

persons who seek to associate with a member firm.<sup>18</sup>

In order to meet its obligations under Section 6 of the Act<sup>19</sup> to enforce compliance by member firms and their associated persons with the Act, the rules thereunder, and the exchange's own rules, an exchange must have baseline registration and examination or qualification requirements for all persons conducting business on an exchange, as well as for those supervising such activity. In addition, most SROs have continuing education requirements for registered persons which help ensure that associated persons are up to date on changes to rules and regulations that govern their activities. Furthermore, an exchange must know if an associated person of a member firm is subject to a statutory disqualification.<sup>20</sup> This information is elicited by the Uniform Application for Securities Industry Registration or Transfer ("Form U4"), which is used by most exchanges and FINRA to register associated persons.

The Commission believes that the requirement that firms have a minimum of two principals responsible for oversight of Authorized Traders and activity on BATS who must be registered and pass the Series 24 exam should help BATS strengthen the regulation of its member firms. Requiring a minimum of two persons, both of whom meet specified proficiency standards, should help ensure that member firms have adequate supervision, and that those overseeing member firms are prepared for the responsibility. The nature of the firm, however, may dictate that more than two principals are needed to provide appropriate supervision. In addition, the Commission believes that requiring chief compliance officers and any employee operating in the capacity of a FINOP to register with the Exchange as principals and take either the Series 24 or Series 27, respectively, is appropriate based on the heightened level of accountability inherent in the duty of overseeing compliance by an Exchange member, and in the oversight and

preparation of financial reports and the oversight of those employed in the financial and operational capacities at each firm.

The Commission believes BATS's proposed exceptions from the above requirements are appropriate. The Commission notes that a member seeking a waiver from BATS's FINOP requirement must prove that it has satisfied the financial and operational requirements of its designated examining authority applicable to registration.<sup>21</sup> Additionally, any member seeking an exception from BATS's requirement that each firm have two principals must provide evidence that conclusively indicates to the Exchange that only one principal is necessary. The Commission expects this authority to be used sparingly as principals are charged with oversight of the operations of member firms, and provide the first line of defense in ensuring that member firms are complying with the rules of the exchange as well as the federal securities laws.

Additionally, the Commission believes that the proposed rule change is consistent with the principles of Section 11A(a)(1)<sup>22</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Commission believes that the proposed rule will promote uniformity of regulation across markets, thus reducing opportunities for regulatory arbitrage. BATS' proposed rule change helps ensure that all persons conducting a securities business through BATS are appropriately supervised, as the Commission expects of all SROs. In addition, the exceptions to the general rules in BATS's proposed rule change are substantively the same as exceptions provided to similar rules at other SROs.

Finally, the Commission believes that the compliance date proposed by the Exchange of September 30, 2010 will provide the Exchange's members adequate time to pass any qualification examinations necessary to become compliant with the proposed rules.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-BATS-2010-008), as modified by Amendment No. 1, be, and hereby is, approved.

<sup>18</sup> See Section 6(c)(2) of the Act and Rule 19h-1 under the Act.

<sup>19</sup> Section 6 requires exchanges to have the ability to enforce compliance by their members and associated persons with the federal securities laws and with their own rules. 15 U.S.C. 78f.

<sup>20</sup> In addition, the Commission believes that it is important to ensure that information, such as whether an associated person is subject to a statutory disqualification, is available to exchanges and other regulators, including the Commission and the state securities regulators, through FINRA's Central Registration Depository System ("WebCRD") as well as members of the public through BrokerCheck, which derives information from WebCRD.

<sup>21</sup> See footnote 10 *infra*.

