SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66315; File No. SR-Phlx-2012-12)

February 3, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Disseminated Quotations

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 January 25, 2012, 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, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1082, Firm Quotations, by modifying Exchange Rules 1017, Openings in Options, and 1082, Firm Quotations, to describe the manner in which the PHLX XL® automated options trading system[3] will disseminate quotations when (i) there is an "Opening Imbalance" (as described below) in a particular series, and (ii) there is a "Quote Exhaust" quote condition (as described below) present in a particular series.

In addition, the current rules describing the Exchange's disseminated quotations during an Opening Imbalance and a Quote Exhaust condition are subject to a pilot scheduled to expire

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

2 17 CFR 240.19b-4.

3 This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

February 29, 2012. The Exchange proposes to discontinue the pilot and to adopt the proposed new rules on a permanent basis.

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 the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a quote condition in which one side of an option quotation (bid or offer) disseminated by the Exchange will be designated as non-firm during an "Opening Imbalance" or a "Quote Exhaust" while the opposite side of the market from the "non-firm" bid or offer remains firm for the Exchange's disseminated price and size. The proposed rule would not be effective on a pilot basis. The Exchange is proposing that this rule change would be effective on a permanent basis.[4]

Background

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[4] The Exchange has previously indicated its intention to implement the non-firm bid or offer functionality. See, e.g., Securities Exchange Act Release No. 65670 (November 2, 2011), 76 FR 69308 (November 8, 2011) (SR-Phlx-2011-144).

In June, 2009, the Exchange added several significant enhancements to its automated options trading platform (now known as PHLX XL), and adopted rules to reflect those enhancements.[5] As part of the system enhancements, the Exchange proposed to disseminate a "non-firm" quote condition on a bid or offer whose size is exhausted in certain situations. The non-exhausted side of the Exchange's disseminated quotation would remain firm at its disseminated price up to its disseminated size. At the time, however, the Options Price Reporting Authority ("OPRA") only disseminated option quotations for which both sides of the quotation were marked "non-firm." OPRA did not have the ability to disseminate a "non-firm" condition for one side of a quotation while the other side of the quotation remained firm.

Accordingly, the Exchange proposed, on a pilot basis, 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 Exchange subsequently modified the manner in which the PHLX XL system disseminated quotes when one side of the quote was exhausted but the opposite side still had marketable size at the disseminated price, as described in detail below.[6]

On October 7, 2010, the U.S. options exchanges, as participants in the OPRA Plan, voted to make technological changes that would enable OPRA to support a one-sided non-firm quote condition. These technological changes presented the opportunity for OPRA and the participants to design, test, and deploy modifications to their systems, and to disseminate this quote condition to quotation vendors, that will support the one-sided non-firm quote condition.

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

6 See Securities Exchange Act Release No. 63024 (September 30, 2010), 75 FR 61799 (October 6, 2010) (SR-Phlx-2010-134).

On November 9, 2010, OPRA submitted to the Commission, for immediate effectiveness, an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (the "OPRA Plan").[7] The amendment made identical changes to Section 4.04 of OPRA's Data Recipient Interface Specification and Section 4.15 of its Participant Interface Specification (both Specifications are collectively referred to herein as the "OPRA Spec"), which govern the format in which options market information is input to and disseminated from the OPRA Processor, in order to add message type codes specifying that either the bid side or the offer side, but not both sides, of a quotation is not firm.[8] OPRA also made a conforming change to Appendix D of the OPRA Spec describing Best Bid and Offer (BBO) calculations.

Pursuant to the amendment to the OPRA Plan (and the conforming amendments cited above), the Exchange now proposes to adopt, on a permanent basis, rules describing the PHLX XL system's disseminated quotations during an Opening Imbalance and during a Quote Exhaust condition.

Opening Imbalance

An Opening Imbalance occurs when all opening marketable size cannot be completely executed at or within an established Opening Quote Range ("OQR") for the affected series.[9] Currently, Exchange Rule 1017(l)(vi)(C)(7) states that any unexecuted contracts from the opening imbalance not traded or routed are displayed in the Exchange quote at the opening price for a period

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7 See Securities Exchange Act Release No. 63400 (November 30, 2010), 75 FR 76058 (December 7, 2010) (SR-OPRA-2010-04).

8 Specifically, a quote with a notation of "X" would indicate that the disseminated offer is not firm (and the disseminated bid is firm); a quote with a notation of "Y" would indicate that the disseminated bid is not firm (and the disseminated offer is firm).

9 Where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the lowest quote bid and highest quote offer, the PHLX XL system will calculate an OQR for a particular series, outside of which the PHLX XL system will not execute. See Exchange Rule 1017(l)(iii) and (iv).

not to exceed ten seconds. After such period, contracts that remain unexecuted are cancelled back to the entering participant, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. During this display time period, the PHLX XL system disseminates a bid price of $0.00, with a size of one contract [sic] if the imbalance is a sell imbalance, or an offer price of $0.00, with a size of zero contracts if the imbalance is a buy imbalance.

The Exchange proposes to amend Rule 1017(l)(vi)(C)(7) to reflect the new manner in which the Exchange will disseminate quotations during the Opening Imbalance display period. Specifically, during this display time period, the PHLX XL system will disseminate, on the opposite side of the market from remaining unexecuted contracts: (i) a non-firm bid for the price and size of the next available bid(s) on the Exchange if the imbalance is a sell imbalance, or (ii) a non-firm offer for the price and size of the next available offer(s) on the Exchange if the imbalance is a buy imbalance.[10] The purpose of this provision is to indicate that the Exchange has exhausted all marketable interest, at or within the OQR, on one side of the market during the opening process yet has remaining unexecuted contracts on the opposite side of the market that are firm at the disseminated price and size.

