

further the objectives of section 6(b)(5) of the Act,<sup>21</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, 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.

#### *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 that is not necessary or appropriate in furtherance of the purposes of the Act.

#### **II. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others**

No written comments were solicited or received with respect to the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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:

##### *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-NYSE-2008-45 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2008-45. 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 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 NYSE. 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-NYSE-2008-45 and should be submitted on or before July 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58039; File No. SR-Phlx-2008-44]

#### **Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Quarterly Options Series Pilot Program**

June 26, 2008.

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>

<sup>22</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.

notice is hereby given that on June 19, 2008, the Philadelphia Stock Exchange, Inc. ("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 substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 amend its Rules 1012 (Series of Options Open for Trading) and 1101A (Terms of Option Contracts), in order to extend for a period of one year an Exchange pilot program (the "Pilot Program") to permit the listing and trading of options series that may be opened for trading on any business day and expire at the close of business on the last business day of a calendar quarter ("Quarterly Options" or "Quarterly Options Series"). The Pilot Program currently continues through July 10, 2008.<sup>5</sup> The text of the proposed rule change is available on the Exchange's Web site ([http://www.phlx.com/regulatory/reg\\_rulefilings.aspx](http://www.phlx.com/regulatory/reg_rulefilings.aspx)), 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.

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

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

<sup>5</sup> See Securities Exchange Act Release No. 56030 (July 9, 2007), 72 FR 38645 (July 13, 2007) (SR-Phlx-2007-42).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program for a period of one year so that the Exchange may continue to list and trade Quarterly Options within the parameters specified in its Rules 1012 and 1101A. In February 2007, the Commission approved the Pilot Program allowing the listing and trading of Quarterly Options on the Exchange, and thereafter extended the Pilot Program through July 10, 2008.<sup>6</sup> The Exchange is proposing to extend the Pilot Program for one year through July 10, 2009. The Exchange is not proposing any changes to the Pilot Program.<sup>7</sup>

In the Commission Order approving the Pilot Program, the Commission indicated that if the Exchange seeks extension, expansion, or permanent approval of the Pilot Program, it must submit a Pilot Program Report (the "Report") that must include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which Quarterly Option Series were opened; (2) an assessment of the appropriateness of the options classes selected for the Phlx Pilot; (3) an assessment of the impact of the Pilot Program on the capacity of Phlx, Options Price Reporting Authority ("OPRA"), and on market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how Phlx addressed such problems; (5) any complaints that the Phlx received during the operation of the Pilot Program and how the Phlx addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program.<sup>8</sup> In connection with the Pilot Program expansion,<sup>9</sup> the Commission further requested that the Report

include analysis of: (1) The impact of the additional series on the Exchange's market and quote capacity, and (2) the implementation and effects of the delisting policy, including the number of series eligible for delisting during the period covered by the report, the number of series actually delisted during that period (pursuant to the delisting policy or otherwise), and documentation of any customer requests to maintain Quarterly Options Series strikes that were otherwise eligible for delisting. The Exchange has submitted, under separate cover, a Report in connection with this filing, which Report seeks confidential treatment under the Freedom of Information Act.

The Report reviews the Exchange's experience with the Pilot Program and clearly supports the Exchange's belief that extension of the Pilot Program is proper. Among other things, the Exchange believes that the Report shows the strength and efficacy of the Pilot Program on the Exchange as reflected by the strong volume of Quarterly Options traded on Phlx since the Pilot Program's inception in February 2007. The Exchange further believes that the Report establishes that the Pilot Program has not created, and in the future should not create, capacity problems for the Exchange or the OPRA system. Moreover, the Exchange represents that it has the necessary systems capacity to support new options series that will result from the introduction of Quarterly Options Series.

The Exchange believes that extending the Pilot Program would continue to provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5), specifically,<sup>11</sup> in that it is designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and the national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposal would achieve this by allowing continued listing of Quarterly Options, thereby stimulating customer interest in such options and creating greater trading opportunities and flexibility and providing customers with the ability to

more closely tailor their investment strategies.

*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 solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest and will promote competition because such waiver will allow Phlx to continue the existing Pilot without interruption.<sup>14</sup> Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate

<sup>6</sup> See Securities Exchange Act Release Nos. 55301 (February 15, 2007), 72 FR 8238 (February 23, 2007) (SR-Phlx-2007-08) (establishing the Pilot Program) and 56030 (July 9, 2007), 72 FR 38645 (July 13, 2007) (SR-Phlx-2007-42) (extending the Pilot Program).

