

credit. The change is consistent with an equitable allocation of fees and not unfairly discriminatory because it will reduce the extent to which NASDAQ pays an extra credit to encourage the use of the QDRK and QCST strategies, thereby making the credit paid to NASDAQ members more consistent with credits paid by BX. In addition, the change is equitable and not unfairly discriminatory because it affects only those members that opt to use NASDAQ's optional routing services, and will in any event have a minimal impact because few orders using the strategies execute at BX.

#### *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.<sup>11</sup> NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, although the proposed change with respect to midpoint orders has the effect of eliminating a rebate tier, the tier had not been successful at encouraging greater use of midpoint orders, and so its elimination is unlikely to have an impact on the order routing decisions of NASDAQ members. Moreover, other incentive tiers with respect to midpoint orders remain in place. Similarly, the proposed changes with respect to routing fees are expected to have a minimal effect on members that opt to use NASDAQ's routing services, because few routed orders execute at PSX or BX; moreover, the amount of the fee increase (for PSX) or credit reduction (for BX) is small. In addition, numerous alternatives exist to the routing services offered by NASDAQ. Thus, if any of the changes are [sic]

unattractive to market participants, it is likely that NASDAQ will lose market share as a result. As a result of these considerations, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

#### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>13</sup> 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-129 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-2013-129. 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 offices 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-2013-129, and should be submitted on or before November 12, 2013.

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

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-24570 Filed 10-21-13; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-70682; File No. SR-Phlx-2013-101]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Regarding the Short Term Option Series Program**

October 15, 2013.

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 October 3, 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.

<sup>14</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>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f).

<sup>11</sup> 15 U.S.C. 78f(b)(8).

## 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 Rule 1012 (Series of Options Open for Trading) to expand the Short Term Option Program ("STO Program" or "Program")<sup>3</sup> so that the Exchange may: Change the current thirty option class limitation to fifty option classes on which STOs may be opened; list or add STOs within fifty percent (50%) above or below the closing price of the underlying security from the preceding day if the price of the underlying security is greater than \$20, or within one hundred percent (100%) above or below the closing price of the underlying security from the preceding day if the price of the underlying security is less than or equal to \$20; open up to thirty STO series for each expiration date in an STO class; add an STO strike price interval of \$2.50 or greater where the strike price is above \$150; and in general harmonize the different parts of the Program.

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.

<sup>3</sup> STOs, also known as "weekly options" as well as "Short Term Options", are series in an options class that are approved for listing and trading on the Exchange in which the series are opened for trading on any Thursday or Friday that is a business day and that expire on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. For STO Program rules regarding non-index options, see Rule 1000(b)(44) and Commentary .11 to Rule 1012. For STO Program rules regarding index options, which are not implicated by this proposal, see Rule 1000A(b)(16) and Rule 1101A(b)(vi).

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

#### 1. Purpose

The purpose of this proposed rule change is to amend Rule 1012 to expand the STO Program for non-index options so that the Exchange may: Change the current thirty option class limitation to fifty option classes on which STOs may be opened; list or add STOs within fifty percent (50%) above or below the closing price of the underlying security from the preceding day if the price of the underlying security is greater than \$20, or within one hundred percent (100%) above or below the closing price of the underlying security from the preceding day if the price of the underlying security is less than or equal to \$20; open up to thirty STO series for each expiration date in an STO class; add an STO strike price interval of \$2.50 or greater where the strike price is above \$150; and in general harmonize the different parts of the Program.<sup>4</sup>

The STO Program, which was initiated in 2010,<sup>5</sup> is codified in Commentary .11 to Rule 1012 for non-index options including equity, currency, and exchange traded fund ("ETF") options.<sup>6</sup> These sections currently state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than thirty option classes that expire on the Friday of the following business week that is a business day.<sup>7</sup> In addition to the thirty option class limitation, there is also a limitation that no more than twenty series for each expiration date in those classes may be opened for trading.<sup>8</sup>

<sup>4</sup> The price of the underlying security will be calculated commensurate with Commentary .10(a) to Rule 1012 as amended.

<sup>5</sup> See Securities Exchange Act Release No. 62296 (June 15, 2010), 75 FR 35115 (June 21, 2010) (SR-Phlx-2010-84) (notice of filing and immediate effectiveness permanently establishing STO Program on the Exchange).

