SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60951; File No. SR-Phlx-2009-95)

November 6, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Concerning Non Firm Quote Conditions

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 October 29, 2009, 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, 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 to extend, until September 30, 2010, a pilot program under which the Exchange disseminates option quotations with a price of $0.00 or $200,000, and a size of one contract, when the Exchange's disseminated size on one side of the market is exhausted (the "pilot"). The current pilot is scheduled to expire November 30, 2009.

The text of the proposed rule change is available on the Exchange's Website at http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

2 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 extend the pilot through September 30, 2010.

In June, 2009, the Exchange added several significant enhancements to its automated options trading platform (known as PHLX XL II), and adopted rules to reflect those enhancements.[3] As part of the system enhancements, the Exchange proposed to disseminate a quote condition of "non-firm" on a single bid quotation or offer quotation when the size associated with such bid or offer was exhausted on the Exchange and there were no new quotations submitted on the exhausted side of the market in the affected series. The non-exhausted side of the Exchange's disseminated quotation would remain firm up to its disseminated size. Currently, however, while the Options Price Reporting Authority ("OPRA") disseminates option quotations for which both sides of the quotation are marked "non-firm," OPRA currently does not disseminate a "non-firm" condition for one side of a quotation while the other side of the quotation remains firm.

[3] See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

Accordingly, the Exchange proposed, for a pilot period scheduled to expire November 30, 2009, to disseminate quotations in such a circumstance with a (i) a bid price of $0.00, with a size of one contract if the remaining size is a seller, or (ii) an offer price of $200,000, with a size of one contract if the remaining size is a buyer.

The relevant sections of the following rules are effective for a pilot period scheduled to expire November 30, 2009: Proposed Rules 1082(a)(ii)(B)(3)(b); 1082(a)(ii)(B)(3)(g)(iv)(A)(3); 1082(a)(ii)(B)(3)(g)(iv)(A)(4); 1082(a)(ii)(B)(3)(g)(iv)(B)(2); 1082(a)(ii)(B)(3)(g)(iv)(C); 1082(a)(ii)(B)(4)(b); and 1082(a)(ii)(B)(4)(d)(iv)(E). The Exchange proposes to amend these rules to reflect the extension of the pilot through September 30, 2010.

In its proposed rule change adopting the system enhancements and rules, the Exchange represented that it would work with OPRA during the pilot period to explore the development of a "non-firm" condition for one side of a quotation while the other side of the quotation remains firm. The Exchange represents that it has worked with OPRA during the pilot period and currently OPRA does not support the "non-firm" condition for one side of a quotation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] 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,

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[4] 15 U.S.C. 78f(b).

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

in general to protect investors and the public interest, by ensuring the orderly continuity of the pilot.

In the situations described herein where the Exchange disseminates quotations with a price of $0.00 or $200,000 and a size of one contract, the Exchange is relieved of its obligations under the SEC Quote Rule.[6] The fact that there is no quote from any Phlx XL II participant is an unusual market condition which requires the Phlx XL II system to disseminate a market with a price of $0.00 or $200,000 to indicate that there is a non-firm condition on the side of the market that is exhausted. Currently, OPRA disseminates option quotations for which both sides of the quotation are marked “non-firm.” OPRA currently does not disseminate a “non-firm” condition for one side of a quotation while the other side of the quotation remains firm. The current rule and functionality is simply a method for indicating that one side of the Phlx disseminated market is firm while the other side is in a non-firm condition.

This unusual market condition renders the Exchange incapable of collecting, processing, and making available to vendors the requisite data for a particular option series in a manner that accurately reflects the current state of the market on the Exchange. The $0.00 or $200,000 quote with a size of one contract will notify all “specified persons” of the determination that one side of the quotation is in a non-firm condition. Accordingly, in this circumstance, the Exchange is relieved of its obligations under Rules 602(a)(1)[7] and (2)[8] under the Act.[9]

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6 17 CFR 242.602.

7 17 CFR 242.602(a)(1).

8 17 CFR 242.602(a)(2).

9 17 CFR 242.602(a)(3).

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

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; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b-4(f)(6)[11] thereunder.

At any time within 60 days of the filing of the 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.

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10 15 U.S.C. 78s(b)(3)(A).

11 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. Phlx has satisfied this requirement.

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-2009-95 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-2009-95. 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 inspection and copying 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 the 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-2009-95 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.[12]

Florence E. Harmon
Deputy Secretary

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12 17 CFR 200.30-3(a)(12).