

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61546; File No. 4-546]

### Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Order Protection and Locked/Crossed Market Plan To Add the BATS Exchange, Inc. as a Participant

February 19, 2010.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 608 thereunder, <sup>2</sup> notice is hereby given that on February 4, 2010, BATS Exchange, Inc. (“BATS” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) an amendment to the Options Order Protection and Locked/Crossed Market Plan (“Plan”). <sup>3</sup> The amendment proposes to add BATS as a Participant <sup>4</sup> to the Plan. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Description and Purpose of the Amendment

The current Participants in the Linkage Plan are CBOE, ISE, Nasdaq, BOX, Phlx, NYSE Amex, and NYSE Arca. The proposed amendment to the Plan would add BATS as a Participant in the Plan. BATS has submitted a signed copy of the Plan to the Commission in accordance with the procedures set forth in the Plan regarding new Participants. Section 3(c) of the Plan provides for the entry of new Participants to the Plan. Specifically an Eligible Exchange <sup>5</sup> may become a

<sup>1</sup> 15 U.S.C. 78k-1(a)(3).

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> On July 30, 2009, the Commission approved a national market system plan relating to Options Order Protection and Locked/Crossed Markets proposed by Chicago Board Options Exchange, Incorporated (“CBOE”), International Securities Exchange, LLC (“ISE”), The NASDAQ Stock Market LLC (“Nasdaq”), NASDAQ OMX BX, Inc. (“BOX”), NASDAQ OMX PHLX, Inc. (“Phlx”), NYSE Amex, LLC (“NYSE Amex”), and NYSE Arca, Inc. (“NYSE Arca”). See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

<sup>4</sup> The term “Participant” is defined as an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

<sup>5</sup> Section 2(6) of the Plan defines an “Eligible Exchange” as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that: (a) is a “Participant Exchange” in the Options Clearing Corporation (“OCC”) (as defined in OCC By-laws, Section VII); (b) is a party to the Options Price Reporting Authority (“OPRA”) Plan (as defined in the OPRA Plan, Section 1); and (c) if the national securities exchange chooses not to become party to this Plan, is a participant in another plan approved by the Commission providing for comparable

Participant in the Plan by: (i) Executing a copy of the Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Plan; (iii) effecting an amendment to the Plan, as specified in Section 4(b) of the Plan.

Section 4(b) of the Plan puts forth the process by which an Eligible Exchange may effect an amendment to the Plan. Specifically, an Eligible Exchange must: (a) execute a copy of the Plan with the only change being the addition of the new participant’s name in Section 3(a) of the Plan; and (b) submit the executed Plan to the Commission. The Plan then provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

#### II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing proposed Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) of the Act <sup>6</sup> because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (b)(1) of Rule 608, <sup>7</sup> if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment 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 4-546 on the subject line.

Trade-Through and Locked and Crossed Market protection. BATS has represented that it has met the requirements for being considered an Eligible Exchange. See letter from Eric Swanson, SVP and General Counsel, BATS, to David Liu, Assistant Director, Division of Trading and Markets, Commission, dated February 12, 2010.

<sup>6</sup> 17 CFR 242.608(b)(3)(iii).

<sup>7</sup> 17 CFR 242.608(b)(1).

##### 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 4-546. 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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BATS. 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 4-546 and should be submitted on or before March 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[File Nos. SR-Phlx-2009-104, SR-Phlx-2009-116, & SR-Phlx-2010-14; [Release No. 61547]

### NASDAQ OMX PHLX, Inc.; Order of Summary Abrogation

February 19, 2010.

Notice is hereby given that the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(3)(C) of the Securities Exchange

<sup>8</sup> 17 CFR 200.30-3(a)(29).