

products. As in the Commission's NYSE Arca Order analysis, at least two broad types of significant competitive forces applied to BX in setting the terms of this proposal: (i) BX's compelling need to attract order flow from market participants; and (ii) the availability to market participants of alternatives to purchasing BX's depth-of-book order data. Attracting order flow is the core competitive concern of any national securities exchange, including BX. Attracting order flow is an essential part of a national securities exchange's competitive success. If a national securities exchange cannot attract order flow to its market, it will not be able to execute transactions. If a national securities exchange cannot execute transactions on its market, it will not generate transaction revenue. If a national securities exchange cannot attract orders or execute transactions on its market, it will not have market data to distribute, for a fee or otherwise, and will not earn market data revenue and thus not be competitive with other exchanges that have this ability.

BX must compete vigorously for order flow to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on BX to act reasonably in setting its fees for BX market data, particularly given that the market participants that must pay such fees often will be the same market participants from whom BX must attract order flow. These market participants particularly include the large broker-dealer firms that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one trading venue to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival.<sup>15</sup>

In addition to the need to attract order flow, the availability of alternatives to BX's TotalView data significantly affects the terms on which BX can distribute this market data.<sup>16</sup> In setting the fees for

its BX TotalView data, BX must consider the extent to which market participants would choose one or more alternatives instead of purchasing the Exchange's data.<sup>17</sup> Of course, the most basic source of information generally available at an exchange is the complete record of an exchange's transactions that is provided in the core data feeds.<sup>18</sup> In this respect, the core data feeds that include an exchange's own transaction information are a significant alternative to the exchange's market data product.<sup>19</sup> For more specific information concerning depth, market participants can choose among products offered by the various exchanges and ECNs.<sup>20</sup> The various self-regulatory organizations, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data are all sources of competition. In addition, market participants can assess depth with tools other than market data, such as "pinging" orders that search out both displayed and nondisplayed size at all price points within an order's limit price.<sup>21</sup>

In sum, there are a variety of alternative sources of information that impose significant competitive pressures on BX in setting the terms for distributing its depth-of-book order data. The Commission believes that the availability of those alternatives, as well as BX's compelling need to attract order flow, imposed significant competitive pressure on BX to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because BX was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis. Further, the Commission did not receive any comment letters raising concerns of a substantial countervailing basis that the terms of the proposal failed to meet the requirements of the Act or the rules thereunder.

*Leegin Creative Leather Products v. PSKS, Inc.*, 127 S. Ct. 2705 (2007); *Atlanta Richfield Co. v. United States Petroleum Co.*, 495 U.S. 328 (1990); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *State Oil Co. v. Khan*, 522 U.S. 3 (1997); *Northern Pacific Railway Co. v. U.S.*, 356 U.S. 1 (1958).

<sup>17</sup> See NYSE Arca Order, *supra* note 13, at 74783.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 74784.

<sup>21</sup> *Id.*

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-BX-2010-027) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62269; File No. SR-Phlx-2010-82]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Trading Halts in Options During a Trading Pause in the Underlying Security

June 10, 2010.

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 June 10, 2010, 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 Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by 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 Exchange Rule 1047, Trading Rotations, Halts and Suspensions, to state that Trading on the Exchange in any option contract shall be halted whenever trading in the underlying security has been paused by the primary listing market. Trading in such options contracts may be resumed upon a determination by the Exchange that the conditions that led to the pause are no

<sup>22</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> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> See NYSE Arca Order, *supra* note 13, at 74783.

<sup>16</sup> See Richard Posner, *Economic Analysis of Law* § 9.1 (5th ed. 1998) (discussing the theory of monopolies and pricing). See also U.S. Dep't of Justice & Fed'l Trade Comm'n, Horizontal Merger Guidelines § 1.11 (1992), as revised (1997) (explaining the importance of alternatives to the presence of competition and the definition of markets and market power). Courts frequently refer to the Department of Justice and Federal Trade Commission merger guidelines to define product markets and evaluate market power. See, e.g., *FTC v. Whole Foods Market, Inc.*, 502 F. Supp. 2d 1 (D.D.C. 2007); *FTC v. Arch Coal, Inc.*, 329 F. Supp. 2d 109 (D.D.C. 2004). In considering antitrust issues, courts have recognized the value of competition in producing lower prices. See, e.g.,

longer present and that the interests of a fair and orderly market are best served by a resumption of trading, which in no circumstances will be before the Exchange has received notification that the underlying security has resumed trading on at least one exchange.

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 ensure that the Exchange maintains fair and orderly markets in options upon the imposition of a single stock pause ("trading pause")<sup>4</sup> by the listing market for the underlying security. Accordingly, as proposed, if such a trading pause is imposed, it will be considered a halt on the primary market for the underlying security and a trading halt in the overlying option will be imposed.

Transactions that occur between the time the pause is imposed on the listing market and the halt is processed on PHLX will be nullified pursuant to PHLX Rule 1092(c)(iv)(B).<sup>5</sup>

Trading in the affected option will resume upon a determination by the Exchange that the conditions that led to

the pause are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading, which in no circumstances will be before the Exchange has received notification that the underlying security has resumed trading on at least one exchange.

