

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63978; File No. SR-Phlx-2011-25)

February 25, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt New Rule 3303 to Implement the Amendments to Regulation SHO.

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 February 18, 2011, The NASDAQ OMX PHLX LLC ("PSX" 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 substantially 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, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4<sup>4</sup> thereunder, proposes to adopt new Rule 3303 as a written policy or procedure to implement the amendments to Rules 200(g) and 201 of Regulation SHO.<sup>5</sup>

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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.

<sup>5</sup> 17 CFR 242.200(g); 17 CFR 242.201. *See* Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) (amending Rules 201 and 200 of Regulation SHO to adopt a short sale price test restriction and "short exempt" marking requirement). *See also* Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010) (extending the compliance date of the amendments to Rules 201 and 200 of Regulation SHO until February 28, 2011).

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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 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

On February 26, 2010, the Commission adopted amendments to Rules 200(g) and 201 of Regulation SHO.<sup>6</sup> The amendments became effective on May 10, 2010, and compliance is required by February 28, 2011.<sup>7</sup> The amendments to Rule 201 of Regulation SHO require trading centers<sup>8</sup> such as PSX to establish, maintain, and enforce certain written policies and procedures reasonably designed to comply with the rule.<sup>9</sup>

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<sup>6</sup> See *supra* note 5.

<sup>7</sup> *Id.*

<sup>8</sup> Rule 201(a)(9) states the term "trading center" will have the same meaning as in Rule 600(b)(78). 17 CFR 242.201(a)(9). Rule 600(b)(78) of Regulation NMS defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

<sup>9</sup> See 17 CFR 242.201(b). The amendments to Rule 200(g) of Regulation SHO provide a "short exempt" marking requirement. See 17 CFR 242.200(g).

PSX is proposing to adopt new Rule 3303 as a written policy and procedure to implement the amendments to Rules 200(g) and 201 of Regulation SHO.

Proposed Rule 3303(a) defines the terms “covered security,” “listing market,” and “national best bid” as having the same meaning as such terms have in Rule 201 of Regulation SHO.<sup>10</sup>

Under Proposed Rule 3303(b), entitled “Short Sale Price Test,” the System<sup>11</sup> will not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more from the security’s closing price on the listing market as of the end of regular trading hours on the prior day (“Trigger Price”).<sup>12</sup>

Under Proposed Rule 3303(c), Duration of Short Sale Price Test, once triggered by the listing market, the short sale price test restriction shall remain in effect until the next trading day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an

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<sup>10</sup> See Rule 201(a) of Regulation SHO. The System will utilize the national best bid from the systems information processor. Rule 201(a)(1) defines “covered security” to mean any “NMS stock” as defined under Rule 600(b)(47) of Regulation NMS. 17 CFR 242.201(a)(1). Rule 600(b)(47) of Regulation NMS defines an “NMS stock” as “any NMS security other than an option.” 17 CFR 242.600(b)(47). Rule 600(b)(46) of Regulation NMS defines an “NMS security” as “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.” 17 CFR 242.600(b)(46).

<sup>11</sup> See Rule 3301(a). The term “System” shall mean the automated system for order execution and trade reporting owned and operated by PSX.

<sup>12</sup> See Rule 201(b)(1)(i) of Regulation SHO. Such execution or display needs to be in compliance with applicable rules concerning minimum pricing increments. See 17 CFR 242.612.

effective national market system,<sup>13</sup> as provided for in Regulation SHO Rule 201(b)(1)(ii) (the “Short Sale Period”).

Under Proposed Rule 3303(d), Re-pricing of Orders During Short Sale Period, during the Short Sale Period, short sale orders that are limited to the current national best bid or lower and short sale market orders will be re-priced by the System one minimum allowable price increment above the current national best bid (“Permitted Price”). To reflect declines in the national best bid, the Exchange will continue to re-price a short sale order at the lowest Permitted Price down to the order’s original limit price, or if a market order, until the order is filled. Non-displayed orders between the PSX bid and offer at the time of receipt will also be re-priced upward to a Permitted Price to correspond with a rise in the national best bid. During the Short Sale Period, immediate or cancel (“IOC”) orders requiring that all or part of the order be executed immediately will be executed to the extent possible at a Permitted Price and higher and then cancelled, and will not be re-priced. Inter-market sweep orders not marked “short exempt” will be handled in the same manner as IOC orders.

Pursuant to Proposed Rule 3303(e), Execution of Permissible Orders during the Short Sale Period, during the Short Sale Period, the System will execute and display a short sale order without regard to whether the order is at a Permitted Price or higher if, at the time of initial display of the short sale order, the order was at a price above the then current national best bid. This determination is consistent with Rule 201(b)(1)(iii)(A) of

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<sup>13</sup> See 17 CFR 242.201(b)(1)(ii). See also Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 2.1.

Regulation SHO.<sup>14</sup> Short sale orders that are entered into the System prior to the Short Sale Period but that are not displayed will be re-priced as described in Proposed Rule 3303(d) as set forth above.

Finally, under Proposed Rule 3303(f), Short Exempt Orders, during the Short Sale Period, the System will execute and display orders marked “short exempt” without regard to whether the order is at a Permitted Price or higher.<sup>15</sup> The System will accept orders marked “short exempt” at any time when the System is open for order entry regardless of whether the short sale price test has been triggered in the covered security. PSX member firms marking orders “short exempt” in reliance on Rule 201(c) or 201(d) are responsible for ensuring that any such orders meet the criteria of these provisions and are accurately marked as “short exempt.”<sup>16</sup>

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,<sup>17</sup> which requires, among other things, the rules of an exchange to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act<sup>18</sup> in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these

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<sup>14</sup> See 17 CFR 242.201(b)(1)(iii)(A).

<sup>15</sup> See 17 CFR 242.201(b)(1)(iii)(B).

<sup>16</sup> See Rules 200(g)(2), 201(c) and 201(d) of Regulation SHO. See also Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 5.4 and 5.5.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78k-1(a)(1).

requirements in that it implements rules adopted by the Commission in Regulation SHO under the Act.

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 Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6)<sup>20</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>21</sup> normally may not become operative prior to 30 days after the date of filing.<sup>22</sup> However, Rule 19b-4(f)(6)(iii)<sup>23</sup>

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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 of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>23</sup> *Id.*

permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. PSX has requested that the Commission waive the 30-day operative delay so that it may implement the change no later than February 28, 2011 to coincide with the compliance date for the amendments to Rules 200(g) and 201 of Regulation SHO. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change, among other things, implements the amendments to Rules 200(g) and 201 of Regulation SHO which have a February 28, 2011 compliance date.<sup>24</sup> For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>25</sup>

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:

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<sup>24</sup> See *supra* note 5.

<sup>25</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2011-25 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-2011-25. 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, 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 to File Number SR-Phlx-2011-25 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>26</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12).