<sup>7</sup> The Pilot Program was expanded and amended when the Exchange filed a proposed rule change, pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(6) thereunder, to list additional series and implement a delisting policy for outlying series with no open interest. See Securities Exchange Act Release No. 57583 (March 31, 2008), 73 FR 18589 (April 4, 2008) (SR-Phlx-2008-23).

<sup>8</sup> See Securities Exchange Act Release No. 55301, *supra* note 6.

<sup>9</sup> See Securities Exchange Act Release No. 57583, *supra* note 7.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its 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 fulfilled this requirement.

<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).

the 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 No. SR-Phlx-2008-44 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2008-44. 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 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 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 No.

SR-Phlx-2008-44 and should be submitted on or before July 24, 2008.

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

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58049; File No. SR-Phlx-2008-46]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for Options on the Full-Size Nasdaq 100 Index and Options on the Mini Nasdaq 100 Index

June 27, 2008.

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 13, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 substantially prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member, pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

Phlx proposes to assess equity option charges, as opposed to index option charges, on: (1) Options on the full value of the Nasdaq 100 Index<sup>5</sup> traded

under the symbol NDX (the "Full-size Nasdaq 100 Index"); and (2) options on the one-tenth of the value of the Nasdaq 100 Index traded under the symbol MNX (the "Mini Nasdaq 100 Index") (collectively referred to herein as the "Nasdaq Index Products").<sup>6</sup> Therefore, the Exchange proposes to charge the Nasdaq Index Products, which are index options, in a similar manner that it charges for equity options, except that there will be a fee assessed for customer transactions.<sup>7</sup> Specifically, for purposes of the option transaction charge, the Exchange proposes to adopt a specific customer option transaction charge of \$0.12 per contract side customer execution transaction fee on the Nasdaq Index Products.

In addition, the Exchange proposes to adopt a \$0.10 per contract side license fee on "firm-related" comparison and transaction charges for the Nasdaq Index Products.<sup>8</sup> This license fee will be imposed only after the Exchange's \$60,000 firm-related equity option and index option comparison and transaction charge cap is reached.<sup>9</sup>

Corporations. The Corporations make no warranties and bear no liability with respect to the options products.

<sup>6</sup> See Securities Exchange Act Release No. 57936 (June 6, 2008), 73 FR 33481 (June 12, 2008) (SR-Phlx-2008-36) (proposed rule change relating to the listing and trading of options on the Nasdaq Index Products).

<sup>7</sup> Phlx has clarified that the index option transaction charge for customer executions, which is currently \$0.40 per contract, applies to broker-dealer transactions. Pursuant to this proposed rule change, Phlx has stated that broker-dealer transactions in MNX and MDX index options will be assessed the equity option transaction charges as set forth on the Exchange's current Summary of Equity Option and RUT and RMN Charges fee schedule. Pursuant to that fee schedule, the broker-dealer equity option transaction charges are either \$0.45 per contract for AUTOM-delivered orders or \$0.25 per contract for non-AUTOM-delivered orders. Email communication to Heather Seidel, Assistant Director, Division of Trading and Markets ("Division"), Commission, and Leah Mesfin, Special Counsel, Division, Commission, from Cynthia Hoekstra, Vice President, Phlx, on June 24, 2008.

<sup>8</sup> Specifically, "firm-related" charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm (proprietary and customer executions) comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively the "firm-related charges").

<sup>9</sup> Currently, the Exchange imposes a per contract side license fee for equity option and index option "firm" transactions on certain licensed products (collectively "licensed products") after the \$60,000 cap per member organization on all "firm-related" equity option and index option comparison and transaction charges combined is reached. Therefore, when a member organization exceeds the \$60,000 cap (comprised of firm-related charges), the member organization is charged \$60,000, plus the applicable license fee per contract side for any contracts in licensed products (if any) over those that were

<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.

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

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

<sup>5</sup> NASDAQ®, NASDAQ-100® and NASDAQ-100 Index® are registered trademarks of The NASDAQ OMX Group, Inc. (which with its affiliates are the "Corporations") and are licensed for use by the Philadelphia Stock Exchange, Inc. in connection with the trading of options products based on the NASDAQ-100 Index®. The options products have not been passed on by the Corporations as to their legality or suitability. The options products are not issued, endorsed, sold, or promoted by the