<sup>22</sup> 15 U.S.C. 78k-1(a)(1).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-18037 Filed 7-22-10; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62518; File No. SR-Phlx-2010-90]

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

July 16, 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 28, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "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 [sic] amend its Section II equity options fees to: (i) Pay a \$0.05 per contract side rebate to members for certain Customer complex orders<sup>3</sup>; and (ii) assess a \$0.05 fee to Firms on the contra-side of a Customer complex order that have reached the maximum on the Firm Related Equity Option Cap.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective

<sup>24</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> A complex order is a spread, straddle, combination, ratio or collar order, all of which consist of more than one component, priced like a single order at a net debit or credit based on the prices of the individual components. See Exchange Rule 1080.08 Commentary .08(a)(i). In 2008, the Exchange automated the handling of complex orders on its electronic trading platform for options, PHLX XL. See Securities Exchange Act Release No. 58361 (August 14, 2008), 73 FR 49529 (August 21, 2008) (SR-Phlx-2008-50). Since that time, the Exchange has enhanced its options trading platform, now known as Phlx XL II. See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

for trades settling on or after July 1, 2010.

The text of the proposed rule change is available on Phlx's Web site at <http://www.nasdaqtrader.com>, on the Commission's Web site at <http://www.sec.gov>, at Phlx, 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 attract additional complex order business, specifically by amending the equity options fees to pay a \$0.05 rebate per contract to members for Customer complex orders in equity options that are electronically<sup>4</sup> executed against a non-Customer contra-side<sup>5</sup> complex order or a non-Customer contra-side individual order or quote. Currently, members are assessed the equity options fees in Section II of the Fee Schedule for executing Customer complex orders that are electronically executed against non-Customer contra-side complex orders.<sup>6</sup> Now, instead of

<sup>4</sup> Complex Orders executed on the floor of the Exchange and not electronically executed are not subject to the \$0.05 per contract rebate described in this proposal.

<sup>5</sup> This would be a complex order that is contra to an order from a specialist, Registered Options Trader (as defined in Exchange Rule 1014(b)(i) and (ii)), Streaming Quote Trader (as defined in Exchange Rule 1014(b)(ii)(A)), Remote Streaming Quote Specialist (as defined in Exchange Rule 1014(b)(ii)(B)), Professional (as defined in Exchange Rule 1000(b)(14)), Broker-Dealer or Firm. A complex order strategy means any Complex Order involving any option series which is priced at a net debit or credit (based on the relative prices of each component). The Exchange will calculate both a bid price and an offer price for each Complex Order Strategy based on the current PBBO (as defined below) [sic] for each component of the Complex Order and the bid/ask differential for each component. See Exchange Rule 1080, Commentary .08(a)(ii).

<sup>6</sup> The proposed rebate and fee do not apply to any of the symbols listed in Section 1, titled "Rebates for Adding and Fees for Removing Liquidity in Select Symbols."

assessing a fee of \$0.00 per contract, the Exchange is proposing to pay a \$0.05 rebate. Similarly, the Exchange also proposes to pay a \$0.05 rebate to members for Customer complex orders where the complex order is executed against or "legged" against individual non-Customer contra-side orders or quotes.

The Exchange would continue to assess other market participants the current equity options fees. The payment for order flow fees will continue to apply to complex order transactions. The Exchange believes that paying rebates for executing such Customer complex orders as described herein will increase the volume of complex orders that are executed on Phlx XL II.

The Exchange also proposes to assess a \$0.05 per contract fee to Firms that: (i) Are on the contra-side of a Customer complex order; and (ii) have reached the maximum of the Firm Related Equity Option Cap. Currently, the Exchange has in place a Firm Related Equity Option Cap of \$75,000. Firms are subject to this Firm Related Equity Option Cap per member organization for equity option transactions, in the aggregate, for one billing month.<sup>7</sup> The Exchange believes that assessing such a fee to Firms for transacting Customer complex orders, once that Firm has reached the maximum of the Firm Related Equity Option Cap, will help defray the cost of paying the \$0.05 per contract rebate to Customers. For example, when a Firm exceeds the \$75,000 Firm Related Equity Option Cap, a \$0.05 per contract fee will be added to the Firm Related Equity Option Cap, over those trades that were counted in reaching the \$75,000, when a Firm is contra to a Customer Complex Order. The Exchange proposes to amend the current language in the Fee Schedule, relating to equity option fees, concerning the Firm Related Equity Option Cap, to reflect the proposal and also amend the language to provide more clarity to the \$75,000 cap.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after July 1, 2010.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is

