

Phlx XL participants from exposure to undue volatility risk respecting options positions.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(5) of the Act¹³ 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 providing Phlx XL participants with additional protection from exposure to undue market risk through the Risk Monitor Mechanism.

The Exchange further believes that the proposed rule change is consistent with the Act because the risk protection afforded Phlx XL participants by way of elimination of the long put/call and short put/call offsets should encourage them to quote options series with greater size, adding liquidity to the Exchange's markets against which customers can trade.

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 proposed rule change effects a change in an existing order-entry or trading system that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and subparagraph (f)(5) of Rule 19b-4 thereunder.¹⁵

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 the 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. Please include File Number SR-Phlx-2008-69 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-2008-69. 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 Phlx. 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-2008-69 and should

be submitted on or before October 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-23490 Filed 10-3-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58684; File No. SR-NASDAQ-2008-075]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading the Two-Character Ticker Symbol "TO"

September 30, 2008.

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 September 19, 2008, The NASDAQ Stock Market LLC ("Nasdaq") 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 substantially prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(5) thereunder,⁴ which renders it 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

Nasdaq proposes to trade the common stock of Tech/Ops Sevcon, Inc. on Nasdaq using the two-character symbol "TO."

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

In its filing with the Commission, Nasdaq 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

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(5).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(5).

in Item IV below. Nasdaq 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

Historically, securities listed on Nasdaq have traded using four or five character symbols.⁵ In 2005, however, Nasdaq announced its intent to allow companies listed on Nasdaq to also use one, two or three character symbols beginning on January 31, 2007.⁶ This announcement was designed to provide market participants and vendors the time needed to make required changes to their own systems that may be affected by the change. Since February 20, 2007, Nasdaq has had the ability to accept and distribute Nasdaq-listed securities with one, two or three character symbols. Nasdaq reminded market participants about this change again on March 1, 2007, stressing that "[a]ll customers should have completed their coding and testing efforts to ensure their readiness to support 1-, 2- and 3-character NASDAQ-listed issues,"⁷ and on March 22, 2007, Delta Financial Corporation transferred to Nasdaq from the American Stock Exchange and maintained its three-character symbol, DFC.⁸ Subsequently, the Commission approved a rule change to permit any company to transfer from another exchange to Nasdaq and maintain its three-character symbols.⁹ On April 28, 2008, CA, Inc. transferred to Nasdaq from the New York Stock Exchange and maintained its two-character symbol,

CA, and on June 2, 2008, Hawaiian Holdings, Inc. transferred to Nasdaq from the American Stock Exchange and maintained its two-character symbol, HA.¹⁰ Nasdaq states that there have been no trading problems reported to Nasdaq as a result of listing securities on Nasdaq with two-character or three-character symbols.

Nasdaq now proposes to allow Tech/Ops Sevcon, Inc., which currently trades on another domestic market with the two-character symbol TO, to transfer its common stock to Nasdaq and continue using that two-character symbol. Nasdaq believes that allowing this company to maintain its symbol will reduce investor confusion and promote competition among exchanges. Specifically, allowing Tech/Ops Sevcon to maintain its trading symbol will reduce investor confusion associated with its transfer to Nasdaq because investors will continue to be able to obtain quotations and execute trades using the same familiar symbol and will allow the issuer to maintain a symbol that has become a part of its identity to investors.¹¹ Further, Nasdaq believes that permitting Tech/Ops Sevcon to maintain its symbol will enhance competition among exchanges by removing concerns about investor confusion surrounding its symbol from the factors a company must consider when choosing where to list its equities. This proposal is also consistent with the historical practice of allowing companies to maintain their symbols when they switch among national securities exchanges.¹²

Given the foregoing, Nasdaq believes that market participants were provided adequate notice of this change and are prepared to accommodate the trading of this company on Nasdaq using the symbol TO. Further, Nasdaq believes that any change to the symbol will cause confusion among investors and market participants. As such, Nasdaq proposes to begin trading the common stock of

Tech/Ops Sevcon, Inc. on Nasdaq using the symbol TO on October 1, 2008. While this filing relates to the transfer of this issuer, Nasdaq remains committed to working with the Commission and other markets to establish an equitable and transparent symbol assignment plan.¹³

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁴ in general and with Section 6(b)(5) of the Act,¹⁵ in particular, 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 a free and open market and a national market system, and, in general, to protect investors and the public interest. As described above, the proposed rule change will reduce investor confusion and encourage competition between national securities exchanges.

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

Nasdaq 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, as amended.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(5) thereunder¹⁷ in that it effects a change to an order-entry or trading system that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. As such, this proposed rule change is effective upon filing with the Commission.

At any time within 60 days of the filing of a proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

⁵ This includes securities listed on Nasdaq's predecessor market, operated as a facility of the NASD.

⁶ See Head Trader Alert 2005-133 (November 14, 2005), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2005-133> and Vendor Alert 2005-070 (November 14, 2005), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=nva2005-070>. See also Head Trader Alert 2006-144 (September 29, 2006), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2006-144>, Head Trader Alert 2006-193 (November 16, 2006), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2006-193> and Vendor Alert 2006-065 (October 4, 2006), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=nva2006-065>.

⁷ Head Trader Alert 2007-050 (March 1, 2007), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2007-050>.

⁸ See Securities Exchange Act Release No. 55519 (March 26, 2007) 72 FR 15737 (April 2, 2007) (SR-NASDAQ-2007-025).

⁹ See Securities Exchange Act Release No. 56028 (July 9, 2007), 72 FR 38639 (July 13, 2007) (approving SR-NASDAQ-2007-031). Over 30 companies with three-character symbols have listed on Nasdaq.

