

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-NYSEMKT-2013-10 and should be submitted on or before March 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69031; File No. SR-Phlx-2013-18]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Long-Term Index Options

March 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on February 20, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 the Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Exchange Rule 1101A (Terms of Option Contracts) to amend Exchange Rule

1101A (Terms of Option Contracts) to clarify that long-term index options series ("long-term options series") must have a term of not less than nine months to expiration,³ and to reflect that certain rules will not apply to such long-term options series until the time to expiration is less than nine months.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).⁴

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 the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend subsection (b) of Rule 1101A to clarify that long-term options series must have a term of not less than nine months to expiration, and to reflect that certain rules will not apply to such long-term options series until the time to expiration is less than nine months. These changes are proposed to the limited extent needed to make subsection (b) regarding long-term options series consistent with the established rule language of Chicago Board Options Exchange, Inc. ("CBOE") (e.g. CBOE Rule 24.9 regarding LEAPS⁵), as well as with the established rule language of the Exchange (e.g. Rule 1012 regarding long-

term equity and exchange traded fund ("ETF") options).

The Exchange believes that its proposal is proper, and indeed desirable, in light of its objective to continue to harmonize the listing rules for options products offered for trading on the Exchange, particularly in light of the symbiotic hedging and trading relationship between index options and other option classes on Phlx, such as stock and ETF options, as well as with options classes on other options exchanges.

Rule 1101A has been developed to discuss, among other things, when and how the Exchange may open months and series (including long-term series) in classes of index options that have been approved for listing and trading on the Exchange. The rule also discusses the price intervals for index option products that include quarterly options, short term options, and currency options. Rule 1101A(b) indicates how the Exchange initially fixes expiration months and series in index options.

Rule 1101A(b) currently states that at the commencement of trading on the Exchange of a particular class of stock index options, the Exchange will open at least one expiration month and series for each class of options open for trading on the Exchange.⁶ The proposal to open at least one month and one series of index options was filed and approved almost two years ago,⁷ in large part in the recognition that trading and hedging strategies work most efficiently across various types of option classes trading on the Exchange (e.g. equity options and index options) when the rules for these classes are in sync. This proposal is a continuation of the

⁶ Rule 1101A(b) states, in relevant part: (b) After a particular class of stock index options has been approved for listing and trading on the Exchange, the Exchange shall from time to time open for trading series of options therein. Within each approved class of stock index options, the Exchange shall open for trading a minimum of one expiration month and series for each class of approved stock index options and/or series of options having up to 60 months to expiration ("long-term options series") as provided in subparagraph (b)(iii). Prior to the opening of trading in any series of stock index options, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series.

⁷ See Securities Exchange Act Release No. 64741 (June 24, 2011), 76 FR 38444 (June 30, 2011) (order approving SR-Phlx-2011-65). To further conform its equity and index option rules, in the filing the Exchange also deleted obsolete references to consecutive month and cycle month series in Rule 1101A and added language to state that it may open additional option series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices.

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In addition to a term of not less than nine months, long-term options series may have up to 60 months to expiration. Rule 1101A.

⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵ CBOE refers to long-term options series as LEAPS, or Long-Term Equity Anticipation Securities.

Exchange's efforts to conform its options rules.

Rule 1101A(b)(iii) states that long-term options series have a maximum term of up to 60 months to expiration. The Exchange proposes language in subsection (b)(iii) to also establish a minimum term of not less than nine months to expiration for long-term options series. The Exchange incorporates the long-term options series definition provided in (b)(iii) into subsection (b) to indicate the nine month floor and 60 month ceiling of long-term options series, just as it does in (b)(iii), while deleting obsolete language. The Exchange believes that this is proper and desirable. First, it conforms subsection (b) and (b)(iii) where they refer to long-term options series. Second, it establishes a floor for long-term options series, as is done in CBOE Rule 24.9.⁸ Third, it deletes language referring to expiration cycle that is not needed in light of the definition of long-term options clarifying their minimum and maximum term. The Exchange believes that, in addition to conforming Rule 1101A internally as well as with CBOE Rule 24.9, the proposed change negates potential confusion by clearly indicating what a long-term options series is in regard to index options.

