Introduction

On July 2, 2012, 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 indicate that the interval between strike prices on short term options series (''STOs'') listed in accordance with its Short Term Option Series Program (''STO Program'') shall be $0.50 or greater where the strike price is less than $75 and $1 or greater where the strike price is between $75 and $150. The proposal would also provide that, during the expiration week of an option that is in the same class as an STO but has a longer expiration cycle (''Related non-STO'') the strike price interval for the STO and such Related non-STO shall be the same and that a Related non-STO shall be opened for trading in STO intervals in the same manner as the STO. The proposed rule change was published for comment in the **Federal Register** on July 20, 2012.[3] The Commission received one comment letter on the proposal.[4] On August 16, 2012, the Exchange filed a response to the CBOE Letter (''Phlx Response'').[5] This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange proposed to amend Phlx Rules 1012 (Series of Options Open for Trading) and 1101A (Terms of Options Contracts) to indicate that the interval between strike prices on STOs shall be $0.50 or greater where the strike price is less than $75 and $1 or greater where the strike price is between $75 and $150 (''STO Intervals''). The proposal would amend Phlx's rules to indicate that, during expiration week of a Related non-STO, the strike price intervals for the STO and Related non-STO shall be the same. Phlx also proposed to amend its rules to indicate that, during the week before the expiration week of the Related non-STO, such Related non-STO shall be opened for trading in the STO Intervals and in the same manner as the STO.

In the Notice, the Exchange stated that the principal reason for the proposed expansion is market demand for weekly options and continuing strong customer demand to use STOs to effectively execute hedging and trading strategies.[6] Conversely, Phlx contended that inadequately narrow STO intervals can impact trading and hedging opportunities.[7] Phlx also stated that listing Related non-STOs at the same strike prices intervals as STOs will ensure conformity and give investors and traders the ability to maximize trading and hedging opportunities and minimize associated costs.[8]

The Exchange stated that it has analyzed its capacity, and represented that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading in STOs at $0.50 or greater where the strike price is less than $75 and $1 or greater where the strike price is between $75 and $150. In addition, Phlx stated that it believes that the proposed rule change will not raise a capacity issue with its members.[9]

## III. Discussion and Commission Findings

After careful review of the proposed rule change and the CBOE Letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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 Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 67446 (July 20, 2012), 77 FR 42780 (''Notice'').

[4] *See* letter from Jenny L. Klebes-Golding, Senior Attorney, Legal Division, Chicago Board Options Exchange, Incorporated (''CBOE''), to Elizabeth M. Murphy, Secretary, Commission, dated August 10, 2012 (''CBOE Letter''). CBOE sought, in part, further clarification on whether the current 30 series per-class limitation set forth in the STO Program would apply to the Related non-STOs when the STO strike price intervals are added in accordance with this proposal.

[5] In its response, Phlx confirmed that the 30 series limitation CBOE identified applies to STOs only and would not restrict the ability to open additional series of Related non-STOs in accordance with the proposed rule change. *See* Phlx Response at 2–3.

[6] *See* Notice, *supra* note 3 at 42781.

[7] *Id.* at 42782–42783.

[8] *Id.* at 42783.

[9] *Id.*

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

need to avoid unnecessary proliferation of options series.

In approving this proposal, the Commission notes that Exchange has represented that it and OPRA have the necessary systems capacity to handle the potential additional traffic associated with trading STOs and Related non-STOs at more granular strike price intervals. The Commission expects the Exchange to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2012–78) be, and it hereby is, approved.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67751; File No. SR–FINRA–2012–024]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to FINRA Rule 4210 (Margin Requirements)

August 29, 2012.

## I. Introduction

On May 23, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 amend FINRA Rule 4210 (Margin Requirements). The proposed rule was published for comment in the **Federal Register** on June 6, 2012.[3] The Commission received one comment on the proposed rule change.[4] On July 13, 2012, FINRA extended the time period for Commission action until September 4, 2012.[5] FINRA filed Amendment No. 1 to the proposed rule change and responded to the comment letter on August 13, 2012.[6] The Commission is publishing this notice and order to solicit comment on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposal

FINRA has proposed to amend FINRA Rule 4210 (Margin Requirements) to: (1) Revise the definitions and margin treatment of option spread strategies; (2) clarify the maintenance margin requirement for non-margin eligible equity securities; (3) clarify the maintenance margin requirements for non-equity securities; (4) eliminate the current exemption from the free-riding prohibition for designated accounts; (5) conform the definition of ''exempt account''; and (6) eliminate the requirement to stress test portfolio margin accounts in the aggregate. In addition, the proposed rule change would amend FINRA Rule 4210 to make non-substantive technical and stylistic changes.