<sup>6</sup> The Exchange does not by this filing propose any changes to Rule 1101A(b)(vi) related to the STO Program for index options.

<sup>7</sup> The increase in the number of option issues that could be opened pursuant to the STO Program was approved in 2011. See Securities Exchange Act Release No. 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR-Phlx-2011-131) (approval order).

<sup>8</sup> However, if the Exchange opens less than twenty (20) Short Term Option Series for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the

Furthermore, the strike price of each STO has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the STOs are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange proposes in part to increase the number of STO classes that may be opened, match the opening of initial and additional STO strikes to what is permissible per the OLPP,<sup>9</sup> add new strike price increments that may be used in the STO Program, and in general harmonize the different parts of the Program (e.g., initial listings and additional series).

In terms of the strike price intervals, the STO Program currently allows that the interval between strike prices on

series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened. Commentary .11(d) to Rule 1012. The Exchange proposes, as discussed below, to change twenty (20) Short Term Option Series to thirty (30) Short Term Option Series to achieve consistency with other proposed rule changes.

<sup>9</sup> The full name of the OLPP (which is applicable to all option exchanges) is Plan For The Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934. With regard to the listing of new series on equity, ETF, or trust issued receipt ("TIRs") option classes, subsection 3.(g)(i) of the OLPP states, in relevant part, that the exercise price of each option series listed by an exchange that chooses to list a series of options (known as the Series Selecting Exchange) shall be fixed at a price per share which is reasonably close to the price of the underlying equity security, ETF, or TIR at or about the time the Series Selecting Exchange determines to list such series. Except as provided in subparagraphs (ii) through (iv) of the OLPP, if the price of the underlying security is less than or equal to \$20, the Series Selecting Exchange shall not list new option series with an exercise price more than 100% above or below the price of the underlying security. If the price of the underlying security is greater than \$20, the Series Selecting Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security.

Subsection 3.(g)(i) of the OLPP indicates that an option series price has to be reasonably close to the price of the underlying security and must not exceed a maximum of 50% or 100%, depending on the price, from the underlying. The Exchange's proposal related to non-index options, while conforming to the current structure of the Exchange's STO rules, is similar in practical effect to the noted OLPP subsection.

STOs may be (i) \$0.50 or greater where the strike price is less than \$75, and \$1 or greater where the strike price is between \$75 and \$150 for all classes that participate in the STO Program; or (ii) \$0.50 for classes that trade in one dollar increments in Related non-STOs<sup>10</sup> and that participate in the STO Program. Related non-STO series shall be opened during the week prior to the week that such Related non-STO series expire in the same manner and in the same strike price intervals as permitted in Commentary .11 to Rule 1012.<sup>11</sup> This proposal retains many of the fundamental limitations of the STO Program while proposing specific changes as described below.

#### The Proposal

First, the Exchange proposes to increase the number of STO classes that may be opened after an option class has been approved for listing and trading on the Exchange. Specifically, the Exchange proposes in Commentary .11(a) of Rule 1012 that the Exchange may select up to fifty currently listed option classes on which Short Term Option Series may be opened. The Exchange proposes also that for each option class eligible for participation in the STO Program, the Exchange may open up to thirty STO Series for each expiration date in that class.<sup>12</sup> The Exchange believes that this proposed moderate increase is needed and advisable in light of the demonstrated acceptance and popularity of the STO Program among market participants, as discussed below.

Second, the Exchange proposes to indicate under what circumstances, subsequent to opening initial STO classes, additional STO strike prices may be added. Specifically, the Exchange proposes in Commentary .11(c) of Rule 1012 that any initial series listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) If the price of the underlying security is less than or equal to \$20, additional strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the

price of the underlying security is greater than \$20, additional strike prices shall be not more than fifty percent (50%) above or below the price of the underlying security. This proposal is in line with the process for adding new series of options found in subsection 3.(g)(i) of the OLPP, and harmonizes the Program internally. The Exchange believes that this proposal is a reasonable and desirable enhancement to the STO Program.

