

(ii) shall specify the length or lengths of terms members shall serve;

(iii) may increase the number of members which shall constitute the whole Board, provided that such number is an odd number; and

(iv) shall establish requirements regarding the independence of public representatives.

The Commission believes that the proposal provides for fair representation of public representatives, broker-dealers, bank dealers and municipal advisors consistent with the Exchange Act, and that providing a minimum number of non-dealer municipal advisor representatives—at least 30 percent of the regulated representatives—is reasonable, and consistent with the Exchange Act. The Commission notes that the proposal provides that the number of public representatives on the Board shall exceed the total number of regulated representatives by one so that the membership shall be as evenly divided as possible between public representatives and regulated representatives—11 to 10. The proposal specifies the length of terms that Board members will serve—three years—which is consistent with the length of the terms served by Board members prior to the adoption of the Dodd-Frank Act. The proposal increases the size of the Board from 15 to 21, consistent with the size of the Board during the transitional period that commenced on October 1, 2010. Finally, the proposal maintains the existing requirement regarding the independence of public representatives.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>30</sup> that the proposed rule change (SR-MSRB-2011-11) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-25478 Filed 10-3-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65418; File No. SR-NYSEArca-2011-66]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .04 to Rule 6.4 in Order To Simplify the \$1 Strike Price Program

September 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on September 26, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Commentary .04 to Rule 6.4 in order to simplify the \$1 Strike Price Program. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, on the Commission's Web site at <http://www.sec.gov>, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange is proposing to amend Commentary .04 to Rule 6.4 in order to

simplify the \$1 Strike Price Program (“Program”).

In 2003, the Commission issued an order permitting the Exchange to establish the Program on a pilot basis.<sup>3</sup> At that time, the underlying stock had to close at or below \$20 on the previous trading day in order to qualify for the Program. The range of available \$1 strike price intervals was limited to a range between \$3 and \$20 and no strike price was permitted that was greater than \$5 from the underlying stock's closing price on the previous trading day. Series in \$1 strike price intervals were not permitted within \$0.50 of an existing strike. In addition, the Exchange was limited to selecting five (5) classes and reciprocal listing was permitted. Furthermore, Long-Term Equity Option Series (“LEAPS”) in \$1 strike price intervals were not permitted for classes selected to participate in the Program.

The Exchange renewed the pilot program on a yearly basis and, in 2008, the Exchange adopted the pilot program on a permanent basis.<sup>4</sup> At that time, the Program was expanded to increase the upper limit of the permissible strike price range from \$20 to \$50. In addition, the number of class selections per exchange was increased from five (5) to ten (10).

Since the Program was made permanent, the number of class selections per exchange has been increased from ten (10) classes to 55 classes<sup>5</sup> and subsequently increased from 55 classes to 150 classes.<sup>6</sup>

The most recent expansion of the Program was approved by the Commission in early 2011 and increased the number of \$1 strike price intervals permitted within the \$1 to \$50 range.<sup>7</sup>

##### Amendments To Simplify Non-LEAPS Rule Text

These numerous expansions have resulted in very lengthy rule text that the Exchange believes is complicated and difficult to understand. The Exchange believes that the proposed changes to simplify the rule text of the Program would benefit market

<sup>3</sup> See Securities Exchange Act Release No. 48045 (June 17, 2003), 68 FR 37594 (June 24, 2003) (SR-PCX-2003-28).

<sup>4</sup> See Securities Exchange Act Release No. 57130 (January 10, 2008), 73 FR 3302 (January 17, 2008) (SR-NYSEArca-2008-04).

<sup>5</sup> See Securities Exchange Act Release No. 59587 (March 17, 2009), 74 FR 12414 (March 24, 2009) (SR-NYSEArca-2009-10).

<sup>6</sup> See Securities Exchange Act Release No. 62450 (July 2, 2010), 75 FR 39712 (July 12, 2010) (SR-NYSEArca-2010-66).

<sup>7</sup> See Securities Exchange Act Release No. 63770 (January 25, 2011), 76 FR 5627 (February 1, 2011) (SR-NYSEArca-2010-106).

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</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.

participants since the Program will be easier to understand and would maintain the expansions made to the Program, including those in early 2011. Through the current proposal, the Exchange also hopes to make administration of the Program easier, *e.g.*, system programming efforts. To simplify the rules of the Program and, as a proactive attempt to mitigate any unintentional listing of improper strikes, the Exchange is proposing the following streamlining amendments:

- When the price of the underlying stock is equal to or less than \$20, permit \$1 strike price intervals with an exercise price up to 100% above and 100% below the price of the underlying stock.<sup>8</sup>

- However, the above restriction would not prohibit the listing of at least five (5) strike prices above and below the price of the underlying stock per expiration month in an option class.<sup>9</sup>

- For example, if the price of the underlying stock is \$2, the Exchange would be permitted to list the following series: \$1, \$2, \$3, \$4, \$5, \$6 and \$7.<sup>10</sup>

- When the price of the underlying stock is greater than \$20, permit \$1 strike price intervals with an exercise price up to 50% above and 50% below the price of the underlying security up to \$50.<sup>11</sup>

- For the purpose of adding strikes under the Program, the “price of the underlying stock” shall be measured in the same way as “the price of the underlying security” is, as set forth in Rule 6.4A(b)(1).<sup>12</sup>

- Prohibit the listing of additional series in \$1 strike price intervals if the underlying stock closes at or above \$50 in its primary market and provide that additional series in \$1 strike price intervals may not be added until the underlying stock closes again below \$50.<sup>13</sup>

<sup>8</sup> See proposed new paragraph (b)(i) to Commentary .04 to Rule 6.4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See proposed new paragraph (b)(ii) to Commentary .04 to Rule 6.4.

