

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61438; File No. SR-Phlx-2010-13)

January 28, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Amending Rule 1092, Obvious Errors and Catastrophic Errors

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on January 26, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1092, Obvious Errors and Catastrophic Errors, to adopt the ability to review transactions on the Exchange's own motion.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 amend Rule 1092 pertaining to the nullification and adjustment of options transactions. Specifically, the Exchange proposes to adopt a provision which provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the President of the Exchange or his/her designee who is an officer (collectively "Exchange officer"), may, on his or her own motion or upon request, determine to review any transaction occurring on the Exchange that is believed to be erroneous.³ A transaction reviewed pursuant to this provision may be nullified or adjusted only if it is determined by the Exchange officer that the transaction is an obvious error as provided in Rule 1092. A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction. The Exchange officer may be assisted by an Options Exchange Official in reviewing a transaction.

The Exchange officer shall act pursuant to this paragraph as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the rule provides that the Exchange officer shall act no later than 9:30 a.m. (ET) on the next trading day following the date of the

³ In the event a party to a transaction requests that the Exchange to review a transaction, the Exchange officer nonetheless would need to determine, on his or her own motion, whether to review the transaction.

transaction in question. A party affected by a determination to nullify or adjust a transaction pursuant to this provision may appeal such determination in accordance with Rule 1092; however, a determination by an Exchange officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. The Exchange believes it is appropriate to limit review on appeal to only those situations in which a transaction is actually nullified or adjusted.

This provision is not intended to replace a party's obligation to request a review, within the required time periods under Rule 1092, of any transaction that it believes meets the criteria for an obvious error. And, if a transaction is reviewed and a determination has been rendered pursuant to Rule 1092, no additional relief may be granted under this new provision. Moreover, the Exchange does not anticipate exercising this new authority in every situation in which a party fails to make a timely request for review of this transaction pursuant to Rule 1092. The Exchange believes this provision should help to protect the integrity of its marketplace by vesting an Exchange officer with the authority to review a transaction that may be erroneous, in those situations where a party failed to make a timely request for a review.

The Exchange believes that the provision would also be useful in situations where some parties, but not all, to trades around the same time have requested a review. Under the rule, reviews are currently request-based. Under the proposal, in this situation, the Exchange would be able to invoke this provision to review a series of trades, whether or not all parties requested it.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act⁵ 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. The Exchange notes that the Exchange officer can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the objective criteria for an obvious error under the Exchange rules.

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; or (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest,

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

it has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷

The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may promptly implement the proposed rule change. The Exchange believes that a recent trading situation that resulted in divergent outcomes on some other options markets could have been handled in a more clear and orderly way if the new provision had been in place. The Commission notes that the proposed rule change is substantively identical to a previously approved proposal from CBOE⁸ and thus presents no new regulatory issues. The Commission believes that, under the circumstances, it is appropriate and consistent with the protection of investors and the public interest to waive the 30-day operative delay. Therefore, the Commission hereby designates the proposed rule change operative upon filing.⁹

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.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 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, along with a brief description and text of 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.

⁸ See Exchange Act Release No. 60978 (November 10, 2009), 74 FR 59296 (November 17, 2009) (approving SR-CBOE-2009-68).

⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 No. SR-Phlx-2010-13 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 No. SR-Phlx-2010-13. 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 such filing also will be available for inspection and copying at the principal office of Phlx. 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 No. SR-Phlx-2010-13 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.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).