Dated: August 24, 2010.

Dan S. Jones,

SBA Committee Management Officer.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62759; File No. SR–Phlx–2010–111]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Change to the Automated Opening System

August 23, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 9, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission (the "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 amend Rule 1017, Openings in Options, to reflect a system change to (i) modify the manner in which the PHLX XL® automated options trading system [3] calculates the Opening Quote Range for an options series during the automated opening process, and (ii) terminate the opening process when away markets become crossed during the opening process. A new opening process for the affected series would commence at the time the Away Best Bid/Offer ("ABBO") is uncrossed.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com,* on the Commission's Web site at *http://www.sec.gov,* 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 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 those 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 parts 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 change the manner in which the PHLX XL® automated options trading system calculates the Opening Quote Range ("OQR") in an options series during the automated opening process. The OQR is a price range outside of which the Exchange will not open an option series. The proposal also reflects new system functionality to state that if, at any point during the opening process the ABBO becomes crossed (*e.g.,* 1.05 bid, 1.00 offer), the opening process will be terminated and the Exchange will not open the affected series. A new opening process for the affected series will commence at the time the ABBO is uncrossed.

OQR

Currently, the PHLX XL system calculates the OQR for a particular series based upon the lowest quote bid on the Exchange and the highest quote offer on the Exchange among quotes that are compliant with the bid/ask differentials set forth in Rule 1014(c)(i)(A)(1)(a) ("valid width quotes".) [4] To determine the minimum value for the OQR, an amount, as defined in a table determined by the Exchange, is subtracted from the lowest quote bid. To determine the maximum value for the OQR, an amount, as defined in a table determined by the Exchange, is added to the highest quote offer. Quotes that are not valid width quotes and quotes that are outside of the OQR are not included in the Exchange's automated opening process.

The Exchange proposes to modify the PHLX XL system and Exchange Rule 1017(l) to reflect the new manner in which the PHLX XL system calculates the OQR under certain circumstances. The manner in which the PHLX XL system calculates the OQR will depend upon whether there is a valid ABBO on markets other than the PHLX.

As stated above, the PHLX XL system currently calculates a lowest bid and highest offer to use as a reference price on which to calculate the OQR. Under the proposal, Rule 1017(l)(ii) would be modified to state that a highest bid and lowest offer will be used when there are opening quotes [5] or orders on the Exchange that lock or cross each other and there is no imbalance [6] at the Exchange's opening price. The purpose of this provision is to tighten the range of allowable opening prices and enable the system to open a series by using PHLX quotes when there are opening trades that will leave no imbalance.

The PHLX XL system currently calculates the OQR without regard to away market(s) in the affected series. The Exchange proposes to modify this provision by enabling the PHLX XL system to consider the away market(s) in the affected series when calculating the OQR. Under the proposal, Rule 1017(l)(iii) would be modified to address the situation where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the highest quote bid and lowest quote offer, and one or more away markets have disseminated opening quotes in the affected series. In this situation, the PHLX XL system will calculate an OQR based upon valid width quotes received by the Exchange and quotes that are disseminated by the away market(s).

In this situation, to determine the minimum value for the OQR, an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

[4] Rule 1014(c)(i)(A)(1)(a) permits bid/ask differentials of no more than $.25 between the bid and the offer for each option contract for which the prevailing bid is less than $2; no more than $.40 where the prevailing bid is $2 or more but less than $5; no more than $.50 where the prevailing bid is $5 or more but less than $10; no more than $.80 where the prevailing bid is $10 or more but less than $20; and no more than $1 where the prevailing bid is $20 or more, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded up to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.

[5] The PHLX XL system will consider only opening valid width quotes on the Exchange in its determination of the highest quote bid and lowest quote offer.

[6] An "imbalance" occurs where there is unexecutable trading interest at a certain price. *See* Exchange Rule 1017(l)(ii)(A).

amount, as defined in a table to be determined by the Exchange,[7] will be subtracted from the highest quote bid among valid width quotes on the Exchange and on the away market(s). Under the current method, the minimum value of the OQR is determined by subtracting the amount in the table from the lowest bid on the Exchange only. To determine the maximum value for the OQR, an amount, as defined in a table to be determined by the Exchange, will be added to the lowest quote offer among valid width quotes on the Exchange and on the away market(s). Under the current method, the maximum value of the OQR is determined by adding the amount in the table to the highest bid on the Exchange only. This new method of calculating the OQR is intended to narrow the OQR, and to consider better-priced away markets' quotations in determining the reference price from which to calculate the OQR. The Exchange believes that this should result in higher quality executions at the opening of trading.

