

expedited actions are understandable and support eliminating the inability-to-pay defense in expedited actions.¹¹ Unlike disciplinary cases, FINRA is not imposing a monetary sanction in these expedited actions; it is suspending a respondent for failing to pay a previously imposed arbitration award. There also is an explicit procedural mechanism built into these expedited actions that allows a suspension to be lifted once respondents satisfy any of the four defenses highlighted above. The main goal is to encourage respondents to comply with the law or previously imposed orders, not to sanction them for past misconduct.

In sum, members and associated persons that fail to pay arbitration awards to customers should not be allowed to remain in the securities industry by relying on the inability-to-pay defense in expedited actions. This is especially true because they can avoid regulatory action by paying the award, reaching a settlement with the customers (which can include payment plans), moving to vacate the award, or filing for bankruptcy. FINRA believes that, in its expedited actions involving respondents that have failed to pay arbitration awards to customers; the inability-to-pay defense should be eliminated.

The proposed rule change will automatically become effective 30 days following Commission approval.

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹² which requires, among other things, that FINRA's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in

general, to protect investors and the public interest. The proposal also is consistent with Section 15A(b)(7) of the Act,¹³ which provides that FINRA must take appropriate action when members and associated persons violate provisions of the Act or FINRA rules. The proposed rule change is consistent with these purposes because it would promote a fair and efficient process for taking action to encourage members and associated persons to pay arbitration awards to customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is 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

Written comments were neither solicited nor received.

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 such 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. Please include File Number SR-FINRA-2010-014 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-FINRA-2010-014. 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>). Comments are also 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. 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-FINRA-2010-014 and should be submitted on or before May 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61944; File No. SR-NASDAQ-2010-035]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Accelerated Approval of Proposed Rule Change To Establish Strike Price Intervals and Trading Hours for Options on Index-Linked Securities

April 20, 2010.

I. Introduction

On March 11, 2010, The NASDAQ Stock Market LLC ("Nasdaq" 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

¹¹ In *William J. Gallagher*, Securities Exchange Act Release No. 47501, 2003 SEC LEXIS 599 (March 14, 2003), the SEC emphasized that expedited actions are reviewed under Section 19(f) of the Act not Section 19(e). The SEC stated, "Gallagher misconstrues the applicable review standard when he argues that [FINRA's] sanction is 'excessive and oppressive' and that [FINRA's] indefinite suspension order is inconsistent with the [FINRA] Sanction Guidelines, standards relevant in the Commission's review of [FINRA] disciplinary proceedings under Section 19(e) of the Exchange Act." *Id.* at *6. The SEC explained that its review is limited to analyzing whether "the specific ground on which [FINRA] based its suspension—failure to pay in full an arbitration award—'exists in fact[.]'" the "SRO's determination was in accordance with its rules, and * * * those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act." *Id.* at *5 & *7. In *Gallagher*, FINRA and the SEC rejected the respondent's claim of inability-to-pay on factual grounds. The issue of whether a respondent was permitted to raise the defense as a matter of law was neither raised nor decided.

¹² 15 U.S.C. 78o-3(b)(6).

¹³ 15 U.S.C. 78o-3(b)(7).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

thereunder,² a proposed rule change to establish strike-price intervals for options on Index-Linked Securities and to establish trading hours for these products. The proposed rule change was published for comment in the **Federal Register** on March 31, 2010.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

Prior to the commencement of trading options on Index-Linked Securities (also known as exchange-traded notes ("ETN")), Nasdaq has proposed to establish strike price intervals and trading hours for these new products. The Commission has approved the Nasdaq's and other options exchanges proposals to enable the listing and trading of options on Index-Linked Securities.⁴

\$1 Strikes for ILS (ETN) Options

Nasdaq's proposal would extend the trading conventions applicable to options on exchange-traded funds ("ETFs") to options on Index-Linked Securities. Specifically, under the proposed rule change, strike price intervals of \$1 will be permitted where the strike price is less than \$200. Where the strike price is greater than \$200, \$5 strikes will be permitted. These proposed changes are reflected by the addition of Chapter IV, Section 6, Supplementary Material .01(c) to Section 6.

In support of its proposal, Nasdaq stated that it believes the marketplace and investors will be expecting ETN options to trade in a similar manner to options on ETFs. Strike prices for ETF options are permitted in \$1 or greater intervals where the strike price is \$200 or less and \$5 or greater where the strike price is greater than \$200.⁵ Accordingly, the Exchange asserts that the rationale for permitting \$1 strikes for ETF options equally applies to permitting \$1 strikes for ETN options and that investors will be better served if \$1 strike price

intervals are available for ETN options (where the strike price is less than \$200).

Nasdaq further stated that it has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of \$1 strikes (where the strike price is less than \$200) for ETN options.

Trading Hours for ILS (ETN) Options

Similar to the trading hours for ETF options, the Exchange proposes to amend Chapter VI, Section 2(b) to provide that options contracts on exchange-traded notes including Index-Linked Securities, as defined in Chapter IV, Section 3(l), may be traded on the Exchange until 4:15 p.m. each business day.

III. Discussion and Commission's Findings

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.⁶ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁷ which requires, among other things, that the rules of a national securities exchange be 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 Commission notes that the proposed strike price intervals for options on Index-Linked Securities are consistent with the strike price intervals currently permitted for options on ETFs. Accordingly, the proposal should provide consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs and may provide investors with greater flexibility in achieving their investment objectives.

In addition, the Commission notes that Nasdaq has represented that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of \$1 strikes for options on Index-Linked Securities.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁸ for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that it recently approved the same changes to strike price intervals and trading hours for options on Index-Linked Securities for another exchange.⁹ The Commission also notes that it has not received any comments regarding this proposal. The Commission believes that the proposed changes to strike price intervals and trading hours for options on Index-Linked Securities do not raise any novel regulatory issues and accelerating approval of this proposal should benefit investors by creating consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs and greater flexibility in achieving their investment objectives.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NASDAQ-2010-035) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61943; File No. SR-Phlx-2010-40]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Granting Accelerated Approval of Proposed Rule Change To Establish Strike Price Intervals and Trading Hours for Options on Index-Linked Securities

April 20, 2010.

I. Introduction

On March 1, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities

⁸ 15 U.S.C. 78s(b)(2).

⁹ See Securities Exchange Act Release No. 61696 (March 12, 2010), 75 FR 13174 (March 18, 2010) (SR-CBOE-2010-005).

¹⁰ 15 U.S.C. 78s(b)(1).

¹¹ 17 CFR 200.30-3(a)(12).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61766 (March 23, 2010), 75 FR 16221.

⁴ See e.g., Securities Exchange Act Release Nos. 58571 (September 17, 2008), 73 FR 55188 (September 24, 2008) (SR-Phlx-2008-60); 59923 (May 14, 2009), 74 FR 23902 (May 21, 2009) (SR-NASDAQ-2009-046); 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (approving SR-CBOE-2008-64); 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (approving SR-NYSEArca-2008-57); 58985 (November 10, 2008), 73 FR 72538 (November 28, 2008) (approving SR-ISE-2008-86).

⁵ See Securities Exchange Act Release No. 60872 (October 23, 2009), 74 FR 55878 (October 29, 2009) (SR-OCC-2009-14) (approval order).

⁶ 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).

⁷ 15 U.S.C. 78f(b)(5).