Third, the Exchange proposes changes to Commentary .11(d) of Rule 1012 to indicate that any additional strike prices listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) If the price of the underlying security is less than or equal to \$20, additional strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the price of the underlying security is greater than \$20, additional strike prices shall be not more than fifty percent (50%) above or below the price of the underlying security. This is done so that the parameters for opening STOs and adding strike prices are in conformity. The Exchange proposes additional changes to Commentary .11(d) to indicate that if the Exchange has opened less than thirty (30) Short Term Option Series for a Short Term Option Expiration Date, the Exchange may also open additional strike prices of Short Term Option Series that are more than 50% above or below the current price of the underlying security (if the price is greater than \$20); provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market Makers trading for their own account are not considered when determining customer interest.<sup>13</sup> This is done to conform the additional strike price methodology with the proposed 50% listing standard in the same subsections, and to ensure that the opening 30 Short Term Option Series language is consistent with other proposed changes,<sup>14</sup> while retaining the

demonstrated interest language that may be useful in unforeseen circumstances.

Fourth, the Exchange also proposes to simplify the Delisting Language in Commentary .11(d) of Rule 1012, which currently contains a range methodology (at least 10% but not more than 30% above or below the current price of the underlying),<sup>15</sup> to indicate that the Exchange will delist any series with no open interest in both the call and the put series having a: (i) Strike higher than the highest price with open interest in the put and/or call series for a given expiration week; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration week. The Exchange believes that like its other proposals, the delisting proposal will add clarity and certainty to the STO process on the Exchange, as well as across other markets that may choose to implement similar changes (discussed below).

Fifth, the Exchange proposes to add \$2.50 strike price intervals to the STO Program. Specifically, the Exchange proposes in Commentary .11(e) of Rule 1012 to indicate that the interval between strike prices on STOs may be \$2.50 or greater where the strike price is above \$150. This proposed change complements the current STO strike price intervals, which are \$0.50 or greater where the strike price is less than \$75, and \$1 or greater where the strike price is between \$75 and \$150 for all classes that participate in the STO Program.<sup>16</sup> The proposed \$2.50 strike price interval addresses the issue that above a \$150 strike price STO strike

<sup>15</sup> Currently, the Delisting Language states: "In the event that the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange will delist any series with no open interest in both the call and the put series having a: (i) Strike higher than the highest price with open interest in the put and/or call series for a given expiration week; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration week, so as to list series that are at least 10% but not more than 30% above or below the current price of the underlying security. In the event that the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security and all existing series have open interest, the Exchange may list additional series, in excess of the 30 allowed under Commentary .11, that are between 10% and 30% above or below the price of the underlying security." Commentary .11(d) of Rule 1012. See Securities Exchange Act Release No. 70116 (August 5, 2013), 78 FR 48754 (August 9, 2013) (SR-Phlx-2013-79) (notice of filing and immediate effectiveness regarding delisting series and opening up to five consecutive weekly expirations of STOs).

<sup>16</sup> STO strike price intervals may also be in \$1 increments in Related non-STOs that participate in the STO Program. Commentary .11 of Rule 1012.

<sup>10</sup> Related non-STOs are non-STOs that have similar options with longer expiration cycles (e.g., monthly Apple (AAPL) options would be Related non-STOs to weekly AAPL options). Unlike monthly non-index options series such as AAPL, which may not be listed within two business days of expiration, because of the short STO expiration cycle these options may be listed up to expiration.

<sup>11</sup> Commentary .11(e) to Rule 1012.

<sup>12</sup> The current limitation is up to thirty currently listed option classes and up to twenty series for each expiration date in an STO class. Commentary .11(a) of Rule 1012.

<sup>13</sup> Commentary .10(a) to Rule 1012 currently states that if the price of the underlying security is greater than \$20, the Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. Immediately before this language, the Exchange proposes to also add a carve-out that states: "Except as provided in Commentary .11(d) to Rule 1012 . . ."

<sup>14</sup> The Exchange believes that the 100% standard proposed for initial listings where the price of the underlying is below \$20 is adequate and does not need to be repeated for additional series adds.

price intervals must currently be an exceedingly wide \$5.00 or greater.<sup>17</sup>

All options exchanges that have weeklies programs have similar rules regarding their own programs, and tend to emulate STO changes that are initiated by other options exchanges. The Exchange recognizes that while this may result in a potentially increased combined capacity footprint of exchanges with weeklies programs, the specific beneficial changes proposed in this filing greatly outweigh any such potential impact.

