

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-2009-95 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-27464 Filed 11-16-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60952; File No. SR-NASDAQ-2009-099]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Strike Price Intervals of \$0.50 for Options on Stocks Trading at or Below \$3.00 on the NASDAQ Options Market

November 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 3, 2009, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission (the "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

Nasdaq is filing a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to modify the Supplementary Material of Chapter IV, Section 6 of the Exchange's rules, in order to establish strike price intervals of \$0.50, beginning at \$1, for certain options classes whose underlying security closed at or below \$3 in its primary market on the previous trading day.

The text of the proposed rule change is available from Nasdaq's Web site at <http://nasdaq.cchwallstreet.com>, at

Nasdaq's principal office, 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 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to expand the ability of investors to hedge risks associated with stocks trading at or under \$3. Currently, Supplementary Material .01 to Chapter IV, Section 6 provides that the interval of strike prices of series of options on individual stocks may be \$2.50 or greater where the strike price is \$25 or less. Additionally, Supplementary Material .02 to Section 6 allows the Exchange to establish \$1 strike price intervals (the "\$1 Strike Program") on options classes overlying no more than fifty-five individual stocks designated by the Exchange. In order to be eligible for selection into the \$1 Strike Program, the underlying stock must close below \$50 in its primary market on the previous trading day. If selected for the \$1 Strike Program, the Exchange may list strike prices at \$1 intervals from \$1 to \$50, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list \$1 strikes on any other option class designated by another securities exchange that employs a similar \$1 Strike Program to its own rules.<sup>3</sup> The Exchange is restricted from listing any series that would result in strike prices being within \$0.50 of an existing \$2.50 strike price.

The Exchange is now proposing to add new section .05 to the Supplementary Material to Chapter IV, Section 6, to establish strike prices of \$1, \$1.50, \$2, \$2.50, \$3 and \$3.50 for

certain stocks that trade at or under \$3.00.<sup>4</sup> The listing of these strike prices will be limited to options classes whose underlying security closed at or below \$3 in its primary market on the previous trading day, and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. The listing of \$0.50 strike prices would be limited to options classes overlying no more than 5 individual stocks (the "\$0.50 Strike Program") as specifically designated by the Exchange. The Exchange would also be able to list \$0.50 strike prices on any other option classes if those classes were specifically designated by other securities exchanges that employed a similar \$0.50 Strike Program under their respective rules.

Currently, the Exchange may list options on stocks trading at \$3 at strike prices of \$1, \$2, \$3, \$4, \$5, \$6, \$7 and \$8 if they are designated to participate in the \$1 Strike Program.<sup>5</sup> If these stocks have not been selected for the Exchange's \$1 Strike Program, the Exchange may list strike prices of \$2.50, \$5, \$7.50 and so forth as provided in Supplementary Material .01, but not strike prices of \$1, \$2, \$3, \$4, \$6, \$7 and \$8.<sup>6</sup>

The Exchange is now proposing to amend the Article IV, Chapter 6 Supplementary Material by adding new section .05 to list strike prices on options on a number of qualifying stocks that trade at or under \$3.00, not simply those stocks also participating in the \$1 Strike Program, in finer intervals of \$0.50, beginning at \$1 up to \$3.50. Thus, a qualifying stock trading at \$3 would have option strike prices established not just at \$2.50, \$5.00, \$7.50 and so forth (for stocks not in the Exchange's \$1 Strike Program) or just at \$1, \$2, \$3, \$4, \$5, \$6, \$7 and \$8 (for stocks designated to participate in the \$1 Strike Program), but rather at strike

<sup>4</sup> The Exchange recently amended Chapter IV, Section 4 (Securities Traded on NOM) of its options rules to eliminate the \$3 market price per share requirement for continued approval for an underlying security. The amendment eliminated the prohibition against listing additional series or options on an underlying security at any time when the price per share of such underlying security is less than \$3. See Securities Exchange Act Release No. 59485 (March 2, 2009), 74 FR 10324 (March 10, 2009) (SR-Nasdaq-2009-16).

<sup>5</sup> Additionally, market participants may be able to trade \$2.50 strikes on the same option at another exchange, if that exchange has elected not to select the stock for participation in its own similar \$1 Strike Program.

<sup>6</sup> Again, market participants may also be able to trade the option at \$1 strike price intervals on other exchanges, if those exchanges have selected the stock for participation in their own similar \$1 Strike Program.

<sup>12</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.

<sup>3</sup> The Exchange may not list long-term option series ("LEAPS") at \$1 strike price intervals for any class selected for the Program.

prices established at \$1, \$1.50, \$2, \$2.50, \$3 and \$3.50.<sup>7</sup>

The Exchange believes that current market conditions demonstrate the appropriateness of the new strike prices. Recently the number of securities trading below \$3.00 has increased dramatically.<sup>8</sup> Unless the underlying stock has been selected for the \$1 Strike Program, there is only one possible in-the-money call (at \$2.50) to be traded if an underlying stock trades at \$3.00. Similarly, unless the underlying stock has been selected for the \$1 Strike Program, only one out-of-the-money strike price choice within 100% of a stock price of \$3 is available if an investor wants to purchase out-of-the-money calls. Stated otherwise, a purchaser would need over a 100% move in the underlying stock price in order to have a call option at any strike price other than the \$5 strike price become in-the-money. If the stock is selected for the \$1 Strike Program, the available strike price choices are somewhat broader, but are still greatly limited by the proximity of the \$3 stock price to zero, and the very large percent gain or loss in the underlying stock price, relative to a higher priced stock, that would be required in order for strikes set at \$1 or away from the stock price to become in-the-money and serve their intended hedging purpose.

