

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 such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.theocc.com/publications/rules/proposed\\_changes/sr\\_occ\\_09\\_16.pdf](http://www.theocc.com/publications/rules/proposed_changes/sr_occ_09_16.pdf). 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-OCC-2009-16 and should be submitted on or before November 20, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60877; File No. SR-Phlx-2009-92]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the TOPO Plus Orders Data Feed

October 26, 2009.

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 October 21, 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 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 make available without charge a direct data product related to the trading of standardized options on the Exchange's enhanced electronic trading platform for options, Phlx XL II.<sup>3</sup> Specifically, the Exchange is proposing to establish and deploy a direct data feed product called Top of Phlx Options Plus Orders ("TOPO Plus Orders"), which will include disseminated Exchange top-of-market data (including orders, quotes and trades), together with all information that is included in the Exchange's Specialized Order Feed ("SOF") as described more fully below.

The text of the proposed rule change is available on the Exchange's Web site 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 make available without charge the TOPO Plus Orders data feed.

On June 5, 2009, the Exchange launched the Phlx XL II system, which was subject to a symbol-by-symbol rollout schedule that was completed on July 23, 2009 (the "rollout"). Currently, all options listed on the Exchange are traded on Phlx XL II. In conjunction with the launch and rollout of the Phlx XL II system, the Exchange developed the Top of Phlx Options data feed

("TOPO")<sup>4</sup> which provides to subscribers a direct data feed that includes the Exchange's best bid and offer position, with aggregate size, based on displayable order and quoting interest on the Phlx XL II system. The data contained in the TOPO data feed is identical to the data sent to the processor for the Options Price Regulatory Authority ("OPRA"), and the TOPO and OPRA data leave the Phlx XL II system at the same time.

In conjunction with the deployment of Phlx XL II, the Exchange represented that, within 90 days following the completion of the rollout,<sup>5</sup> it will offer a data feed (TOPO Plus Orders) to all market participants, which would include disseminated Exchange top-of-market data (including orders, quotes and trades) and all information that is included in SOF.

The SOF provides to its users real-time information to keep track of the single order book(s), single and complex orders, complex strategy and Live Auction for all symbols for which the user is configured. Users may be configured for one or more symbols. SOF provides real-time data for the entire book to its users. It is a compilation of limit order data resident in the Exchange's limit order book for options traded on the Exchange that the Exchange provides through a real-time data feed. The Exchange updates SOF information upon receipt of each displayed limit order. For every limit price, the SOF includes the aggregate order volume.

TOPO Plus Orders responds to the desire of some market participants for depth-of-book data. TOPO Plus Orders will provide top of book data to its users, together with the same data provided to SOF users. The Exchange represents that it will send this data to TOPO Plus Orders users no later than it will send such data to SOF users, and that it will make the data feed available to any market participant that wishes to subscribe to it.

The Exchange anticipates that it will eventually phase out SOF and make available TOPO to users that want only top of book data, and TOPO Plus Orders to users that want both top of book data and the real-time full limit order book data feed.

Initially, the Exchange will not charge fees for TOPO Plus. The Exchange contemplates that it will propose to charge fees for the use of TOPO Plus Orders. The Exchange will submit a

<sup>4</sup> See Securities Exchange Act Release No. 60459 (August 7, 2009), 74 FR 41466 (August 17, 2009) (SR-Phlx-2009-54).

<sup>5</sup> Specifically, by October 21, 2009.

<sup>9</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> See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

proposed rule change to the Commission in order to implement those fees.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general and, because there will be no initial fees charged, with Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls.

The Exchange believes that the proposed rule change is also consistent with the provisions of Section 6(b)(5) of the Act,<sup>8</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act the administration of the Exchange. Specifically, the proposal is not designed to permit unfair discrimination among participants because it provides a mechanism for all market participants to obtain data that was previously available only to SOF users.

The Exchange further believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act<sup>9</sup> in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that this proposal is in keeping with all of these principles by facilitating investors' prompt access to Exchange limit order book information and providing increased transparency. Additionally, this proposal provides market participants with supplemental market information concerning orders on the Exchange's limit order book, which supports the system of a free and open market.

## 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that such a waiver will address the importance of increasing the Exchange's transparency by providing the TOPO Plus Orders data feed to market participants, and ensure that the Exchange will meet its obligation to deploy TOPO Plus Orders by October 21, 2009.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to immediately provide increased transparency to market participants without charge by providing limit order data resident in the Exchange's limit order book to all market participants, rather than just to

those participants eligible to receive data through SOF. Further, waiver of the operative delay will allow the Exchange to meet its obligation to make such data available to all market participants by October 21, 2009. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.<sup>14</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-2009-92 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-2009-92. 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

<sup>14</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>11</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, or such shorter time as designated by the Commission. Phlx has satisfied this requirement.

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

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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

<sup>9</sup> 15 U.S.C. 78f(b)(8).

available for inspection and copying in the Commission's Public Reference Room, 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 available publicly. All submissions should refer to File Number SR-Phlx-2009-92 and should be submitted on or before November 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-26172 Filed 10-29-09; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### The National Railroad Passenger Corporation

[Docket Number FRA-2009-0103]

The National Railroad Passenger Corporation (Amtrak), a Class 1 Railroad, petitioned FRA for a waiver of compliance from certain provisions prescribed by 49 CFR 214.335 *On-track safety procedures for roadway work groups*.

49 CFR 214.7 *Definitions*, states in part, "Fouling a track means the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or on-track equipment, or in any case is within four feet of the field side of the near running rail." The requirements in 49 CFR 214.335 specify the methods in which roadway work groups are provided on-track safety in order to foul railroad tracks to perform work. Those

methods include working limits and train approach warning.

Amtrak states that the current definition of fouling a track prevents the timely removal of snow from the last 3 feet of station platforms adjacent to the track and it discourages the removal of snow in an area where snow removal is critical for passenger safety.

This waiver request is submitted for the removal of snow on platforms exclusively on passenger station platforms outside of the Northeast Corridor. The method proposed would use train conductors to coordinate railroad employees or contractors to remove snow at the platforms after they have received documented training on the process which includes:

1. Job briefings to discuss work to be done.
2. Not crossing the yellow tactile strip.
3. Directions on which tools to use.
4. Not working while trains are moving.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2009-0103) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet

at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on October 26, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E9-26214 Filed 10-29-09; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 23, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13 on or after the publication date of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

*Dates:* Written comments should be received on or before November 30, 2009 to be assured of consideration.

#### Community Development Financial Institutions Fund

*OMB Number:* 1559-0016.

*Type of Review:* Revision.

*Title:* New Markets Tax Credit (NMTC) Program—Allocation Application.

*Form:* CDFI 0020.

*Description:* The New Markets Tax Credit (NMTC) Program will provide an incentive to investors in the form of a tax credit, which is expected to stimulate investment in private capital that, and in turn, will facilitate economic and community development in low-income communities. In order to qualify for an allocation of tax credits under the NMTC Program an entity

<sup>15</sup> 17 CFR 200.30-3(a)(12).