In addition, the Exchange proposes new language in Rule 1101A(b)(iii) to indicate that strike price interval, bid/ask differential and continuity rules shall not apply to options series until the time to expiration is less than nine months (that is, until such time that they are no longer long-term options). This is a concept that is clearly established on the Exchange as well as on other options exchanges. First, the proposed new language directly keys in to the nine month floor for long-term options series that is established in subparagraphs (b) and (b)(iii). Second, the proposed language regarding non-applicability of intervals, differentials, and continuity rules until expiration time is less than nine months is identical to the language found in Rule 1012(a)(i)(D), which deals with long-term equity and ETF options.⁹ Intervals, differentials, and continuity rules are equally not germane to long-term index options as to long-term equity and ETF

options. That is, index options are no different from equity and ETF options in respect of the non-applicability of these three items until expiration time is less than nine months, and should, therefore, have similar rules. And third, the proposed language is similar to the language found in CBOE Rule 24.9(b)(1)(A).¹⁰

The Exchange believes that clarification of its rules to harmonize them across various option classes on Phlx, and other options exchanges, would allow more precise tailoring of hedging and trading opportunities and would thereby be beneficial to the Exchange and its traders, market participants, and public investors in general.

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.¹¹ In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² 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 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 proposes to clarify that it may list long-term options series that have not less than nine months to expiration, and that strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine months. This would harmonize the Exchange's rules internally as well as with the rules of another options exchange, namely CBOE. The Exchange believes this would eliminate potential confusion about competitive long term-index options listing opportunities on the Exchange, would allow better hedging and trading opportunities and efficiency, and would be beneficial to the Exchange and its traders, market participants, and public investors in general.

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. To the contrary, the Exchange believes the proposal is pro-competitive. The rule change clarifies the Exchange's long-term index options rules and thereby allows it to more effectively compete with other exchanges in terms of long-term index options products.

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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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) ¹³ of the Act and Rule 19b-4(f)(6)(iii) thereunder.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 (iii) [sic] 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

⁸ Consistently with their rule sets, CBOE establishes the minimum floor at twelve months while Phlx establishes the floor at nine months. See *infra* note 10.

⁹ While Rule 1101A is the listing rule for regular and long-term index options, Rule 1012 is the equivalent listing rule for regular and long-term equity and ETF options. The Exchange notes that NYSE Arca ("Arca") Rule 6.4 establishes, like Phlx Rule 1012, a nine month floor for long-term equity and ETF options (which Arca refers to as LEAPS).

¹⁰ While the minimum term for long-term index options is stated in CBOE Rule 24.9(b)(1)(A) as twelve months and in Rule 1101A(b)(iii) as nine months, these times are internally consistent within the respective CBOE and Phlx rule sets.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

Number SR-Phlx-2013-18 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-2013-18. 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 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-2013-18, and should be submitted on or before March 29, 2013.

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

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69030; File No. SR-NASDAQ-2013-032]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Require That Listed Companies Have an Internal Audit Function

March 4, 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 February 20, 2013, 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, 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 proposes to require that listed companies establish and maintain an internal audit function. The text of the proposed rule change is below. Proposed new language is in italics.³

* * * * *

5645. Internal Audit Function

Each Company must establish and maintain an internal audit function to provide management and the audit committee with ongoing assessments of the Company's risk management processes and system of internal control. The Company may choose to outsource this function to a third party service provider other than its independent auditor. The audit committee must meet periodically with the internal auditors (or other personnel responsible for this function) and assist the Board in its oversight of the performance of this function. The audit committee should also discuss with the outside auditor the responsibilities, budget and staffing of the internal audit function.

A Company listed on Nasdaq on or before June 30, 2013, must establish an internal audit function by no later than December 31, 2013. A Company listed

after June 30, 2013, must establish an internal audit function prior to listing.

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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

Nasdaq proposes to adopt a new rule to require all listed companies to establish and maintain an internal audit function.⁴ The purpose of the rule is to ensure that listed companies have a mechanism in place to regularly review and assess their system of internal control and, thereby, to identify any weaknesses and develop appropriate remedial measures. The rule is also intended to make sure that the listed company's management and audit committee are provided with ongoing information about risk management processes and the system of internal control. Nasdaq also believes that the rule will assist listed companies' efforts to comply with their obligations under federal securities law, including but not limited to Rules 13a-15 and 15d-15 under the Act, which require most companies to maintain and to evaluate, with the participation of their principal executive and principal financial officers, or persons performing similar functions, the effectiveness of the internal control over financial reporting.⁵

To preserve flexibility, listed companies may choose to outsource this function to a third party service provider other than their independent auditor. However, in all instances, the audit committee has sole responsibility to oversee the internal audit function and cannot allocate or delegate this responsibility to another board committee.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

⁴ The New York Stock Exchange, in Listed Company Manual Section 303A.07(c), has a similar requirement.

⁵ 17 CFR 240.13a-15 and 240.15d-15.

¹⁵ 17 CFR 200.30-3(a)(12).