

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63626; File No. SR-Phlx-2010-185)

December 30, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Pilot Program for Cabinet Trading Below \$1.00 Per Contract Until June 1, 2011

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 December 21, 2010, NASDAQ OMX PHLX LLC ("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 to amend [sic]π

Exchange Rule 1059 to allow cabinet trading to take place below \$1 per option contract.

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 allow cabinet trading to take place below \$1 per option contract. Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 1059, Accommodation Transactions, which sets forth specific procedures for engaging in cabinet trades.³

The purpose of this rule change is to temporarily amend the procedures through June 1, 2011 to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option contract. These lower priced transactions would be traded pursuant to the same procedures applicable to \$1 cabinet trades, except that (i) bids and offers for opening transactions would only be permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures would also be made available for trading in options participating in the Penny Pilot Program.

The Exchange believes that allowing a price of at least \$0 but less than \$1 will better accommodate the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of \$100 and the underlying stock might now be trading at \$30. In such

³ Cabinet or accommodation trading of option contracts is intended to accommodate persons wishing to effect closing transactions in those series of options dealt in on the Exchange for which there is no auction market.

an instance, there might not otherwise be a market for that person to close-out its position even at the \$1 cabinet price (e.g., the series might be quoted no bid).

Exchange Rule 1059 currently provides for cabinet transactions to occur via open outcry at a cabinet price of a \$1 per option contract in any options series open for trading in the Exchange. A specialist registered in each class of option contracts supervises the operation of the cabinet for that class. Only closing limit orders at a price of \$1 per option contract for the accounts of customer, firm, specialists and Registered Options Traders (“ROTs”) may be placed in the cabinet.⁴

All orders placed in the cabinet are assigned priority based upon the sequence in which such orders are received by the specialist. All closing bids and offers must be submitted to the specialist in writing, and the specialist shall effect all closing cabinet transactions by matching such orders placed with him. Bids or offers on orders to open for the accounts of customer, firm, specialists and ROTs may be made at \$1 per option contract, but such orders may not be placed in and must yield to all orders in the cabinet. Specialists effect all cabinet transactions by matching closing purchase or sale orders which have been placed in the cabinet or, provided there is no matching closing purchase or sale order in the cabinet, by matching a closing purchase or sale order in the cabinet with an opening purchase or sale order.⁵ All cabinet transactions are reported to the Exchange following the close of each business day.⁶

⁴ Orders must be submitted to the specialist in writing.

⁵ Specialists and ROTs are not subject to the requirements of Rule 1014 in respect of orders placed pursuant to this Rule. Also, the provisions of Rule 1033(b) and (c), Rule 1034 and Rule 1038 do not apply to orders placed in the cabinet. Cabinet transactions are not reported on the ticker.

⁶ See Exchange Rule 1059.

Notwithstanding the provisions of Rule 132, any (i) member, (ii) member organization, or (iii) other person who is a non-member broker or dealer and who directly or indirectly controls, is controlled by, or is under common control with, a member or member organization (any such other person being referred to as an affiliated person) may effect any transaction as principal in the over-the-counter market in any class of option contracts listed on the Exchange for a premium not in excess of \$1.00 per contract.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)⁷ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)⁸ in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than \$1 per option contract will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where cabinet trades are not otherwise permitted.

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.

⁷ See 15 U.S.C. 78f(b).

⁸ See 15 U.S.C. 78f(b)(5a).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder¹⁰ because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.¹¹

The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission hereby grants the request. The Commission notes that the proposal is nearly identical to the rules of another exchange.¹² Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ In addition, Rule 19b-4(f)(6) provides that the Exchange must provide the Commission 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.

¹² See CBOE Rule 6.54, Interpretations and Policies .03.

¹³ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁴

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-2010-185 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-2010-185. 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 website (<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,

¹⁴ 15 U.S.C. 78s(b)(3)(C).

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 available publicly. All submissions should refer to File Number SR-Phlx-2010-185 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30–3(a)(12).