¹⁰ See Securities Exchange Act Release Nos. 57696 (April 22, 2008), 73 FR 22987 (April 28, 2008) (SR-NASDAQ-2008-034 relating to CA) and 57875 (May 27, 2008), 73 FR 31524 (June 2, 2008) (SR-NASDAQ-2008-047 relating to HA).

¹¹ A market transfer will still be transparent to investors because, under the Commission's rules, a company must announce the transfer of its listing on a Form 8-K. See Form 8-K, item 3.01(d). In addition, the issuer must publish notice of its intent to withdraw a class of securities from listing and/or registration, along with its reasons for such withdrawal, via a press release and, if it has a publicly accessible Web site, on that Web site. See Rule 12d2-2(c)(2)(iii) under the Act, 17 CFR 240.12d2-2(c)(2)(iii).

¹² See, e.g., Darwin Professional Underwriters, Inc. (from NYSE Arca to NYSE keeping the symbol DR), Chile Fund, Inc. (from NYSE to Amex keeping the symbol CH), and iShares NYSE 100 (from NYSE to NYSE Arca keeping the symbol NY).

¹³ See Securities Exchange Act Release No. 56037 (July 10, 2007) 72 FR 39096 (July 17, 2007).

¹⁴ 15 U.S.C. 78(a).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(5).

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. Please include File Number SR-NASDAQ-2008-075 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-NASDAQ-2008-075. 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 Number SR-NASDAQ-2008-075 and should be submitted on or before October 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-23488 Filed 10-3-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58680; File No. SR-NYSE-2008-76]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending NYSE Rule 2B To Establish Procedures Designed To Manage Potential Informational Advantages Resulting From the Affiliation Between the Exchange and Archipelago Securities L.L.C.

September 29, 2008.

I. Introduction

On August 20, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change amending NYSE Rule 2B to establish procedures designed to manage potential informational advantages resulting from the affiliation between the Exchange and Archipelago Securities L.L.C. ("Arca Securities"), an NYSE affiliated member. On September 4, 2008, the proposed rule change was published for comment in the **Federal Register**.³ The Commission received no comments on the proposed rule change. On September 25, 2008, NYSE filed Amendment No. 1.⁴ This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Background

A. NYSE Arca's PO Plus Proposal

On August 20, 2008, NYSE Arca, Inc. ("NYSE Arca") filed with the Commission a proposed rule change to

expand the availability of its PO Order type ("PO Plus Proposal").⁵ NYSE Arca's PO Order is a market or limit order that is to be routed to the primary market in that security without first attempting to access liquidity on the NYSE Arca book. The PO Orders are routed to the primary market through NYSE Arca's routing broker-dealer, Arca Securities, which is an affiliate of NYSE Arca as described more fully below. The "primary market" may be the New York Stock Exchange LLC ("NYSE") or the American Stock Exchange LLC ("Amex"),⁶ each of which, as described more fully below, also is (or will be) an affiliate of NYSE Arca and Arca Securities.

Such orders, currently, may only be entered until a cut-off time established from time to time by the Exchange.⁷ In its PO Plus Proposal, NYSE Arca

⁵ See Securities Exchange Act Release No. 58431 (August 27, 2008), 73 FR 51681 (September 4, 2008). The Commission today is approving NYSE Arca's proposed rule change. See Securities Exchange Act Release No. 58681 (September 29, 2008) (SR-NYSEArca-2008-90) ("PO Plus Approval Order").

On February 13, 2008, NYSE Arca filed a proposal to modify its PO Order pursuant to 19(b)(3)(A), making it effective upon filing with the Commission. See Securities Exchange Act Release No. 57377 (February 25, 2008), 73 FR 11177 (February 29, 2008) (SR-NYSEArca-2008-19). The Commission abrogated the proposal on April 11, 2008, noting that it has, in the past, expressed concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests if an exchange were affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtues of informational or operational advantages, or the ability to receive preferential treatment. See Securities Exchange Act Release No. 57648 (April 11, 2008), 73 FR 20981 (April 17, 2008) at note 9 and accompanying text. The Commission noted that NYSE Arca's filing raised this issue by expanding the activities of Arca Securities in sending orders to its affiliate, the NYSE, and therefore should be subject to notice and comment and review pursuant to Sections 19(b)(1) and 19(b)(2) of the Act. See *id.* at note 10 and accompanying text. Further, the Commission stated that the issue of whether the routing of PO Orders by Arca Securities to the NYSE is consistent with existing NYSE and NYSE Arca rules should be subject to notice and comment pursuant to Sections 19(b)(1) and 19(b)(2) of the Act. See *id.* at note 11 and accompanying text.

⁶ Amex will change its name to NYSE Alternext US in connection with the acquisition of Amex by NYSE Euronext. See Securities Exchange Act Release No. 58673 (September 29, 2008) (order approving a proposed rule change related to the acquisition of the Amex by NYSE Euronext) (SR-Amex-2008-62; SR-NYSE-2008-60) ("NYSE Alternext US Order"). The transaction is expected to close shortly.

⁷ See NYSE Arca Equities Rule 7.31(x). Currently, a PO Order entered for participation in the primary market opening must be entered before 6:28 a.m. (Pacific Time), and a PO Order entered for participation in the primary market re-opening after a trading halt must be entered after trading was halted on NYSE Arca and before the re-opening time. See *id.*

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58430 (August 27, 2008), 73 FR 51678 ("Notice").

⁴ In Amendment No. 1, NYSE requested that the Commission accelerate approval of the proposed rule change. Because Amendment No. 1 is technical in nature, the Commission is not publishing it for comment.