

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62710; File No. SR-Phlx-2010-109)

August 12, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. to Amend Exchange Rules Related to the Cut-off Time for Contrary Exercise Advice Submissions

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 August 3, 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 is filing with the Commission a proposal to amend Rule 1042 (Exercise of Equity Options Contracts) to extend the cut-off time to submit contrary exercise advices (“Contrary Exercise Advices” or “CEAs”)<sup>3</sup> to the Exchange. The Exchange also proposes to make certain non-substantive changes to reorganize the text of Rule 1042 to more clearly present the existing requirements and to eliminate duplicative language.<sup>4</sup>

---

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

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

<sup>3</sup> Contrary Exercise Advices are also referred to as Expiring Exercise Declarations (“EED”) in the rules of The Options Clearing Corporation.

<sup>4</sup> An Exchange Rule may have an Options Floor Procedure Advice (“OFPA” or “Advice”) that corresponds to the rule. OFPA F-35 (Violations of Exercise and Exercise Advice Rules for Noncash-Settled Equity Option Contracts) is a corresponding Advice to Rule 1042 and is part of the Exchange’s minor rule plan. The Exchange’s minor rule plan consists of Advices with preset fines, pursuant to Rule 19d-1(c) under the Act. 17 CFR 240.19d-1(c). For exercise procedures in respect of index option contracts, see Rule

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the principal office of the Exchange, on the Commission's Web site at <http://www.sec.gov>, 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 this proposal is to make changes to Rule 1042 to extend the cut-off time to submit Contrary Exercise Advices; to extend exercise cut-off deadlines to Quarterly Options Series; and to make certain non-substantive changes to reorganize the text of Rule 1042 to more clearly present the existing requirements and to eliminate duplicative language.<sup>5</sup>

Background

---

1042A (Exercise of Option Contracts) and corresponding OFPA G-1 (Index Options Exercise Advice Forms). The Exchange is not proposing any changes to Rule 1042A or OFPAs F-35 or G-1.

<sup>5</sup> The Exchange proposes to reorganize the current rule text of Rule 1042 so that the requirement that exercise decisions must be made by 5:30 p.m. is specified in paragraph (c), while the requirements pertaining to submitting CEA instructions are contained in new paragraph (d). The language in new paragraph (d) is comprised of language moved from paragraph (b)(ii) and paragraph (c) of the current rule. The Exchange also proposes to eliminate Supplementary Material .04 to Rule 1042 because it is duplicative of the language contained in paragraph (c) of the current rule and paragraph (d) in the proposal.

The Options Clearing Corporation (“OCC”) has an established procedure, under OCC Rule 805, that provides for the automatic exercise of certain options that are in-the-money by a specified amount known as “Exercise-by-Exception” or “Ex-by-Ex.” Under the Ex-by-Ex process, options holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need take no further action. However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under different parameters than that of the Ex-by-Ex procedures must instruct OCC of their “contrary intention.”

In addition to and separately from the OCC requirement, under Exchange Rule 1042 option holders must file a CEA with the Exchange notifying it of the contrary intention. Rule 1042 is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder’s timely decision to exercise or not exercise expiring equity options. Members satisfy this evidentiary requirement by submitting a CEA form to the Exchange, or by electronically submitting the CEA to the Exchange through OCC’s electronic communications system. The submission of the CEA allows the Exchange to satisfy its regulatory obligation to verify that the decision to make a contrary exercise was made timely and in accordance with Rule 1042.

Currently under Rule 1042, option holders have until 5:30 p.m.<sup>6</sup> on the day prior to expiration to make a final decision to exercise or not exercise an expiring option that would otherwise either expire or be automatically exercised. An Exchange member may not accept CEA instructions from its customer or non customer accounts after 5:30 p.m. However, the

---

<sup>6</sup> Referenced times are Eastern Standard Time (EST).

current rule gives Exchange members an additional one hour, up to 6:30 p.m., to submit these CEA instructions to the Exchange where such members use an electronic submission process.<sup>7</sup>

This current process allowing members an additional one hour after the decision making cut off time of 5:30 p.m. to submit a CEA to the various options exchanges was approved by the Commission in 2003 for the existing options exchanges;<sup>8</sup> and for an additional options exchange in 2008.<sup>9</sup> When initially approved in 2003, the Ex-by-Ex thresholds were \$0.75 for customers and \$0.25 for broker-dealer accounts. In 2009, the Ex-by-Ex threshold was \$0.01 for all accounts. This decrease in the Ex-by-Ex threshold, coupled with the dramatic increase in option trading volume from 2003 to 2009, has led to a larger number of CEA instructions and has increased the burden on firms to process and submit instructions timely.