Proposed new Rule 1017(l)(iii)(A)(3) addresses the situation where there are away markets and the PHLX opening market is crossed or crosses away markets. If one or more away markets have disseminated opening quotes that are not crossed, and there are valid width quotes on the Exchange that cross each other or that cross away market quotes, the minimum value for the OQR will be the highest quote bid among quotes on away market(s). The maximum value for the OQR will be the lowest quote offer among quotes on away market(s). The purpose of this provision is to maintain market efficiency at the opening of trading when the PHLX market is crossed but there are away markets that the system can use as the OQR. The PHLX XL system will not add to the lowest away offer or subtract from the highest away bid in this situation in order to prevent an opening trade that would be through the ABBO.

Proposed new Rule 1017(l)(iv) addresses the situation where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the highest quote bid and lowest quote offer, and no away markets have disseminated opening quotes in the affected series.[8] In this situation, to determine the minimum value for the OQR, an amount, as defined in a table to be determined by the Exchange, will be subtracted from the highest quote bid among valid width quotes on the Exchange only. To determine the maximum value for the OQR, an amount, as defined in a table to be determined by the Exchange, will be added to the lowest quote offer among valid width quotes on the Exchange only.

Proposed new Rule 1017(l)(iv)(A)(3) addresses the situation where there is an imbalance and there are opening quotes on the Exchange that cross each other, and there is no away market in the affected series. In this situation, the minimum value for the OQR will be the lowest quote bid among valid width quotes on the Exchange, and the maximum value for the OQR will be the highest quote offer among valid width quotes on the Exchange. The purpose of this provision is to maintain market efficiency at the opening of trading when there is an imbalance, and when the PHLX market is crossed but there are no away markets that the system can consider as the OQR. The PHLX XL system will not add to the highest quote offer on the Exchange or subtract from the lowest quote bid on the Exchange in order to ensure that the OQR is as narrow as possible when there are opening quotes on the PHLX that cross each other.

Crossed ABBO During the Opening Process

Proposed new Rule 1017(l)(ix) provides that if, at any point during the opening process the ABBO becomes crossed, the opening process will be terminated and the Exchange will not open the affected series. A new opening process for the affected series will commence at the time the ABBO is uncrossed. The purpose of this provision is to ensure that the PHLX XL system does not route contracts that cannot be executed on the PHLX to away markets that may be disseminating incorrect prices that cross another market, thus protecting investors in general from entering into executions at incorrect prices.

Technical Re-Numbering Amendment

The Exchange proposes to re-number existing rules 1017(l)(iv)—(vii) to reflect the insertion of new proposed Rule 1017(i)(iv). There are no proposed substantive amendments to these existing rules.

Deployment

Although the proposed rule change is effective upon filing, the Exchange anticipates that it will deploy the new PHLX XL functionality described herein on or around September 15, 2010.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] 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 improving prices and market efficiency at the opening of trading.

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 proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. Therefore, the proposal is effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (f)(5) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

[7] The Exchange maintains the OQR table on its Web site. Changes to the OQR table are communicated to members by way of an Options Trader Alert ("OTA") posted on the Web site.

[8] This condition could be due to system issues, order imbalances, and other factors that would cause an away market not to disseminate an opening quote. This section of the proposed rule would also apply to issues that are singly listed on PHLX, in which case there is no other market that could quote in the affected series.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(5).

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.* Please include File Number SR–Phlx–2010–111 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–2010–111. 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 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–2010–111 and should be submitted on or before September 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62760; File No. SR–Phlx–2010–112]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Trade Reporting

August 24, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on August 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 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 the Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to amend Exchange Options Floor Procedure Advice ("OFPA") F–2 Allocation, Time Stamping, Matching and Access to Matched Trades, and Exchange Rule 1051, General Comparison and Clearance Rule, to state that late reports of transactions in complex spread transactions executed in open outcry may be considered "exceptional circumstances" under the rule.

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.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

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 codify certain factors that the Exchange may consider to be "exceptional circumstances" when determining whether an Exchange member has engaged in a pattern or practice of late trade reporting.[5]

Currently, OFPA F–2 and Rule 1051 require a member or member organization initiating an options transaction, whether acting as principal or agent, to report or ensure that the transaction is reported within 90 seconds of the execution to the tape. Each also states that a pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade.

The Exchange proposes to modify OFPA F–2 and Rule 1051 to state that, in determining whether exceptional circumstances exist, the Exchange may consider late reports resulting from open outcry executions in: (i) A hedge order (as defined in Rule 1066(f)); [6] (ii)

[5] The proposal is not intended to limit the Exchange to these factors in determining whether exceptional circumstances exist.

[6] Rule 1066(f) defines a hedge order is any spread type order (including a spread, straddle and combination order) for the same account or tied hedge order as defined below:

(1) Spread Order. A spread order is an order to buy a stated number of option contracts and to sell a stated number of option contracts in a different series of the same option and may be bid for or offered on a total net debit or credit basis.

(A) Inter-Currency Spread Order. In the case of foreign currency options, a spread order may consist of an order to buy a stated number of option contracts in one foreign currency and to sell the same number of option contracts in a different foreign currency option.

(2) Straddle Order. A straddle order is an order to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security (in the case of options on a stock or Exchange-Traded Fund Share)