INTERNATIONAL SECURITIES EXCHANGE.

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September 15, 2010

Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: File No. SR-Phlx-2010-112

Dear Ms. Murphy:

The International Securities Exchange, LLC ("ISE") appreciates the opportunity to comment on the above-referenced rule filing (the "Filing") of NASDAQ OMX PHLX, Inc. ("Phlx").[1] Phlx proposes to permit its members to report all open outcry complex trades late and out of sequence, providing its members with virtually unlimited opportunities to report such trades at prices that trade through both the Phlx's own market and the national best bid and offer ("NBBO"). We believe that the Filing is inconsistent with the requirements of the Exchange Act and we urge the Commission to institute proceedings to disapprove the Filing.

As with all options exchanges, Phlx generally requires its members to report trades within 90 seconds of execution.[2] A pattern or practice of reporting trades late "without exceptional circumstances" subjects a Phlx member to potential disciplinary action for conduct inconsistent with just and equitable principles of trade.[3] Phlx now proposes to specify that "exceptional circumstances" could include the mere fact of consummating an open outcry trade in "hedge orders," "synthetic options," or "any other order consisting of multiple option and/or stock components."

Phlx explains that it "has observed that a disproportionate number of late trade reports are due to transactions in complex spread transactions executed in open outcry." It believes that, due to the multiple legs of the transaction, the execution of the order in open outcry could take more than 90 seconds. Thus, Phlx states that subjecting members to the 90-second reporting requirement "unfairly penalizes" members engaged in legitimate trading activities. We disagree with the underlying assumption that the trades are being reported late because members cannot reasonably report the trades in 90 seconds.

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[1] Release No. 62760 under the Securities Exchange Act of 1934, as amended ("Exchange Act") (August 24, 2010); 75 F.R. 53010 (August 30, 2010).
[2] Phlx Rule 1051, also codified in Phlx Options Floor Procedure Advice F-2.
[3] *Id.*

The prompt and accurate reporting of trades is a cornerstone of the National Market System ("NMS").[4] Such reporting helps ensure that that the investing public has an accurate picture of the sequence of trading in a market. In addition, it provides the only effective way to ensure that exchange members do not trade through better-priced quotations both on their own market and on other markets.[5] As important as accurate trade reporting is to the NMS, the current 90-second time frame is an anachronism dating from the initial implementation of the NMS, when all trading occurred on floors. At that time, trade reporting required human intervention to enter trade details into relatively primitive reporting systems.

Given the technological advances in the 35 years of the NMS, we believe that the Commission and NMS market centers should be working to reduce the reporting time frames, not relaxing current rules to permit the reporting of trades outside this overly-generous time period. Indeed, in the entire history of the NMS we are not aware of any market ever stating that 90 seconds was not sufficient time to report a trade. Complex trades have been a part of the listed options market for as long as there has been such a market, and prior to this Filing no exchange has ever stated that 90 seconds provided insufficient time to report all legs of a trade.

Eliminating enforcement of the 90-second trading reporting requirement for complex trades will render Phlx's trade-through rule meaningless. As is the case on all options exchanges, unless there is an exemption, Phlx members cannot execute any trade outside the then-current NBBO.[6] The only way to determine whether Phlx members are trading within the NBBO is to compare the price of an execution against the NBBO. Yet Phlx now proposes to permit its members to report all multiple-leg open outcry trades with an indicator that the trade report is out of sequence and may not reflect the current market. This would give Phlx members near limitless flexibility to print such trades at prices that did not appear to trade through either its own quotation or the NBBO, regardless of the actual market at the time of execution. Indeed, Phlx members could print a trade at any price that would have been legitimate within the previous two, three, or potentially even five minutes before the trade report.

If approved, the Filing would allow Phlx to mask significant trade-through problems. As we discussed in a letter last December on our Qualified Contingent Cross proposal,[7] for a two-and-a-half month period at the end of 2009, 40 percent of Phlx trades of 5,000 or more contracts traded through the NBBO. In contrast, another floor-based exchange, the Chicago Board Options Exchange, had a trade-through rate of less than eight percent, while the all-electronic ISE had a one percent trade-through rate for orders of this size.

The Exchange Act mandates that the Phlx enforce its members' compliance with the exchange's rules.[8] Rather than enhance its compliance efforts, Phlx proposes

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[4] *See* Sections 601 and 602 of Regulation NMS under the Exchange Act ("Regulation NMS").
[5] *See* Section 611 of Regulation NMS.
[6] Phlx Rule 1084.
[7] Letter dated December 3, 2009 from Michael J. Simon, Secretary, ISE, to Elizabeth Murphy, Secretary, Commission regarding File No. SR-ISE-2009-35.
[8] Exchange Act Section 6(b)(1).

effectively to exempt its members from this rule, allowing members to print complex trades at practically any price they wish, regardless of the prevailing price on the Phlx or the NBBO at the actual time of execution. The Filing provides no indication that Phlx and its members, unlike all the other options exchanges and their members (almost all of whom are common across the other options exchanges), cannot comply with an already overly-generous 90-second reporting requirement. Thus, the Commission should disapprove this proposal and require Phlx to enforce its existing rules.

We appreciate the opportunity to comment on the Filing. If you have any questions on our comments, please do not hesitate to contact us.

Sincerely,

Michael J. Simon
Secretary

cc: Robert Cook, Director, Division of Trading and Markets
James Brigagliano, Deputy Director, Division of Trading and Markets
Heather Seidel, Acting Associate Director, Division of Trading and Markets