

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61282; File No. SR-Phlx-2009-110]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow All SPY and IWM Option Series To Quote in Penny Increments

January 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 <sup>2</sup> thereunder, notice is hereby given that on December 24, 2009, 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 is filing with the Commission a proposal to quote all series of options on SPDR S&P 500 Exchange Traded Funds (SPY) and options on iShares Russell 2000 Index Funds (IWM) in penny increments (\$0.01) pursuant to the Penny Pilot (“Penny Pilot” or “Pilot”), effective February 1, 2010.<sup>3</sup> This date corresponds with the phase-in date for additional classes for the Penny Pilot.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>4</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 principal office of the Exchange, 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 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this filing is to enable the Exchange to quote all series of options on SPDR S&P 500 Exchange Traded Funds (“SPY”) and options on iShares Russell 2000 Index Funds (“IWM”) in penny increments pursuant to the Penny Pilot, effective February 1, 2010.

In the Exchange’s immediately effective filing to extend and expand the Penny Pilot through December 31, 2010, the Exchange proposed expanding the Pilot four times on a quarterly basis.<sup>5</sup> In addition to sixty-three options classes that were in the Penny Pilot, the Exchange has recently added the next seventy-five most actively traded multiply listed options classes based on the national average daily volume (“ADV”) for the six months prior to selection, closing under \$200 per share on the Expiration Friday prior to expansion.<sup>6</sup> The minimum quotation variation for all classes included in the Pilot, except for options on PowerShares QQQ (“QQQ”),<sup>7</sup> is \$0.01 for all quotations in option series that are quoted at less than \$3.00 per contract, and \$0.05 for all quotations in option series that are quoted at \$3.00 or greater.

<sup>5</sup> See Securities Exchange Act Release No. 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR-Phlx-2009-91) (notice of filing and immediate effectiveness).

<sup>6</sup> The month immediately preceding the addition of options to the Penny Pilot was not used for the purpose of the six month analysis, and index option products were included only if the underlying index levels were under 200. See Securities Exchange Act Release No. 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR-Phlx-2009-94) (notice of filing and immediate effectiveness).

<sup>7</sup> Options on QQQQ are quoted in \$0.01 increments for all series.

Thus, the current minimum quoting increment for bids and offers in SPY and IWM is \$0.01 for all options series below \$3.00 and \$0.05 for all options series \$3.00 and above.

The Exchange now proposes to eliminate the \$3.00 breakpoint that exists for SPY and IWM and designate all options series of SPY and IWM as eligible to quote in \$0.01 increments, regardless of premium value. The Exchange will communicate the proposed change to its membership via an Options Trader Alert (“OTA”) posted on the Exchange’s web site.

The Exchange notes that although the Pilot has contributed to some increase in quote message traffic, it has been manageable by the Exchange and the Options Price Reporting Authority (“OPRA”), with no significant disruption in the dissemination of pricing information. The Exchange believes that the benefits to public customers and other market participants who are able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic. Moreover, the Exchange’s rule change proposal is sufficiently limited such that it is unlikely to increase quotation message traffic beyond the capacity of the Exchange’s or OPRA’s systems, or to disrupt the timely dissemination of information.

The Exchange believes that its proposal to eliminate the breakpoint for penny quoting of all SPY and IWM option series should facilitate the continuing narrowing of spreads, thereby lowering costs to the benefit of investors.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system by allowing all SPY and IWM option series to quote in penny intervals.

#### 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

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot); and 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot through December 31, 2010). See also Securities Exchange Act Release No. 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR-NASDAQ-2009-097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot) [sic].

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

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**

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and Rule 19b-4(f)(6)(iii) thereunder<sup>11</sup> because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate.<sup>12</sup>

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2009-110 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-2009-110. 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 the filing also will 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-2009-110 and should be submitted on or before February 1, 2010.

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

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-205 Filed 1-8-10; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-61281; File No. SR-NASDAQ-2009-115]**

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow All SPY and IWM Option Series To Quote in Penny Increments**

January 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on December 24, 2009, The NASDAQ Stock Market LLC (“Nasdaq”) 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 Nasdaq. 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 is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal for the NASDAQ Options Market (“NOM” or “Exchange”) to quote all series of options on SPDR S&P 500 Exchange Traded Funds (SPY) and options on iShares Russell 2000 Index Funds (IWM) in penny increments (\$0.01) pursuant to the Penny Pilot (“Penny Pilot” or “Pilot”), effective February 1, 2010.<sup>3</sup> This date corresponds with the phase-in date for additional classes for the Penny Pilot.

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

The text of the proposed rule change is available from Nasdaq's Web site at <http://nasdaq.cchwallstreet.com/Filings/> at Nasdaq's principal office, 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, 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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot); and 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot through December 31, 2010). See also Securities Exchange Act Release No. 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR-NASDAQ-2009-097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). 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 the 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 this requirement.

<sup>13</sup> 17 CFR 200.30-3(a)(12).