

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61492; File No. SR-Phlx-2010-10)

February 4, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to the Exchange's Quote Lock Counting Period

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 29, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Phlx has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. 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 Commentaries .02 and .03 to Exchange Rule 1082, Firm Quotations, to modify the duration of the "counting period" that is initiated when electronically submitted quotations of specialists, Streaming Quote Traders ("SQTs"),⁴ and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

Remote Streaming Quote Traders (“RSQTs”)⁵ interact with one another and result in a locked market (e.g., \$1.00 bid - 1.00 offer) or crossed market (e.g., \$1.10 bid – 1.00 offer). The Exchange also proposes technical amendments as described below.

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 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 give the Exchange the ability to improve the speed with which the Exchange’s systems can automatically execute locked or crossed quotations against one another.

⁵ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

When the Exchange deployed its initial electronic options trading platform, Phlx XL,⁶ the Commission approved an Exchange proposal to establish a one-second “counting period,” to begin when electronic quotations submitted by specialists and/or SQTs became locked, during which the SQT(s) and/or specialist whose quotations are locked could eliminate the locked market. If their markets became crossed, the Exchange would disseminate a locked market at the price of the quotation that was crossed and would initiate the one-second counting period. Subsequently, the Exchange reduced the one-second counting period to 1/4 of one second.⁷ Any unresolved locked or crossed markets remaining after the counting period are automatically executed.

The Exchange proposes to modify the duration of the counting period in order to provide more flexibility in increasing the speed with which locked and crossed markets may be resolved on the Exchange. Specifically, proposed Commentary .02 to Rule 1082 would state that the duration of the counting period will be established by the Exchange, will be the same for all options traded on the Exchange, and will not exceed .25 of one second. The duration of the counting period and any changes thereto will be published in an Options Trader Alert, which will be available on the Exchange’s web site.

The effect of the proposed rule change would be to give the Exchange the ability to reduce the counting period from the current 1/4 of one second⁸ to a lesser time period, during which market participants may resolve locked and crossed markets, and after which, if the locked/crossed condition is not resolved, the Exchange’s system will eliminate the condition by

⁶ See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

⁷ See Securities Exchange Act Release No. 55375 (February 28, 2007), 72 FR 10288 (March 7, 2007) (SR-Phlx-2006-31).

⁸ The counting period would not exceed the current ¼ of one second.

executing the transaction. The Exchange believes that any reduced counting period should improve market efficiency by eliminating locked and crossed markets in a more timely fashion, and should, in turn, facilitate compliance with firm quote obligations.

Technical Amendments

At the time the rule was originally adopted, the Exchange distinguished between “Streaming Quote Options” which are traded on the Exchange’s automated options trading platform, Phlx XL (since modified and re-named Phlx XL II⁹), and “Non-Streaming Quote Options.” All options traded on the Exchange are currently traded on Phlx XL II. Thus, the distinction is no longer necessary, and accordingly the Exchange proposes to delete references to “Streaming Quote Options” from the rule.

The Exchange proposes to modernize the rule by eliminating anachronistic references to the “¼ of one second” counting period, and instead acknowledge the world of decimalization by referring to a counting period “not to exceed .25 of one second.”

The Exchange further proposes to delete quotations surrounding the term “counting period” in all references thereto following its initial definition in the rule. The rule will simply refer to the counting period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act¹¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect

⁹ See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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 improving market efficiency by enabling the Exchange's system to eliminate locked and crossed markets in a more timely fashion.

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

The proposed rule change is designated by the Exchange as a "non-controversial" rule pursuant to Section 19(b)(3)(A)¹² of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder,¹³ because the proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not 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, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

days prior to the filing of the proposed rule change.¹⁴ Specifically, the Exchange notes that a similar counting period has been established under the rules of another exchange.¹⁵

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.

Consequently, the rule is being filed for immediate effectiveness.

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-2010-10 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-2010-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁴ As required under Rule 19b-4(f)(6)(iii), the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date of this proposal.

¹⁵ See Chicago Board Options Exchange Inc. ("CBOE") Rule 6.45A(d)(i)(B).

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 Web site 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 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-2010-10 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.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).