The principal reason for the proposed expansion is market demand for additional STO classes and series and a desire to make the STO Program more effective. There is continuing strong customer demand for having the ability to execute hedging and trading strategies via STOs, particularly in the current fast and volatile multi-faceted trading and investing environment that extends across numerous markets and platforms<sup>18</sup> and includes market moving events such as significant market volatility, corporate events, or large market, sector, or individual issue price swings. The Exchange has been requested by traders and other market participants to expand the STO Program to allow additional STO offerings and increased efficiency.

In order that the Exchange not exceed the current thirty option class and twenty option series restriction, the Exchange has on occasion had to turn away STO customers (traders and investors) because it could not list, or had to delist, STOs or could not open adequate STO Series because of restrictions in the STO Program. This has negatively impacted investors and traders, particularly retail public customers, who have continued to request the Exchange not to remove STO classes or add STO classes, or have requested the Exchange to expand the STO Program so that additional STO classes and series could be opened that would allow the market participants to execute trading and hedging strategies.<sup>19</sup> There are, as discussed,

substantial benefits to market participants having the ability to trade eligible option classes within the STO Program. Furthermore, the Exchange supports the objective of responding to customer need to enhance successful programs to make them more efficient for hedging and trading purposes.

The Exchange notes that the STO Program has been well-received by market participants, in particular by retail investors. The volume of STO trading has increased by 132% since the beginning of 2011<sup>20</sup> and continues to grow, such that currently STOs represent 20% of trading volume on the Exchange and 31% of trading volume across all option exchanges.<sup>21</sup> The Exchange believes that weekly expiration options will continue to grow in importance for all market participants, including institutional and retail investors.<sup>22</sup>

The proposed revisions to the STO Program will permit the Exchange to meet customer demand for better STO Program use and efficiency, harmonization of OLPP and STO Program rules, internal harmonization of the STO Program, and a reasonable expansion of strike price intervals in the Program.

By way of example, if an investor wants to gain exposure to a relatively higher priced security like AAPL, he may invest in AAPL stock and/or AAPL options. Currently, the investor must choose a strike price that might lack the precision he is looking for in order to gain or reduce exposure to AAPL. If the investor is looking to invest in a long position in AAPL, for example, he may choose to execute a covered call strategy by selling calls on AAPL. Assume AAPL is trading at \$415. Under the current rules the nearest out of the money STO call would be the \$420.00 strike, which would, with one week until expiration, trade at or about \$2.15. If the \$417.50 strike were available per this proposal, however, the investor could sell calls at approximately \$3.15. This would allow the investor to still execute an out of the

money covered call strategy, but would increase the potential return by \$1, or approximately 46% (\$1/\$2.15), thus offering approximately 46% additional risk protection. To the investor writing covered calls on his AAPL equity position, this extra risk protection could be very significant on an annual basis, and costly if not available.

By way of a second example, if an investor wants to gain exposure to a lower priced security like Banc of America (BAC), he may invest in BAC stock and/or options. Assume BAC is trading at \$14.60. The investor may have established a long position in a non-STO BAC option like, for example, the standard expiration BAC Aug 17th 1.00 calls. To offset some of the risk the investor possesses in the BAC Aug 17th 1.00 calls, the investor may wish to make a corresponding trade in the BAC Aug 10th (STO) 1.00 call. Currently, the investor does not have this risk reduction strategy available to him, as the current BAC STO does not have available strikes. The proposal would correct this shortcoming.

By way of further example, in a lower priced stock such as BAC there may be a need for tighter strike price intervals in case of a precipitous drop in price. Assume BAC is trading at \$14.60. Assume BAC announces a large loss, and the stock price drops to \$6. The Exchange believes that investors should have the ability to use calls or puts with a more targeted strike price to attain proper risk protection—one of the great advantages of options. Because current STO rules do not allow a strike price below \$9.50 in the BAC STO, however, an investor looking to purchase out of the money put protection for a short period of time, and at a lower premium than a longer term option, is not able to do so. BAC \$9.50 strike puts would trade at a premium of about \$3.50 or more, and would require the investor to sell or exercise his puts by expiration if they remained in the money. An Aug 10th \$5.00 out of the money STO option in BAC, on the other hand, would trade a much more affordable premium due to being out of the money, and would only require the investor to sell or exercise his put if the BAC stock price continued its precipitous drop. Clearly, the ability to make more targeted and efficient decisions regarding the protection of investments is of great importance to investors and market participants, and should be encouraged.