<sup>12</sup> See proposed new paragraph (b)(iii) to Commentary .04 to Rule 6.4. Rule 6.4A(b)(1) provides, “[t]he price of the underlying security is measured by: (1) For intra-day add-on series and next-day series additions, the daily high and low of all prices reported by all national securities exchanges; (2) for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines its preliminary notification of new series; and (3) for options series to be added as a result of pre-market trading, the most recent share price reported by all national securities exchanges between 8:45 a.m. and 9:30 a.m. Eastern Time.”

<sup>13</sup> See proposed new paragraph (b)(iv) to Commentary .04 to Rule 6.4. The Exchange believes that it is important to codify this additional series criterion because there have been conflicting

## Amendments To Simplify LEAPS Rule Text

The early 2011 expansion of the Program permitted for some limited listing of LEAPS in \$1 strike price intervals for classes that participate in the Program. The Exchange is proposing to maintain the expansion as to LEAPS, but simplify the language and provide examples of the simplified rule text. These changes are set forth in proposed new paragraph (b)(v) to Commentary .04 to Rule 6.4.

For stocks in the Program, the Exchange may list one \$1 strike price interval between each standard \$5 strike price interval, with the \$1 strike price interval being \$2 above the standard strike for each interval above the price of the underlying stock, and \$2 below the standard strike for each interval below the price of the underlying stock (“\$2 wings”). For example, if the price of the underlying stock is \$24.50, the Exchange may list the following standard strikes in \$5 intervals: \$15, \$20, \$25, \$30 and \$35. Between these standard \$5 strikes, the Exchange may list the following \$2 wings: \$18, \$27 and \$32.<sup>14</sup>

In addition, the Exchange may list the \$1 strike price interval which is \$2 above the standard strike just below the underlying price at the time of listing. In the above example, since the standard strike just below the underlying price (\$24.50) is \$20, the Exchange may list a \$22 strike. The Exchange may add additional LEAP strikes as the price of the underlying stock moves, consistent with the Options Listing Procedures Plan (“OLPP”).

## Non-Substantive Amendments to Rule Text

The early 2011 expansion of the Program prohibited the listing of \$2.50 strike price intervals for classes that participate in the Program. This

interpretations among the exchanges that have adopted similar programs. The \$50 price criterion for additional series was intended when the Program was originally established (as a pilot) in 2003. See *supra* note 4 (“the Exchange may list an additional expiration month for a \$1 strike series provided that the underlying strike price closes b[e]low \$20 on its primary market on expiration Friday. If the underlying closes at or above \$20 on expiration Friday, the Exchange would not list an additional month for \$1 strike series until the stock again closes below \$20.”).

<sup>14</sup> The Exchange notes that a \$2 wing is not permitted between the standard \$20 and \$25 strikes in the above example. This is because the \$2 wings are added based on reference to the price of the underlying and as being between the standard strikes above and below the price of the underlying stock. Since the price of the underlying stock (\$24.50) straddles the standard strikes of \$20 and \$25, no \$2 wing is permitted between these standard strikes.

prohibition applies to non-LEAPS and LEAPS. The Exchange proposes to maintain this prohibition and codify it in paragraph (a) to Commentary .04 to Rule 6.4 (Program Description).

For ease of reference, the Exchange is proposing to add the headings “Program Description,” “Initial and Additional Series” and “LEAPS” to Commentary .04 to Rule 6.4.

The Exchange is proposing to more accurately reflect the nature of the Program and is proposing to make stylistic changes throughout Commentary .04 to Rule 6.4 by renaming the Program “The \$1 Strike Price Interval Program” and by adding the phrase “price interval.”

The Exchange proposes to reorganize certain text of Commentary .04 to Rule 6.4 and portions of the Delisting Policy therein in order to better organize Commentary .04. This would include moving current paragraph (b) out of Commentary .04 and instead including the text as new Commentary .13 to Rule 6.4.

Lastly, the Exchange is making technical changes to Commentary .04 to Rule 6.4, *e.g.*, replacing the word “security” with the word “stock.”

The Exchange represents that it has the necessary systems capacity to support the increase in new options series that would result from the proposed streamlining changes to the Program.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>16</sup> in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and to simplify the provisions of the \$1 Strike Price Interval Program.

## B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> in particular, because it is designed to promote just and equitable

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and to simplify the provisions of the \$1 Strike Price Interval Program.

*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**

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.<sup>21</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>22</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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-NYSEArca-2011-66 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-NYSEArca-2011-66. 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 website 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. 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 publicly available. All submissions should refer to File Number SR-NYSEArca-2011-66 and should be

submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-25475 Filed 10-3-11; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65420; File No. SR-PHLX-2011-128]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Regarding Simplification of the Exchange's \$1 Strike Price Program**

September 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on September 27, 2011, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposal to modify Commentary .05 to Phlx Rule 1012 (Series of Options Open for Trading) to simplify the Exchange's \$1 Strike Price Program (the "\$1 Strike Program" or "Program").

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>3</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the Exchange's principal office, on the Commission's Web site at <http://www.sec.gov>, and at the Commission's Public Reference Room.

<sup>23</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> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 satisfied the five-day pre-filing requirement.

<sup>21</sup> See Securities Exchange Act Release No. 65383 (September 22, 2011) (SR-CBOE-2011-040) (order approving proposed rule change to simplify the \$1 Strike Price Interval Program).

<sup>22</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).