As a practical matter, a low-priced stock by its very nature requires narrow strike price intervals in order for investors to have any real ability to hedge the risks associated with such a security or execute other related options trading strategies. The current restriction on strike price intervals, which prohibits intervals of less than \$2.50 (or \$1 for stocks in the \$1 Strike Program) for options on stocks trading at or below \$3, could have a negative effect on investors. The Exchange believes that the proposed \$0.50 strike price intervals would provide investors with greater flexibility in the trading of equity options that overlie lower priced stocks by allowing investors to establish equity option positions that are better tailored to meet their investment objectives. The proposed new strike prices would enable investors to more closely tailor their investment strategies and decisions to the movement of the underlying security. As the price of

stocks decline below \$3 or even \$2, the availability of options with strike prices at intervals of \$0.50 could provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price.

With regard to the impact on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> 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, by expanding the ability of investors to hedge risks associated with stocks trading at or under \$3. The proposal should create greater trading and hedging opportunities and flexibility, and provide customers with the ability to more closely tailor investment strategies to the price movement of the underlying stocks, trading in many of which is highly liquid.

### 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: (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 after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of

investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

The Exchange has requested that the Commission waive the 30-day operative delay to permit the Exchange to compete effectively with other exchanges that have implemented similar rules permitting \$0.50 strike price intervals for certain options classes.<sup>13</sup> The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2009-099 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-2009-099. This

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). 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.

<sup>13</sup> See, e.g., Securities Exchange Act Release No. 60694 (September 18, 2009), 74 FR 49048 (September 25, 2009) (SR-Phlx-2009-65) (order approving a \$0.50 strike program substantially the same as the \$0.50 Strike Program proposed by Nasdaq).

<sup>14</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>7</sup> The option on the qualifying stock could also have strike prices set at \$5, \$7.50 and so forth at \$2.50 intervals (pursuant to Commentary .05(a)(ii) to Phlx Rule 1012) or, if it has been selected for the \$1 Strike Program, at \$4, \$5, \$6, \$7 and \$8.

<sup>8</sup> As of October 20, 2009, stocks trading at or below \$3 include CIT Group Inc., E-trade Financial Corp. and Evergreen Solar Inc. Options overlying these stocks trade on NOM.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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 inspection and copying 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-2009-099 and should be submitted on or before December 8, 2009.

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

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-27465 Filed 11-16-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60961; File No. SR-Phlx-2009-84]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Conduct of Business on the Exchange

November 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 29, 2009, NASDAQ OMX PHLX, Inc. ("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. On November 6, 2009, the Exchange filed Amendment No. 1. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rules to: (i) Create an expedited hearing process for members posing an immediate threat to the safety of persons or property, seriously disrupting Exchange operations, or are in possession of a firearm on the Exchange trading floor; (ii) increase the time period a member may be physically excluded from the trading floor; (iii) increase the maximum amount a member may be charged pursuant to Rule 60; (iv) amend language applicable to contesting citations and create a forum fee of \$100 for contesting citations; (v) add clarifying language to prohibit alcohol and illegal controlled substances on the trading floor; (vi) increase fines for various regulations; (vii) require non-member visitors who are performing contract work at the Exchange to provide a certificate of insurance and add a fee schedule for failure to provide such proof of insurance; (viii) add a new rule to limit exchange liability and require reimbursement of certain expenses; (ix) amend the disciplinary rules to allow Enforcement Staff to request a hearing; and (x) increase the limit on fees from \$5,000 to \$10,000 and add additional clarifying language to Rule 970.

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

##### Order and Decorum Regulations

The purpose of the proposed rule change is to ensure the efficient, undisrupted conduct of business on the Exchange and provide a trading floor environment free from conduct that could distract or interfere with market activity. Additionally, the Exchange proposes to provide a fair process for members to be heard with respect to removals.

Currently, the Exchange may summarily remove a member from the floor for breaches of regulations that relate to the administration of order, decorum, health, safety and welfare on the Exchange ("order and decorum" regulations). Exchange By-Law Article VIII, Section 8-1, provides "[t]he Exchange shall make and enforce rules and regulations relating to order, decorum, health, safety and welfare on the options trading floor and the immediately adjacent premises of the Exchange and shall be empowered to impose penalties for violations thereof. For breaches of order, the President and his designated staff may exclude Members, participants and Member Organizations and participant organizations (as applicable) and employees from the trading floor and the immediately adjacent premises, or may impose fines consistent with Exchange rules, or both. They shall administer the provisions of these By-Laws and the Rules of the Exchange pertaining to the trading floor and the immediately adjacent premises of the Exchange."<sup>3</sup> Removal from the trading floor is not the exclusive sanction for breaches of order and decorum and the regulations thereunder. In addition to removal, a member could also be subject to a fine or the matter could also be referred to the Business Conduct Committee where it would proceed in accordance with Rules 960.1 through 960.12.<sup>4</sup> Removal occurs when a

<sup>3</sup> For purposes of this proposed Rule, the premises immediately adjacent to the trading floor shall include the following: (1) All premises other than the trading floor that are under Exchange control; and (2) premises in the building where the Exchange maintains its principal office and place of business, namely 1900 Market Street, Philadelphia, Pennsylvania. See Exchange Rule 60 (b)(iii).

<sup>4</sup> These rules provide the jurisdiction, procedures and process by which an Exchange member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization may be charged with a violation within the disciplinary

<sup>15</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.