### *Option Spread Strategies*

Basic option spreads can be paired in such ways that they offset each other in terms of risk. The total risk of the combined spreads is less than the sum of the risk of both spread positions if viewed as stand-alone strategies. FINRA Rule 4210(f)(2) currently recognizes several specific option spread strategies.[7] These strategies consist of either a ''long'' and a ''short'' option contract or two ''long'' and two ''short'' option contracts. The ''long'' and ''short'' option contracts have the same underlying security or instrument and the ''long'' option contracts must expire on or after the expiration of the ''short'' option contracts.

While the strategies recognized under FINRA Rule 4210 are the most common types of option spread strategies used by investors, there are other combinations of calls and/or puts that are similar in terms of their risk profile. Accordingly, FINRA proposed a broader definition of a spread in FINRA Rule 4210(f)(2)(A)(xxxii) to mean a ''long'' and ''short'' position in different call option series, different put option series, or a combination of call and put option series, that collectively have a limited risk/reward profile, and meet the following conditions: (1) All options must have the same underlying security or instrument; (2) all ''long'' and ''short'' option contracts must be either all American-style or all European-style;[8] (3) all ''long'' and ''short'' option contracts must be either all listed or all over-the-counter (''OTC''); [9] (4) the aggregate underlying contract value of ''long'' versus ''short'' contracts within option type(s) must be equal; and (5) the ''short'' option(s) must expire on or before the expiration date of the ''long'' option(s).

The proposed revised margin requirements set forth in FINRA Rule 4210(f)(2)(H) would require that the ''long'' option contracts within such spreads must be paid for in full. The margin required for the ''short'' option contracts within such spreads would be the lesser of: (1) The margin required pursuant to FINRA Rule 4210(f)(2)(E); or (2) the maximum potential loss. The maximum potential loss would be determined by computing the intrinsic value of the options at price points for the underlying security or instrument that are set to correspond to every exercise price present in the spread. The intrinsic values are netted at each price point, and the maximum potential loss is the greatest loss, if any. The proceeds of the ''short'' options may be applied towards the cost of the ''long'' options and/or any margin requirement. FINRA Rule 4210(f)(2)(H)(iv) would also make clear that OTC option contracts that comprise a spread must be issued and

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[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 67088 (May 31, 2012), 77 FR 33527 (''Notice'').

[4] Letter to Elizabeth M. Murphy, Secretary, Commission from David Aman, Esq., Cleary Gottlieb Steen & Hamilton LLP, dated June 27, 2012 (''Aman Letter'').

[5] *See http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p135885.pdf.*

[6] Amendment No. 1 and response to Aman Letter, dated Aug. 13, 2012 (''Amendment No. 1''). The text of Amendment No. 1 is available on FINRA's Web site at http://www.finra.org, at the principal office of FINRA, and at the Commission's Public Reference Room. *See* section III. below (describing Amendment No. 1).

[7] *See* FINRA Rule 4210(f)(2)(A) that currently recognizes the following spread strategies: box spread, butterfly spread, calendar (or time) spread, ''long'' calendar butterfly spread, ''long'' calendar condor spread, ''long'' condor spread, ''short'' calendar iron butterfly spread, ''short'' calendar iron condor spread, ''short'' iron butterfly spread and ''short'' iron condor spread.

[8] American-style options can be exercised or assigned at any time during the life of the contract. European-style options can only be exercised or assigned at the time of expiration.

[9] *See* FINRA Rule 4210(f)(2)(A)(xxvi) (renumbered as 4210(f)(2)(A)(xxiv)) that defines a listed option as an option contract that is traded on a national securities exchange and is issued and guaranteed by a registered clearing agency. *See also* FINRA Rule 4210(f)(2)(A)(xxxii) (renumbered as 4210(f)(2)(A)(xxvii)) that defines an OTC option as an over-the-counter option contract that is not traded on a national securities exchange and is issued and guaranteed by the carrying broker-dealer.