SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63979; File No. SR-Phlx-2011-21)

February 25, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Quality Opening Markets

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4[2] thereunder, notice is hereby given that, on February 16, 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, pursuant to Section 19(b)(1) of the Act[3] and Rule 19b-4 thereunder,[4] proposes to amend Rule 1017, Openings in Options, to reflect a system change under which the PHLX XL® automated options trading system[5] will initiate an opening "imbalance process" during the opening of trading in an option series when: (i) no other U.S. options exchange has

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.

5 This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May, 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

opened the affected series for trading, and (ii) there is not a "quality opening market" (as defined below) present on the Exchange in such option series.

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 improve the quality of executions that take place on the Exchange during the Opening Process when no other market center is open for trading in the affected series, by amending Exchange Rule 1017. Specifically, the Exchange's PHLX XL system will initiate an imbalance process when marketable opening orders on the Exchange could be executed against valid width quotes (defined in Exchange Rule 1014)[6] but

6 A "valid width quote" for options on equities and index options means bidding and/or offering so as to create differences of no more than $.25 between the bid and the offer for each option contract for which the prevailing bid is less than $2; no more than $.40 where the prevailing bid is $2 or more but less than $5; no more than $.50 where the prevailing bid is $5 or more but less than $10; no more than $.80 where the prevailing bid is $10 or more but less than $20; and no more than $1 where the prevailing bid is $20 or more, provided that, in the case of equity options, the bid/ask differentials stated above

there is not a "quality opening market." (as set forth in a table posted on the Exchange's web site).

Quality Opening Market

A "quality opening market " is a bid and offer on the Exchange comprised of the highest bid of all valid width opening quotes on the Exchange and the lowest offer of all valid width opening quotes on the Exchange, with a specific bid/ask differential that is narrower than the bid/ask differential of a valid width quote.

A quality opening market is calculated by determining the bid/ask differential of the best available bid and the best available offer on the Exchange. If such bid/ask differential is equal to or less than a specific range as defined in a table published by the Exchange, the available top of book quotation is considered to be a "quality opening market".

For example, currently for options priced under $2.00, a valid width quote is defined as a quote with a bid/ask differential that is not greater than $0.25. Assume at the opening on the Exchange, the Exchange's market is $0.00 bid, $0.25 offer for 500 contracts in an option that is quoted and traded in increments of $0.01 (a "penny pilot option"). Despite having a "valid width" quote on the Exchange, a market or marketable limit order to buy with equal or smaller size than the valid width quote size would be executed against the valid width quote offer of $0.25 if there were no other options markets open for trading in the affected series.[7] An

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shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded up to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options. See Exchange Rule 1014(c)(i)(A)(1)(a).

[7] If there are other options markets open for trading in the affected series, the Exchange would route the order to better-priced away markets following a one-second "Route Timer." See, e.g., Exchange Rule 1017(l)(iv)(B).

execution of $0.25 in a penny pilot option that is normally quoted with, for example, a $0.03 or $0.04 bid/ask differential, may be considered unacceptable. The Exchange has experienced situations where, following such an execution, additional PHLX market participants submit quotes in the affected series at a significantly better level than the opening price. This result is unacceptable to both the Exchange and its customers. The Exchange believes that the "quality opening market" requirement should reduce, the number of occurrences of, or preclude, this result, especially in the case of out-of-the-money options series and relatively illiquid options.

Another example of the result the proposed rule change addresses concerns options having up to thirty-nine months from the time they are listed until expiration.[8] Strike price interval, bid/ask differential and continuity rules do not apply to such options series until the time to expiration is less than nine months.[9] Options series with expirations of nine months or more may be quoted with any bid/ask differential. Assume at the opening on the Exchange, the Exchange's market in such an option series is $0.00 bid, $5.00 offer for 50 contracts. A market or marketable limit order to buy with a size of 50 or fewer contracts would execute at $5.00, absent an imbalance process seeking a "quality opening market" on the Exchange.

