

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62760; File No. SR-Phlx-2010-112)

August 24, 2010

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX  
PHLX, Inc. Relating to Trade Reporting

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 10, 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, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to amend Exchange Options Floor Procedure Advice (“OFPA”) F-2 Allocation, Time Stamping, Matching and Access to Matched Trades, and Exchange Rule 1051, General Comparison and Clearance Rule, to state that late reports of transactions in complex spread transactions executed in open outcry may be considered “exceptional circumstances” under the rule.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> 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 codify certain factors that the Exchange may consider to be “exceptional circumstances” when determining whether an Exchange member has engaged in a pattern or practice of late trade reporting.<sup>5</sup>

Currently, OFPA F-2 and Rule 1051 require a member or member organization initiating an options transaction, whether acting as principal or agent, to report or ensure that the transaction is reported within 90 seconds of the execution to the tape. Each also states that a pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade.

The Exchange proposes to modify OFPA F-2 and Rule 1051 to state that, in determining whether exceptional circumstances exist, the Exchange may consider late reports resulting from

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<sup>5</sup> The proposal is not intended to limit the Exchange to these factors in determining whether exceptional circumstances exist.

open outcry executions in: (i) a hedge order (as defined in Rule 1066(f));<sup>6</sup> (ii) a synthetic option (as defined in Rule 1066(g));<sup>7</sup> or (ii) any other order consisting of multiple option and/or stock components.

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<sup>6</sup> Rule 1066(f) defines a hedge order is any spread type order (including a spread, straddle and combination order) for the same account or tied hedge order as defined below:

(1) Spread Order. A spread order is an order to buy a stated number of option contracts and to sell a stated number of option contracts in a different series of the same option and may be bid for or offered on a total net debit or credit basis.

(A) Inter-Currency Spread Order. In the case of foreign currency options, a spread order may consist of an order to buy a stated number of option contracts in one foreign currency and to sell the same number of option contracts in a different foreign currency option.

(2) Straddle Order. A straddle order is an order to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security (in the case of options on a stock or Exchange-Traded Fund Share) or the same underlying foreign currency (in the case of options on a foreign currency) and having the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security (in the case of options on a stock or Exchange-Traded Fund Share) or the same underlying foreign currency (in the case of options on a foreign currency) and having the same exercise price and expiration date (e.g., an order to buy two XYZ July 50 calls and to buy two XYZ July 50 puts is a straddle order). In the case of adjusted stock option contracts, a straddle order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares at option.

(3) Combination Order. A combination order is an order involving a number of call option contracts and the same number of put option contracts in the same underlying security and representing the same number of shares at option (if the underlying security is a stock or Exchange-Traded Fund Share) or the same number of foreign currency units (if the underlying security is a foreign currency). A combination order includes a conversion (generally, buying a put, selling a call and buying the underlying stock or Exchange-Traded Fund Share) and a reversal (generally, selling a put, buying a call and selling the underlying stock or Exchange-Traded Fund Share). In the case of adjusted option contracts, a combination order need not consist of the same number of shares at option.

(4) Tied Hedge Order. A tied hedge order is an option order that is tied to a hedge transaction as defined in Commentary .04 to Rule 1064, following the receipt of an option order in a class determined by the Exchange as eligible for “tied hedge” transactions.

Currently, in order to establish whether a member or member organization has engaged in a pattern or practice of violating a specific order handling rule the Exchange may aggregate, or “batch,” individual violations of order handling OFPAs, and consider such “batched” violations as a single occurrence of a violation by a member or member organization over a specific time period.<sup>8</sup> Late trade reporting is currently included in the Exchange’s “batching” program. The

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A tied hedge order involves buying or selling a stock, security futures or futures position following receipt of an option order, including a complex order, but prior to announcing such order to the trading crowd, provided that certain conditions are met. See Rule 1064, Commentary .04.

<sup>7</sup> Rule 1066(g) defines a synthetic option order as an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with either (i) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying stock or convertible security or the number of units of the underlying stock or convertible security necessary to create a delta neutral position, or (ii) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of stock as, and on the opposite side of the market from, the stock or convertible security portion of the order.

<sup>8</sup> Exchange Rule 970.01 states that, for purposes of imposing fines under the Options Floor Procedure Advices (“OFPAs”), when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program the Exchange may aggregate, or “batch,” individual violations of order handling OFPAs, and consider such “batched” violations as a single Occurrence only in accordance with the guidelines set forth in the Exchange's Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In addition, the Exchange may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice F-6). In the alternative, the Exchange may refer the matter to the Business Conduct Committee for possible disciplinary action when (i) the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate.

Exchange has observed that a disproportionate number of late trade reports are due to transactions in complex spread transactions executed in open outcry.<sup>9</sup>

Hedge orders and synthetic options are presented as a single order [sic] in the crowd, often including multiple option and/or stock components, on a net debit or credit basis. It is not unusual for the individual components of such an order to be executed at different times (especially in situations involving the execution of a stock component on an away equity market). Therefore, some components of the order may be executed while other components are pending execution. In many cases execution of the entire hedge or synthetic option order takes longer than 90 seconds to complete, resulting in late reporting for the individual components upon completion of the entire order at the net debit or credit price.

The Exchange believes that the inclusion of late trade reporting violations in the “batch” of violations respecting hedge or synthetic order transactions in open outcry unfairly penalizes a member or member organization engaging in legitimate hedge and synthetic option orders and thus proposes, when determining whether exceptional circumstances exist, to consider late reports of transactions in such orders executed in open outcry to be “exceptional circumstances” under the rule.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> in particular, in that it is

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<sup>9</sup> This proposal applies only to executions in open outcry, and not to complex orders executed and reported automatically by the Exchange’s Complex Order System. See Exchange Rule 1080.08.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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. Specifically, the Exchange believes that the proposal benefits customers by encouraging Exchange Floor Brokers, market makers and specialists to introduce and/or participate in legitimate complex transactions in open outcry without being penalized for late trade reporting in the specific instances described above.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2010-112 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-2010-112. 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 website 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-2010-112 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>12</sup>

Florence E. Harmon  
Deputy Secretary

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