Following are illustrations of the STO listing process per the rules as proposed. Assume that the Alcoa Inc. (AA) STO closes at \$7.92. Pursuant to the proposed rule, STOs may be added between \$1 and \$15.50 (half point strike

<sup>17</sup> See, e.g., Commentary .05 to Rule 1012.

<sup>18</sup> These include, without limitation, options, equities, futures, derivatives, indexes, ETFs, exchange traded notes, currencies, and over the counter instruments.

<sup>19</sup> The Exchange noted, in its STO Program expansion proposal in 2011, that it was requested by a retail investor to reinstate an STO class that the Exchange had to remove from trading because of the class option limitation within the Program. The investor told the Exchange that he had used the removed class as a powerful tool for hedging a market sector, and that various strategies that the investor put into play were disrupted and eliminated when the class was removed. See Securities Exchange Act Release No. 65776 (November 17, 2011), 76 FR 72482 (November 23,

2011) (SR-Phlx-2011-131) (order approving opening STO series on 30 option classes).

<sup>20</sup> Since the STO Program was initiated in 2010 on the Exchange and other markets (some of which were established after the STO Program was initiated), STO Program volume has expanded by more than 3000%.

<sup>21</sup> During the same period of time, however, the volume of standard monthly options across all exchanges has, on the other hand, declined by 28%.

<sup>22</sup> The current STO Program, which is similar across all options markets that have weeklies programs, is in its current formulation one of the more challenging industry-wide listings program to administer. Recognizing the importance of the Program, the Exchange is seeking to improve the Program for non-index STOs by making it more uniform and logical.

intervals are currently permitted where the strike price is below \$75). On day one, the maximum number of Short Term Option Series that may be listed are thirty. If the Exchange opens less than thirty Short Term Option Series, additional series may be added as the underlying price moves. If the AA price moves to \$10, additional series can be added as high as \$20 (100% above the underlying price). If the AA price moves to \$5, additional lower strikes would not be added, since the initial strikes go as low as possible (\$1). Or, assume that the McDonald's Corporation (MCD) STO closes at \$96.26. Pursuant to the proposed rule, Short Term Options Series may be added between \$49 and \$144 (in \$0.50 and \$1 intervals). On day one, no more than thirty Short Term Option Series may be listed. If the Exchange opens less than thirty Short Term Option Series, additional series may be added as the underlying price moves. If the MCD price moves to \$105, additional series can be added as high as \$155 (50% above the underlying price). If the MCD price moves to \$87, additional lower strikes can be added as low as \$43.50. To list strikes above the 50% threshold, however, there must be demonstrated customer interest for such series, as expressed by institutional, corporate or individual customers or their brokers.

Following are illustrations of the STO delisting process per the rules as proposed. Series delisting would occur under the proposed rule if the stock price moves and there are no series at least 10% above/below the current price. Assume AA closed at \$7.92 and strikes were listed between \$1 and \$15. If the AA price moved to \$15, and there were no strikes at \$16.50 or above (at least 10% above the current price), the delisting process would begin. For the delisting process, staff would simply need to check what, if any, strikes are higher than the highest strike with open interest, and lower than the lowest strike with open interest. Unlike the current delisting process, there would be no need to check whether strikes were within a listing band (e.g., 10% to 30%). Or, assume that MCD closed at \$96.26 and strikes were listed between \$82 and \$110. If the MCD price moved to \$104, and there were no strikes at \$115 or above (at least 10% above the current price), the delisting process would begin. For the delisting process, staff would simply need to check what strikes are higher than the highest strike with open interest, and lower than the lowest strike with open interest.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and

represents that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle any potential additional traffic associated with this current amendment to the STO Program. The Exchange believes that its members will not have a capacity issue as a result of this proposal. The Exchange represents that it will monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.<sup>23</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>24</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>25</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. Expanding the classes and additional series that can be opened in the STO Program, simplifying the delisting process, and allowing \$2.50 strike price intervals will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities.

The STO Program has been well-received by market participants, and in particular by retail investors, and has seen increasing trading volume. The Exchange believes that the current proposed revisions to the STO Program will permit the Exchange to meet customer demand for enhanced STO Program use and efficiency, harmonization of OLPP and STO Program rules, and a reasonable expansion of strike price intervals in the Program to the benefit of investors, market participants, and the marketplace.

