

available publicly. All submissions should refer to File Number SR-BATS-2010-006 and should be submitted on or before April 29, 2010.

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

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

[FR Doc. 2010-7977 Filed 4-7-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61828; File No. SR-Phlx-2010-52]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Order Price Protection

April 1, 2010.

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 March 31, 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. 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 1080, Commentary .07, to provide for an Order Price Protection feature on Phlx XL, the Exchange’s enhanced electronic trading platform for options.<sup>3</sup>

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

In order to address risks to market participants of human error in entering orders at unintended prices, the Exchange has developed a program in the Phlx XL system known as Phlx XL Order Price Protection (“OPP”). OPP is a feature of Phlx XL that would prevent certain orders from executing or being placed on the book at prices outside pre-set standard limits. The Phlx XL system would reject such orders rather than executing them automatically. The operation of the Phlx XL system would be set forth in new Commentary .07 to Phlx Rule 1080, Phlx XL and Phlx XL II.

The OPP feature would prevent certain day limit, good til cancelled, immediate or cancel, and all-or-none orders at prices outside of certain pre-set limits from being accepted by the system. OPP would apply to all options, but would not apply to market orders, stop limit orders, Intermarket Sweep Orders, or complex orders. OPP would be operational each trading day after the opening until the close of trading, except during trading halts. The Exchange would also be able to temporarily deactivate OPP from time to time on an intraday basis at its discretion if it determined that volatility warranted deactivation. Members would be notified of intraday OPP deactivation due to volatility and any subsequent intraday reactivation by the Exchange through the issuance of system status messages.

The OPP will help users of Phlx XL control risk by checking each order, before it is accepted into the system, against certain parameters established by Rule 1080, Commentary .07. It would compare price instructions on the order against the current contra-side NBBO, and would automatically reject the order if it is priced outside the range established in Rule 1080, Commentary .07.

The range of permissible orders depends on whether the contra-side of an incoming order is greater than \$1.00,

or equal to or less than \$1.00. If the NBBO on the contra-side of an incoming order were greater than \$1.00, orders with a limit more than 50% through such contra-side NBBO would be rejected by Phlx XL upon receipt. For example, if the NBBO on the offer side were \$1.10, an order to buy options for more than \$1.65 would be rejected. Similarly, if the NBBO on the bid side were \$1.10, an order to sell options for less than \$0.55 would be rejected.

If the NBBO on the contra-side of an incoming order were less than or equal to \$1.00, orders with a limit more than 100% through such contra-side NBBO would be rejected by Phlx XL upon receipt. For example, if the NBBO on the offer side were \$1.00, an order to buy options for more than \$2.00 would be rejected. However, if the NBBO of the bid side of an incoming order to sell were less than or equal to \$1.00, the OPP limits set forth above would result in all incoming sell orders being accepted regardless of their limit. To illustrate, if the NBBO on the bid side were equal to \$1.00, the OPP limits provide protection such that all orders to sell with a limit less than \$0.00 would be rejected.

The Exchange anticipates implementing the OPP feature on May 1, 2010. The Exchange will notify members through the issuance of an Options Trader Alert when the feature becomes operational and the rule becomes operative.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act <sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act <sup>5</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 mitigating risks to market participants of human error in entering orders at clearly unintended prices.

#### 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.

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

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

<sup>15</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).

*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 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6)<sup>7</sup> thereunder.

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-2010-52 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-2010-52. 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,<sup>8</sup> 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, 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 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-2010-52 and should be submitted on or before April 29, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-7941 Filed 4-7-10; 8:45 am]

**BILLING CODE 8011-01-P**

**DEPARTMENT OF STATE**

**[Public Notice 6942]**

**Certifications Pursuant to Section 609 of Public Law 101-162**

**SUMMARY:** On March 24, 2010, the Department of State notified Congress that it had withdrawn Mexico's certification under United States Public Law 101-162, Section 609, because Mexico's turtle excluder device (TED) program was not currently comparable to the United States program as required by the statute. Withdrawal of Mexican certification is primarily a compliance and environmental issue, but it does have trade implications and a prohibition on wild-caught shrimp imports will become effective on April 20, 2010. The United States government is providing the Government of Mexico

with detailed technical recommendations and capacity-building support with a view to strengthening Mexico's sea turtle protection program. Both governments will continue to actively seek further engagement opportunities to ensure renewal of Mexican certification within the shortest period of time consistent with the requirements of U.S. law.

**DATES:** *Effective Date:* On Publication.

**FOR FURTHER INFORMATION CONTACT:** James J. Hogan, III, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520-7818; telephone: (202) 647-2252.

**SUPPLEMENTARY INFORMATION:** Section 609 of Public Law 101-162 prohibits imports of certain categories of shrimp unless the President certifies to the Congress no later than May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on July 2, 1999 (Vol. 64, No. 130, Public Notice 3086).

The Department of State has communicated this decision under section 609 to the Office of Field Operations of U.S. Customs and Border Protection.

This decision regarding withdrawal of Mexico's certification means that wild-harvest shrimp from Mexico's commercial trawl fisheries may not be imported into the United States until Section 609 certification for Mexico can be reinstated. A Department of State DS-2031 form signed by the exporter and importer must accompany all shrimp imports into the United States. If shrimp products are from a non-certified country, a government official of the harvesting nation must also certify the shrimp was caught without harming sea turtles. Users should check boxes 7(A)(1) for aquaculture shrimp products or 7(A)(3) for artisanal shrimp products. Users should note that exception 7(A)(2) on the form "Harvested Using TEDs," while a currently valid exception to the prohibition on imports from nations not

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</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. The Exchange has satisfied this requirement.

<sup>8</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

<sup>9</sup> 17 CFR 200.30-3(a)(12).