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VIA ELECTRONIC SUBMISSION AND OVERNIGHT DELIVERY

Ms Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549

Re: File No. SR-Phlx-2009-32

Dear Ms. Murphy:

NYSE Euronext appreciates the opportunity to comment on the proposed rule change of the NASDAQ OMX PHLX Inc. ("PHLX") regarding amendments to their electronic trading platform for options, PHLX XL II ("XL II"). As the operator of two options exchanges, NYSE Arca Inc. and NYSE Amex LLC, we generally applaud efforts to provide investors with improved tools to trade options.

NYSE Euronext, however, has significant concerns regarding certain aspects of the PHLX filing, specifically the proposed new Rule 1082(a)(ii)(B)(3), also known as Quote Exhaust. Under the proposed new rule, if trading interest executes against the entire size of the quoted market, PHLX proposes to continue to disseminate the now-exhausted price, but with an associated size of zero contracts. The zero-size quotation will be disseminated for up to one second while their market participants may submit refreshed quotations.

The PHLX Proposal Increases Investor Confusion, Decreases Transparency and Violates SEC Rule 602

NYSE Euronext objects to this proposal because of the disruption it may cause to the National Market System in options. Specifically, PHLX will not be displaying its best priced quotation, a violation of Securities and Exchange Commission Rule 602, Dissemination of Quotations in NMS Securities.[1] Rule 602 requires each national securities exchange to disseminate its best bid, best offer and aggregate quotation size. Rule 602 further provides that for transactions in listed options, where a national securities exchange does not disseminate a quotation size, the quotation price must be firm for at least one contract.[2] The

1 *See* SEC Rule 602; 17 CFR §242.602.

2 *See* SEC Rule 602(c)(1)(ii); 17 CFR §§242.602(c).

PHLX proposal fails on both counts. PHLX proposes to disseminate a fictional or non-existent price which masks the true best available price on its market place. Also, the zero-size proposal falls short of Rule 602's minimum size requirement of one contract. In other words, where PHLX is disseminating a zero-size quotation as their best bid or offer, in reality they have no quote up at all. Far from increasing transparency, this proposal serves to erode investor confidence and adds unnecessary confusion to the marketplace.

Disseminating zero-size quotes in this manner will also raise issues for "smart routers" which are generally programmed to route to the NBBO. Currently, many broker/dealers that are members of multiple options exchanges have developed smart routers to route options orders to markets at the NBBO so as to meet their obligation to obtain the best execution for their customers. Smart routers generally check price first, then, where multiple exchanges are at the NBBO, other factors including size are considered. With PHLX disseminating a price with no associated size, firms that employ smart routers will likely be required to choose from among several undesirable options, including (a) generate zero quantity orders for routing to PHLX until PHLX displays a valid quote to which it will then route an order with size, (b) re-program their systems to ignore such zero-size prices at the NBBO and run the risk of a possible best execution violation, or (c) route to PHLX (akin to a "blind ping") and risk that their order will go unfilled thereby creating another possible best execution violation.[3] In all of these scenarios, order processing latency is increased and customers may be denied an opportunity for execution because routers delayed sending orders to other market centers, which actually had liquidity at their displayed best bid or offer—all because PHLX displayed a fictitious or non-existent market.[4]

Linkage Plan and OPRA Complications

The Plan For The Purpose Of Creating And Operating An Intermarket Option Linkage ("Linkage Plan"), does not provide an exemption to trade through a disseminated price without liability. Linkage Plan participant exchanges may trade at one minimum price variation ("MPV") worse than the National Best Bid/Offer ("NBBO"), provided a Linkage Order has been sent to the exchange at the NBBO. Markets may not avail themselves of this

[3] Initially, not even PHLX member firms may determine the best price at PHLX, as the proprietary data feed will not be available to non-quoting members for up to 90 days, rather than available at the time a security is converted to the new system.

[4] Imposing on broker / dealers or smart routers in this manner also appears to run afoul of Rule 610(a), which prohibits a national securities exchange from imposing unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to its disseminated quotations.

exception to Trade-Through liability,[5] by virtue of the fact that they will be unable to send a linkage order to trade with a quote that has a Firm Customer Quote Size of zero.[6]

Similarly, Market Makers on NYSE Euronext options markets would be burdened by the operational difficulties of posting a quotation that would lock the PHLX zero-sized quote. A Market Maker may post a quote that locks an away market if the Market Maker contemporaneously sends an order to clear the away market. Again, an order would have to be sent to trade against a fictitious (or non-existent) size in order to "clear" the PHLX market. Furthermore, many systems currently deployed by the market making community for purposes of quoting are designed to not display a quote that would lock another market. So, where PHLX is displaying a "zero-size NBBO," Market Makers may choose to not display a quote. This is of great concern and more applicable to the non-proprietary technology based market making firms that may not have the technological abilities to clear/send orders automatically upon locking a market ultimately forcing them to simply wait for the "zero-size" market to move before posting a better bid or offer. This seems to be an unnecessary burden on many market participants simply because PHLX desires to retain price priority despite its exhausted liquidity.[7]

Further, PHLX proposes to disseminate prices with no associated size to the Options Price Reporting Authority ("OPRA") for dissemination to vendors. This is inconsistent with the provisions of the OPRA plan as it will not "reflect the current state of the market."[8]

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5 *See* Linkage Plan Section 2 (29) *"**Trade-Through**"* means a transaction in an options series at a price that is inferior to the *NBBO*, but shall not include a transaction that occurs at a price that is one minimum quoting increment inferior to the *NBBO* provided a *Linkage Order* is contemporaneously sent to each *Participant* disseminating the *NBBO* for the full size of the *Participant's* bid (offer) that represents the *NBBO*.

6 The PHLX proposal is also silent on whether it would honor Principal orders sent through the linkage for 10 contracts, as required by the Linkage Plan. *See* Linkage Plan Section 2 (12) *"**Firm Principal Quote Size**"* means the number of option contracts that a *Participant* guarantees it will execute at its disseminated quotation for incoming *Principal Orders* in an *Eligible Option Class*. This number shall be no fewer than 10, however if the *Participant* is disseminating a quotation size of less than 10 contracts, this number may equal such quotation size.

7 Should the Commission approve the Quote Exhaust proposal, both NYSE Arca and NYSE Amex may seek no-action relief regarding those instances where they ignore the PHLX zero-size quote. NYSE Euronext shall also seek clarity, should this proposal be approved, as to whether a Market Maker may satisfy its quoting obligations by displaying a zero-size quote.

8 *See* Plan For Reporting Of Consolidated Options Last Sale Reports And Quotation Information, Section V(b).

Additionally, this zero-size price, which masks PHLX's true market, will be disseminated as the purported NBBO.

Conclusion

As described above, the PHLX proposal replaces the fundamental marketplace principles of best execution, certainty and transparency in favor of delayed order processing and increased investor confusion. The proposed rule, if approved, will permit PHLX to disseminate a quote that does not accurately reflect the current state of their market while placing unnecessary burdens and disadvantages on other market participants.

We appreciate the Commission's consideration of our comments. If the Commission or its Staff has any questions, please feel free to contact Mr. Edward Boyle, at (312) 442-7662, or Mr. Peter Armstrong, at (415) 393-4232.

Sincerely,

Janet M Kissane

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Senior Vice President – Legal
Corporate Secretary

cc: E. King, Division of Markets and Trading
H. Seidel, Division of Markets and Trading