Orders in the affected option that are received during the halt on PHLX will be treated as pre-opening orders and will be included in the re-opening process upon the resumption of trading on the listing market for the underlying security pursuant to PHLX Rule 1017(h).<sup>6</sup>

#### 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. Specifically, the Exchange believes that the proposal benefits customers by halting trading in options during times of uncertainty regarding the price of the underlying security due to a trading pause in such underlying security.

### 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

<sup>6</sup> PHLX Rule 1017(h) states that the procedure described in the Rule (Openings in

Options) may be used to reopen an option after a trading halt.

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

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

may designate, if consistent with the protection of investors and the public interest, 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>

The Exchange requested that the Commission waive the 30-day operative delay. The Exchange notes that such a waiver will permit it to immediately implement the proposed rule change in order to benefit customers by halting trading in options during times of uncertainty regarding the price of the underlying security due to a trading pause in such underlying security. The Commission approved filings from the exchanges and the Financial Industry Regulatory Authority to institute a single stock trading pause for equity securities that experience a 10% change in price during a five minute period.<sup>11</sup> The Commission hereby grants the Exchange's request and believes such waiver is consistent with the protection of investors and the public interest.<sup>12</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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

<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)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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>11</sup> See Securities Exchange Act Release Nos. 62251 and 62252 (June 10, 2010).

<sup>12</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. See 15 U.S.C. 78c(f).

<sup>4</sup> The term "trading pause" is not defined in PHLX's Rules, but for example, see Securities Exchange Act Release No. 62129 (May 19, 2010), 75 FR 28839 (May 24, 2010) (SR-NASDAQ-2010-061); and Securities Exchange Act Release No. 62124 (May 19, 2010), 75 FR 28828 (May 24, 2010) (SR-BX-2010-037).

<sup>5</sup> PHLX Rule 1092(c)(iv)(B) states that, respecting equity options (including

options overlying ETFs), trades on the Exchange will be nullified when the trade occurred during a trading halt on the primary market for the underlying security.

Number SR-Phlx-2010-82 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-2010-82. 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 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-2010-82 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62271; File No. SR-ISE-2010-58]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Trading Halts

June 10, 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 June 10, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "SEC" or the "Commission") the proposed rule change as described in Items I, and II below, which items have been prepared by the self-regulatory organization. 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 702 (Trading Halts) to confirm that the Exchange will halt trading in an options class when a trading pause in the underlying security is initiated by the primary listing exchange. The text of the proposed rule changes is as follows, with additions italicized.

##### Rule 702. Trading Halts

(a) and (b) no change.

(c) *Trading Pauses. Trading on the Exchange in any option contract shall be halted whenever trading in the underlying security has been paused by the primary listing market. Trading in such options contracts may be resumed upon a determination by the Exchange that the conditions that led to the pause are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading, which in no circumstances will be before the Exchange has received notification that the underlying security has resumed trading on at least one exchange.*

\* \* \* \* \*

#### 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 self-regulatory organization 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 self-regulatory organization 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 primary listing markets for U.S. stocks, as well as all other U.S. equity markets, are in the process of amending their rules so that they may, from time to time, issue a five-minute "trading pause" for an individual security if the price of such security moves 10% or more from a sale in a preceding five-minute period.<sup>3</sup> This uniform market-wide trading pause will initially cover individual securities included in the S&P 500® Index and is being implemented as a pilot concluding on December 10, 2010 ("trading pause pilot").

ISE Rule 702(a)(1) states that an Exchange official may halt trading in any stock option in the interests of fair and orderly market, taking into consideration factors such as whether trading in the underlying security has been halted or suspended in the primary market. ISE Rule 702(a)(3) further provides that the Exchange will halt trading for a class or classes of options contracts whenever there is a halt of trading in an underlying security in the primary market. In this respect, the Exchange notes that its trading system automatically halts trading upon the receipt of a halt message from the primary listing exchange.

The purpose of this rule change is to confirm that the Exchange will automatically halt trading in securities when the primary listing exchanges initiate a trading pause. The proposed rule specifies that trading in options will resume when the Exchange determines that the conditions that led to the pause are no longer present and

<sup>3</sup> E.g., Exchange Act Release No. 34-62126 (May 19, 2010), 75 FR 28831 (May 24, 2010) (Notice for SR-NYSE-2010-39); Exchange Act Release No. 34-62129 (May 19, 2010), 75 FR 28839 (May 24, 2010) (Notice for SR-NASDAQ-2010-61); Exchange Act Release No. 34-62127 (May 19, 2010), 75 FR 28837 (May 24, 2010) (Notice for SR-NYSEAmex-2010-46); Exchange Act Release No. 34-62128 (May 19, 2010), 75 FR 28830 (May 24, 2010) (Notice for SR-NYSEArca-2010-41); Exchange Act Release No. 34-62133 (May 19, 2010), 75 FR 28841 (May 24, 2010) (Notice for SR-FINRA-2010-25). See also *infra* note 4.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>13</sup> 17 CFR 200.30-3(a)(12).