<sup>7</sup> The exception to this is for orders of joint back-office participants. The equity options transaction charges are waived for firms executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account.

consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that paying a rebate to members for electronically-delivered complex orders is equitable because it is similar to rebates currently being paid by the International Stock Exchange LLC ("ISE") for select symbols.<sup>10</sup> By offering the \$0.05 per contract rebate, the Exchange hopes to encourage more customer complex orders to be executed via Phlx XL. The \$0.05 per contract rebate is reasonable because it is similar to rebates paid by other exchanges for customer orders.<sup>11</sup>

### 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

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder. At any time within 60 days of the filing of such 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:

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> See ISE's Schedule of Fees.

<sup>11</sup> See Securities Exchange Release Act. 59478 (February 27, 2009), 74 FR 9857 (March 6, 2009) (SR-NYSEALTR-2009-19).

<sup>12</sup> 15 U.S.C. 78s(b)(3).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

*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-2010-90 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-2010-90. 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 will also 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 No. SR-Phlx-2010-90 and should be submitted on or before August 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

[FR Doc. 2010-18036 Filed 7-22-10; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62513; File No. SR-ISE-2010-75]

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program**

July 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 14, 2010, the International Securities Exchange, LLC (the "Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The ISE has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with 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 is proposing to extend two pilot programs related to its Price Improvement Mechanism ("PIM"). The text of the proposed rule amendment is as follows, with proposed deletions in [brackets], and proposed additions in italics:

Rule 723. Price Improvement Mechanism for Crossing Transactions

\* \* \* \* \*

Supplementary Material to Rule 723

.01-.02 No Change.

.03 Initially, and for at least a Pilot Period expiring on *July 18, 2011* [July 17, 2010], there will be no minimum size requirements for orders to be eligible for the Price Improvement Mechanism. During the Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders within the Price Improvement Mechanism, that there is significant price improvement for all orders executed through the Price Improvement

Mechanism, and that there is an active and liquid market functioning on the Exchange outside of the Price Improvement Mechanism. Any data which is submitted to the Commission will be provided on a confidential basis.

.04 No Change.

.05 Paragraphs (c)(5), (d)(5) and (d)(6) will be effective for a Pilot Period expiring on *July 18, 2011* [July 17, 2010]. During the Pilot Period, the Exchange will submit certain data relating to the frequency with which the exposure period is terminated by unrelated orders. Any data which is submitted to the Commission will be provided on a confidential basis.

.06-.07 No Change.

\* \* \* \* \*

**II. Self-Regulatory Organization's Statement of 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 Exchange currently has two pilot programs related to its PIM.<sup>5</sup> The current pilot period provided in paragraphs .03 and .05 of the Supplementary Material to Rule 723 is set to expire on July 17, 2010.<sup>6</sup>

<sup>5</sup> See Securities Exchange Act Release Nos. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (Approving the PIM pilot (the "Approval Order")); 52027 (July 13, 2005), 70 FR 41804 (July 20, 2005) Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a One-Year Pilot Extension for the Price Improvement Mechanism; 54146 (July 14, 2006), 71 FR 41490 (July 21, 2006) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a One-Year Pilot Extension Until July 18, 2007 for the Price Improvement Mechanism); 56106 (July 19, 2007), 72 FR 40914 (July 25, 2007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a One-Week Extension for the Price Improvement Mechanism Pilot Program); and [sic] 56156 (July 27, 2007), 72 FR 43305 (August 3, 2007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension for the Price Improvement Mechanism Pilot Program); and 58197 (July 18, 2008), 73 FR 43810 (July 28, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program).

<sup>6</sup> See Securities Exchange Act Release No. 60333 (July 17, 2009), 74 FR 36792 (July 24, 2009) (Notice

Continued

<sup>14</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> 15 U.S.C. 78s(b)(3)(A).

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