With regard to the impact of this proposal on system capacity, the Exchange believes that it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this current amendment

<sup>23</sup> As noted previously, because the STO Program is an industry-wide program, exchanges tend to emulate the rule filings of one another. The Exchange recognizes that while this may result in a potentially increased combined capacity footprint of exchanges with weeklies programs, the Exchange believes that the specific beneficial changes proposed in this filing greatly outweigh any such potential impact.

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

to the STO Program. The Exchange believes that its members will not have a capacity issue as a result of this proposal. All exchanges that have STO programs have largely similar STO rules and tend to emulate STO rule changes proposals initiated by other exchanges. While the Exchange recognizes that this proposal may be copied by other exchanges and impact their capacity, the Exchange believes that any such potential capacity impact will not outweigh (and does not outweigh for the Exchange) the significant benefits that this proposal will afford market participants and the market in general in terms of significantly greater flexibility and increases in efficient trading and hedging options.

The proposed revisions to the STO Program will permit the Exchange to meet customer demand for better STO Program use and efficiency, harmonization of OLPP and STO Program rules, internal harmonization of the STO Program, and a reasonable expansion of strike price intervals in the Program.

## 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. To the contrary, the Exchange believes that the proposal is decidedly pro-competitive. The Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

## 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

Within 45 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 Exchange consents, the Commission shall: (a) By order approve or disapprove 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-101 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-2013-101. 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 offices 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-2013-101, and should be submitted on or before November 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-24673 Filed 10-21-13; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70569; File No. SR-NASDAQ-2013-102]

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To Assume Operational Responsibility for Certain Surveillance Activity Currently Performed by FINRA Under the Exchange's Authority and Supervision**

September 30, 2013.

On July 31, 2013, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to assume operational responsibility for certain surveillance activity currently performed by the Financial Industry Regulatory Authority ("FINRA") under the Exchange's authority and supervision. The proposed rule change was published for comment in the **Federal Register** on August 16, 2013.<sup>3</sup> The Commission received no comments on the proposal.

After careful review, 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<sup>4</sup> and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>5</sup> Since it became a national securities exchange, NASDAQ has contracted with FINRA through various regulatory services agreements to perform certain surveillance and other regulatory functions on its behalf.<sup>6</sup> NASDAQ Rule 0150 requires that, unless NASDAQ obtains prior Commission approval, the regulatory functions subject to the regulatory

services agreement in effect at the time when NASDAQ became a national securities exchange must continue to be performed by FINRA or an affiliate thereof or by another independent self-regulatory organization. NASDAQ now proposes to reallocate operational responsibility from FINRA to NASDAQ Regulation for a limited number of equities surveillance patterns and related review functions focused on: (1) Manipulation patterns that monitor solely NASDAQ activity, including patterns that monitor the Exchange's opening and closing crosses and compliance with minimum bid listing requirements, and (2) monitoring of compliance by member firms with elements of the Commission's Regulation M<sup>7</sup> and NASDAQ Rule 4619 compliance.

In the Notice, the Exchange represents that it has the ability to conduct the surveillances and regulatory functions that it will assume. The Commission also notes that the Exchange represents that its expertise in its own market structure, along with its existing real-time monitoring of these activities, may enable the Exchange to better detect improper activities on its market. Moreover, these patterns, underlying rules, and analytical requirements are similar to patterns that NASDAQ regulatory personnel already operate for affiliated options markets. The Exchange represents that NASDAQ's MarketWatch group, which already handles other real-time surveillance of the NASDAQ market, should be able to adequately and effectively handle the surveillances related to the instant proposed rule change.

In the Notice, the Exchange further represents that it will continue to refer potentially violative conduct to FINRA for further review and that FINRA will continue to perform most of the surveillance activity for NASDAQ's equity markets. The Exchange also represents that FINRA will continue to perform examination and enforcement work, subject to NASDAQ's supervision and ultimate responsibility.

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NASDAQ-2013-102) be, and it hereby is, approved.

<sup>7</sup> 17 CFR 242.100 et seq.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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> See Securities Exchange Act Release No. 70159 (August 12, 2013), 78 FR 50123 (August 16, 2013) ("Notice").

<sup>4</sup> 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).

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

<sup>6</sup> See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

<sup>26</sup> 17 CFR 200.30-3(a)(12).