

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58906; File No. SR-Phlx-2008-76)

November 6, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ OMX PHLX, Inc. Relating to an Increase in the Maximum Number of Quoters Permitted in an Option

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 November 4, 2008, NASDAQ OMX PHLX, Inc. ("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.

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

The Exchange, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to amend Exchange Rule 507, Application for Approval as an SQT or RSQT and Assignment in Options, which governs the assignment of options to Streaming Quote Traders

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

(“SQTs”)⁵ and Remote Streaming Quote Traders (“RSQTs”),⁶ by establishing a higher maximum number of quoting participants (“Maximum Number of Quoters” or “MNQ”) in equity options that are not in the top 15% most actively traded based upon monthly national volume.

The Exchange further proposes to amend Commentary .05 to Rule 507 to reflect the current practice of announcing changes to the MNQ on its web site.

The text of the proposed rule change is available on the Exchange’s Web site at http://www.phlx.com/regulatory/reg_rulefilings.aspx.

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

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

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

1. Purpose

⁵ An SQT is an Exchange Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit options quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Exchange Rule 1014(b)(ii)(A).

⁶ An RSQT is a ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

The purpose of the proposed rule change is to provide additional liquidity in equity options on the Exchange by increasing the MNQ in certain options.

Currently, the Exchange limits the number of participants that may be assigned to a particular equity option at any one time based upon each option's monthly national volume. Commentary .02 to Rule 507 sets forth tiered MNQ levels permitting 22 market participants for the top 5% most actively traded options; 17 market participants for next 10% most actively traded options, and 12 market participants for all other options.⁷ The ranking is based upon the preceding month's national volumes. The Exchange proposes to increase the MNQ level for equity options that are not in the top 15% most actively traded from 12 market participants to 15.⁸

Finally, Commentary .05 to Rule 507 states that the Exchange will inform market participants of changes to the MNQ via Exchange circular. The Exchange proposes to amend Commentary .05 to Rule 507 to reflect its current practice of announcing changes to the MNQ on its web site.

2. Statutory Basis

⁷ When initially adopted, Commentary .01 (a) – (c) established MNQ levels of 20 market participants for the top 5% most actively traded options; 15 market participants for next 10% most actively traded options; and 10 market participants for all other options. See Securities Exchange Act Release No. 55114 (January 17, 2007), 72 FR 3185 (January 24, 2007)(SR-Phlx-2006-81). These MNQ levels were subsequently increased to the current levels of 22, 17, and 12, respectively. See Securities Exchange Act Release No. 56261 (August 17, 2007), 72 FR 47112 (August 22, 2007)(SR-Phlx-2007-51).

⁸ Commentary .05 to Rule 507 states that the Exchange may increase the MNQ levels established in this Commentary (meaning the 22,17, and 12 numbers established in Commentary .01(a)-(c)) by submitting to the SEC a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act. The Exchange may decrease the MNQ levels established in this Commentary upon SEC approval of a rule filing submitted pursuant to Section 19(b)(2) of the Exchange Act.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ 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 adding depth and liquidity to the Exchange's markets in certain equity options.

The Exchange further believes that increasing the MNQ in certain equity options is pro-competitive, because it adds depth and liquidity to the Exchange's markets by permitting additional participants to compete on the Exchange.

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 foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² At any time within 60 days of the filing of such 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 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-2008-76 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-2008-76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange fulfilled this requirement.

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 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-76 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Acting Secretary

¹³ 17 CFR 200.30-3(a)(12).