Quote Exhaust

Quote Exhaust occurs when the market at a particular price level on the Exchange includes a quote, and such market is exhausted by an inbound contra-side quote or order ("initiating quote or

[10] If there are multiple bids or offers at the Exchange's next available price, the PHLX XL system will disseminate a bid or offer for the aggregate size on the Exchange at such price. See supra note 8.

order"), and following such exhaustion, contracts remain to be executed from the initiating quote or order.[11]

Rather than immediately executing at the next available price, the PHLX XL system employs a timer (a "Quote Exhaust Timer"), not to exceed one second, in order to allow market participants to refresh their quotes. During the Quote Exhaust Timer, PHLX XL currently disseminates the "Reference Price" (the most recent execution price) for the remaining size, provided that such price does not lock an away market, in which case, the Exchange currently disseminates a bid and offer that is one Minimum Price Variation ("MPV") from the away market price. During the Quote Exhaust Timer, the Exchange disseminates, on the opposite side of the market from the remaining contracts: (i) a bid price of $0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of $0.00, with a size of zero contracts if the remaining size is a buyer.

The Exchange proposes to amend 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), and 1082(a)(ii)(B)(3)(g)(iv)(C) to reflect the new manner in which the Exchange will disseminate quotations during a Quote Exhaust condition. Specifically, during Quote Exhaust, the PHLX XL system will disseminate, on the opposite side of the market from remaining unexecuted contracts: (i) a non-firm bid for the price and size of the next available bid(s) on the Exchange if the remaining size is a seller, or (ii) a non-firm offer for the price and size of the next available offer(s) on the Exchange if the remaining size is a buyer.[12] The purpose of this provision is to indicate that the Exchange has exhausted all marketable quotations on one side of the market yet has remaining

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11 See Exchange Rule 1082(a)(ii)(B)(3).

12 Just as with an Opening Imbalance, if there are multiple bids or offers at the Exchange's next available price, the PHLX XL system will disseminate a bid or offer for the aggregate size on the Exchange at such price. See supra note 8.

unexecuted contracts on the opposite side of the market that are firm at the disseminated price and size.

Current Rule 1082(a)(ii)(B)(3)(g)(vi) describes what the PHLX XL system does if, after trading at the PHLX and/or routing, there are unexecuted contracts from the initiating order that are still marketable. In this situation, remaining contracts are posted for a period of time not to exceed 10 seconds and then cancelled after such period of time has elapsed, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. Currently, during the up to 10 second time period, the Exchange disseminates, on the opposite side of the market from remaining unexecuted contracts: (i) a bid price of $0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of $0.00, with a size of zero contracts if the remaining size is a buyer.

The Exchange proposes to amend Rule 1082(a)(ii)(B)(3)(g)(vi) to reflect the new manner in which the Exchange will disseminate quotations during the up to 10 second time period. Specifically, during the up to 10 second time period, the PHLX XL system will disseminate, on the opposite side of the market from remaining unexecuted contracts: (i) a non-firm bid for the price and size of the next available bid(s) on the Exchange if the remaining size is a seller, or (ii) a non-firm offer for the price and size of the next available offer(s) on the Exchange if the remaining size is a buyer. The purpose of this provision is to indicate that the Exchange has exhausted all marketable quotations on one side of the market, yet has remaining unexecuted contracts on the opposite side of the market that are firm at the disseminated price and size.

Discontinuation of Current Pilot

The current rules describing the Exchange's disseminated quotations during an Opening Imbalance and a Quote Exhaust condition are subject to a pilot scheduled to expire February 29, 2012. The Exchange proposes to discontinue the pilot and to adopt the proposed new rules on a permanent basis.

Implementation

The Exchange intends to implement the proposed changes to Rules 1017 and 1082 on March 1, 2012.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(5) of the Act[14] 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 further believes that the proposal is consistent with the SEC Quote Rule's provisions regarding non-firm quotations.[15] Specifically, Rule 602(a)(3)(i) provides that if, at any time a national securities exchange is open for trading, the exchange determines, pursuant to rules approved by the Commission, that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing, and making available to vendors the data for a subject security required to be made available in a manner that accurately reflects the current state of the market on such exchange, such exchange shall immediately notify all specified persons of that determination and, upon such notification, the

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13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(5).

15 See 17 CFR 242.602(a)(3)(i) and (ii).

exchange is relieved of its obligations under paragraphs (a)(1) and (2) of Rule 602 relating to collecting and disseminating quotations, subject to certain other provisions of Rule 602(a)(3).

By disseminating a non-firm bid (offer), together with a firm offer (bid) in certain situations delineated above, the Exchange believes that it is adequately communicating that it is non-firm on the affected side of the market in compliance with the Quote Rule.

The proposed rule change promotes just and equitable principles of trade by informing investors that one side of the Exchange's disseminated quotation is exhausted and therefore non-firm, thus providing transparency to investors. This also removes impediments to and perfects the mechanism of a free and open market and a national market system by providing information to market participants who may be in the process of determining where to send their orders for execution. The proposed rule change protects investors and the public interest because it provides accurate information to the investing public concerning the Exchange's disseminated market.

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 19(b)(3)(A) of the Act[16] and Rule 19b-4(f)(6)[17] thereunder.

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 action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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. Please include File Number SR-Phlx-2012-12 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.

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16 15 U.S.C. 78s(b)(3)(A).

17 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. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR-Phlx-2012-12. 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 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 offices 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-2012-12, 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.[18]

Kevin M. O'Neill
Deputy Secretary

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[18] 17 CFR 200.30-3(a)(12).