

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63050; File No. SR-Phlx-2010-137)

October 6, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Anti-Internalization Functionality for NASDAQ OMX PSX

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 September 30, 2010, NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“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 Phlx Rule 3307 to provide an optional anti-internalization functionality on NASDAQ OMX PSX (“PSX”). The text of the proposed rule change is available from the Exchange’s website at <http://nasdaqomxphlx.cchwallstreet.com>, at the Exchange’s principal office, 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. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

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

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

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to provide a voluntary anti-internalization function for the PSX System. Under the proposal, market participants entering orders under a specific market participant identifier (“MPID”) may voluntarily direct that they not execute against other orders entered into the System under the same MPID.

Under the proposal, the System, if requested, will not execute orders entered under the same MPID against each other. Instead, the System will execute against all eligible trading interest of other market participants, in accordance with PSX’s price-size execution priority, up to the point where an incoming order would interact with a resting order having the same MPID. In such a case, share amounts equal to the size of the portion of an incoming order that is designated by the order execution algorithm to interact with an order already in the System with the same MPID will be decremented from each order.

For example, if market participant ABCD had an order to sell 1000 shares at \$10 on the book, entered an order to buy 1000 shares at \$10, and the System allocated 100 shares of the incoming order to the resting ABCD order and 900 shares to other market participants’ orders, the System would execute the 900 shares allocated to other market participants and would decrement, without execution, the remaining 100 shares of the incoming order as well as 100 shares from ABCD’s resting order. Similarly, if ABCD had a resting order to sell 2000 shares at \$10, entered an order to buy 500 shares at \$10, and the System allocated all 500 shares to the resting ABCD order, the System would cancel the incoming order and decrement the resting order by 500 shares.

Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (“ERISA”) that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. It can also assist market participants in reducing execution fees potentially resulting from the interaction of executable buy and sell trading interest from the same firm. The Exchange notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) that they would have originally obtained if execution of the order was not inhibited by the functionality.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and with Sections 6(b)(5) of the Act,<sup>4</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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

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<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> 15 U.S.C. 78f(b)(5).

Exchange notes that similar functionality has previously been approved for The NASDAQ Stock Market LLC (the “NASDAQ Exchange”).<sup>5</sup>

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 that is 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>8</sup> However, Rule 19b-4(f)(6)<sup>9</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public

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<sup>5</sup> NASDAQ Exchange Rule 4757(a)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Phlx has given 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 on which the Exchange filed the proposed rule change.

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> Id.

interest. The Exchange requests that the Commission waive the 30-day operative delay so that the benefits of this functionality to PSX market participants expected from the rule change can be implemented on or about October 8, 2010, when the Exchange expects to launch trading on PSX and have the technological changes in place to support the proposed rule change. The Commission notes that the proposal is similar to rules adopted by other exchanges.<sup>10</sup> For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.<sup>11</sup>

At any time within 60 days of the filing of such 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.

#### 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-2010-137 on the subject line.

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<sup>10</sup> NASDAQ Exchange Rule 4757(a)(4), BATS Exchange Rule 11.9(f) and NYSE ArcaEquities Rule 7.31(qq).

<sup>11</sup> For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2010-137. 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,<sup>12</sup> 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 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

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<sup>12</sup> The text of the proposed rule change is available on Exchange's website at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, on the Commission's website at <http://www.sec.gov>, at Phlx, and at the Commission's Public Reference Room.

to File Number SR-Phlx-2010-137 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).