### The Proposals

The Exchange proposes to extend the current 6:30 p.m. deadline in Rule 1042 for submitting CEA instructions to the Exchange by one additional hour, up to 7:30 p.m. The Exchange believes that this proposed rule change is necessary to address concerns expressed by members that, given the decrease in the Ex-by-Ex threshold and the increase in trading, the

---

<sup>7</sup> Rule 1042 indicates that if members do not employ an electronic submission procedure, they are required to submit CEAs for non-customer accounts by the 5:30 p.m. deadline. This deadline for manual submission is required in order to prevent firms from improperly extending the 5:30 p.m. deadline to exercise or not exercise an option. This requirement is based on the difficulty in monitoring a manual procedure that has different times for deciding whether or not to exercise the option and for the submission of the CEA.

<sup>8</sup> See Securities Exchange Act Release Nos. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR-Amex-2001-92); 48505 (September 17, 2003), 68 FR 55680 (September 26, 2003) (SR-ISE-2003-20); 48640 (October 16, 2003), 68 FR 60757 (October 23, 2003) (SR-PCX-2003-47); and 48639 (October 16, 2003), 68 FR 60764 (October 23, 2003) (SR-Phlx-2003-65).

<sup>9</sup> See Securities Exchange Act Release No. 57478 (May 12, 2008), 73 FR 14521 (March 18, 2008)(SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080).

existing deadline for submitting CEAs to the Exchange is problematic for timely back-office processing. The proposed additional one hour will address this concern by further enabling firms to more timely manage, process, and submit the instructions to the Exchange.

The Exchange also proposes to modify the language in paragraph (g) of the current rule (new paragraph (h)), which allows a member up to 2 hours and 30 minutes to submit a CEA to the Exchange in the event of a modified close of trading on the day of expiration, by removing the two hour and thirty minute restriction and allowing a member to submit a CEA to the Exchange in the event of a modified close of trading of up to the proposed 7:30 p.m. deadline. This will make consistent the submission deadline for both regular and modified close expiration days. Moreover, this will provide uniformity with submission deadlines for both regular and modified close expiration days which will remove any possibility for error when determining what the submission deadline is on any modified close expiration day.

It is important to note that this proposed submission deadline does not change the substantive requirement that option holders make a final decision by 5:30 p.m. The Exchange will continue to enforce the 5:30 p.m. decision making requirement, while also allowing additional time to process and submit the CEA instructions. This proposal seeks to increase that additional submission time by one hour, and the Exchange believes that this proposal will be beneficial to the marketplace, particularly as it concerns back-office processing. This proposed additional processing time and Exchange submission deadline will not conflict with OCC submission rules or cause any OCC processing issues. The initiative to address Exchange member concerns is industry-wide, and the Exchange anticipates that other options exchanges will also propose a one hour extension for which they will accept a CEA.<sup>10</sup>

---

<sup>10</sup> The Commission approved a rule change proposal of the International Stock Exchange LLC (“ISE”) related to extension of the cutoff time for CEA submissions. See Securities

The Exchange also proposes to impose the same cutoff deadlines in Rule 1042(c) to QOS as to non-QOS (e.g. equity) options. QOS are listed and traded on the Exchange pursuant to Rule 1012 (Series of Options Open for Trading). The proposed change reflects the applicability of CEA cut-off deadlines to QOS options and conforms Rule 1042 with Rule 1012 and with the CEA rules of other options exchanges.<sup>11</sup>

The Exchange recognizes that the industry-wide scope of the Exchange's rule change proposal and other similar proposals will require coordinated effectiveness of the expansion to 7:30 p.m. If the operative date of this proposed rule change is more than five business days prior to the date of the next expiration Friday, i.e. the third Friday of the month ("Expiration Friday"),<sup>12</sup> the Exchange will implement its proposed rule change so as to be effective for that Expiration Friday. If the operative date of this proposed rule change is five business days or less prior to the date of the next Expiration Friday, the Exchange will implement the rule change so as to be effective for the following Expiration Friday. The Exchange will notify its Participants of the implementation date of the rule change via an Options Regulatory Alert ("ORA") or Options Trader Alert ("OTA").

---

Exchange Act Release No. 61710 (March 15, 2010), 75 FR 13636 (March 22, 2010)(SR-ISE-2010-02)(order approving). The Exchange's rule change proposal is based on SR-ISE-2010-02, and the Exchange believes that other options exchanges will submit similar filings to the Commission.

<sup>11</sup> See, e.g., ISE Rule 1100(c).

<sup>12</sup> For example, Expiration Friday for August 2010 options will be August 20, 2010, and Expiration Friday for September options will be September 17, 2010.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. This proposed rule change will foster coordination with back office personnel engaged in processing information and is consistent with the facilitating of transactions in securities as set forth in Section 6(b)(5), by providing Exchange members an additional hour within which to complete the necessary processing of CEAs and thereby decreasing Exchange members' burden of processing an increasing number of contrary exercise advices and enabling them to more easily manage and process these instructions.

### 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 Regarding 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;

---

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

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 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-2010-109 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.

---

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

<sup>16</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.

All submissions should refer to File Number SR-Phlx-2010-109. 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 10:00 a.m. and 3:00 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 publicly available. All submissions should refer to File Number SR-Phlx-2010-109 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Florence E. Harmon  
Deputy Secretary

---

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