In order to ensure quality opening executions in this circumstance, proposed Rule 1017(l)(v) (B) would state that, if there is no imbalance, and (1) no other U.S. options exchange has opened the affected series for trading, and (2) there is no "quality opening market" (as defined in a table to be determined by the Exchange and published on the Exchange's website), present on the Exchange in such option series, the PHLX XL system will begin the imbalance

8 Such options are referred to as Long Term Equity AnticiPation Securities ("LEAPS").

9 See Exchange Rule 1012, Commentary .03.

process[10] in order to seek additional valid width quotes that result in a "quality opening market " on the Exchange. During the imbalance process, the Exchange broadcasts "Imbalance Notices" seeking fresh quotations from participants at up to 3-second intervals.[11]

In this situation, the PHLX XL system will execute contra-side interest when either: (i) a "quality opening market " is present on the Exchange, (ii) another options exchange opens for trading in the affected series, or (iii) the imbalance process is complete. Once a "quality opening market" is present on the Exchange, or another options exchange opens for trading in the affected series, the imbalance process will be terminated and the contra-side marketable order interest will be executed in accordance with Exchange Rule 1017.

If no "quality opening market" is present during the imbalance process, and no other options exchange has opened for trading in the affected series during the imbalance process, contra-side marketable order interest will be executed against valid width quotes present on the Exchange in accordance with Exchange Rule 1017 upon the termination of the imbalance process.[12] The Exchange believes that, if no "quality opening market" is present during the imbalance process (and no other options exchange has opened for trading in the affected series), the valid width quote is the best opening price and therefore it is appropriate to execute at the valid width quote price.

The Exchange also proposes technical re-numbering changes to Rule 1017 to address proposed new Rule 1017(l)(v).

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10 Although there is not a true "imbalance" in this situation, the Exchange believes that the imbalance process is the most efficient way to communicate to participants that it is seeking fresh quotations that would result in a quality opening market on the Exchange.

11 See current Exchange Rule 1017(l)(v).

12 The PHLX XL system may repeat the imbalance process up to three times (as established by the Exchange). See current Exchange Rule 1017(l)(v)(C)(6).

The Exchange believes that this proposal to "force" an imbalance process when there are no other markets open for trading in the affected series, and there is no "quality opening market " present on the Exchange, will enhance the opening price discovery process and encourage participants to submit high quality quotes at the opening of trading. This in turn should enhance the quality of executions at the opening of trading on the Exchange, all to the benefit of the investing public. The Exchange further believes that the proposal will promote increased customer confidence in the PHLX opening process, and should attract more opening order flow to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(5) of the Act[14] 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. Specifically, the Exchange believes that the proposal benefits customers by improving prices and market efficiency at the opening of trading.

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.

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[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)[15] of the Act and Rule 19b-4(f)(6)[16] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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

The Exchange notes that the instant proposal to establish a "quality opening market" and to publish a table of acceptable opening bid/ask differentials on its web site is substantially similar to its previously approved proposed rule change to establish an Opening Quote Range and an Acceptable Quote Range, and to publish those ranges in a table on its web site.[17] The Opening Quote Range and the Acceptable Quote Range substantially track the quality opening market standard. Furthermore, because the table that describes the bid/ask differential required for a quality opening market is intended to be dynamic and subject to market conditions, the Exchange believes that it is appropriate to display the table on its web site, just as it does with the Opening Quote Range and the Acceptable Quote Range.

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15 15 U.S.C. 78s(b)(3)(A).

16 17 CFR 240.19b-4(f)(6).

17 See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009)(SR-Phlx-2009-32).

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. Please include File Number SR-Phlx-2011-21 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-2011-21. 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 website (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 10:00 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-2011-21 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.[18]

Cathy H. Ahn
Deputy Secretary

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[18] 17 CFR 200.30-3(a)(12).