

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61397; File No. SR-Phlx-2010-07)

January 22, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Deleting Obsolete Provisions Relating to the Opening

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 January 14, 2010, NASDAQ OMX PHLX, Inc. (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Phlx has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 1017, Openings in Options, to delete the portions of the rule that pertain to the Phlx XL trading system, which has since been replaced by the Phlx XL II trading system. Accordingly, all of the commentary (.01 through .03) as well as paragraphs (a) – (g) will be deleted, with the exception of the last sentence of paragraph (a) defining a Phlx XL II participant and sub-paragraph (iii) of paragraph (c), which will continue to state that to be considered in the determination of the opening price and to participate in the opening trade, orders represented by Floor Brokers must be entered onto the book electronically.

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<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).

Paragraphs (h) and (i) are proposed to be amended by deleting references to the old trading system, Phlx XL.

The Exchange also proposes to delete Options Floor Procedure Advice (“Advice”) A-12, Opening Rotations, and Advice A-14, Equity Option And Index Option Opening Parameters, which are also outdated.

The text of the proposed rule change is available on the Exchange’s Website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to update various rules pertaining to the opening by deleting outdated language. In July 2009, the Exchange fully rolled out its new options trading system, Phlx XL II.<sup>4</sup> Accordingly, many portions of Rule 1017, which pertained to the old trading system, Phlx XL, no longer apply. A few of the provisions applied to both

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<sup>4</sup> Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

Phlx XL and Phlx XL II; those are being amended to delete reference to Phlx XL, such that they remain applicable to Phlx XL II.

Similarly, the Exchange is proposing to delete two Options Floor Procedure Advices (“Advices”). Historically, Advices replicated the provisions of the Exchange’s rules that were most pertinent for the trading floor community to keep handy, in lieu of the large, unwieldy rulebook; the Exchange adopted, for many years, both rules and advices that contained nearly identical language where the rule/advice was the subject of a fine schedule under the Exchange’s minor rule plan in order for the trading floor to have easy access to these provisions (which the Exchange printed and distributed) and in order for those persons who administered fines to have easy access to consult the applicable fine schedules.<sup>5</sup>

The first Advice proposed to be deleted is Advice A-12, which pertains principally to Phlx XL and is therefore obsolete; the portions that refer to Phlx XL II merely cross-reference Rule 1017 and state that the opening is conducted automatically. Accordingly, Advice A-12, which is merely descriptive, is no longer needed because there is no behavior to which to apply the fine schedule.<sup>6</sup> Similarly, Advice A-14 is also proposed to be deleted, because it is merely explanatory and cannot be violated; it was updated to reflect Phlx XL II processes, but should instead have been deleted. Specifically, it describes how the system establishes opening parameters. By proposing to delete these advices, the Exchange is also proposes to amend its minor rule plan to delete these advices from it, because no fine schedule will apply. The content of both Advices remains covered by Rule 1017.

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<sup>5</sup> At the time, such fines were administered by “Floor Officials,” who have since been replaced by “Options Exchange Officials.”

<sup>6</sup> Advices are administered as part of the Exchange’s minor rule plan; the Exchange proposes to remove Advices A-12 and A-14 from the minor rule plan.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</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, by removing obsolete language such that the rules are more clear.

### 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 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 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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,

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-2010-07 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-2010-07. 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

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or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2010-07 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.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).