A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [8] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq requests that the Commission waive the 30-day operative delay. Nasdaq requests this waiver because it currently has the technological changes ready to support the proposed rule change, and believes that the benefits of greater flexibility that are expected from the rule change should not be delayed.

The Exchange believes that the rule change is designed to provide market participants with an additional choice when availing themselves of NOM's order routing and execution services. By offering an additional routing option, Nasdaq hopes to benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders and minimize trading costs. Nasdaq provides these services in a highly competitive market in which participants may avail themselves of a wide variety of routing options. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to NOM only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace.

The Exchange also believes that immediate effectiveness of this proposed rule change is especially appropriate given that routing through NOM is purely optional. Market participants have the flexibility to mark their orders as not available for routing. If there is no benefit to the new routing strategy, market participants will simply not use it. The Exchange will not apply the new order routing strategy to market participants' orders without their positive consent. In fact, market participants would have to make programming changes to adopt the new routing strategy and would need to do nothing if they chose not to adopt it.

The Commission believes that waiving the 30-day operative delay [9] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

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.

[8] 17 CFR 240.19b–4(f)(6).

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NASDAQ–2010–116 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–NASDAQ–2010–116. 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 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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 No. SR–NASDAQ–2010–116 and should be submitted on or before October 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25107 Filed 10–5–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63024; File No. SR–Phlx–2010–134]

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

September 30, 2010.

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 September 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. 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 Exchange Rules 1017, Openings in Options, and 1082, Firm Quotations, to reflect a system change to modify the manner in which the PHLX XL® automated options trading system [3] disseminates quotations when (i) there is an opening imbalance in a particular series, and (ii) there is a Quote Exhaust (as described below) or a Market

[10] 17 CFR 200.30–3(a)(12).

[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.

Exhaust (as described below) quote condition present in a particular series.[4]

The text of the proposed rule change is available on the Exchange's Web site 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 change the manner in which the PHLX XL® automated options trading system disseminates quotations involving opening imbalances and during times when there are exhausted quotes or no quotes on the Exchange in a particular series.

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 up to its disseminated size. Currently, however, the Options Price Reporting Authority ("OPRA") only disseminates option quotations for which both sides of the quotation are marked "non-firm." OPRA currently does not disseminate a "non-firm" condition for one side of a quotation while the other side of the quotation remains firm.[6]

Accordingly, the Exchange proposed, for a pilot period scheduled to expire November 30, 2009, and later extended through September 30, 2010,[7] 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.

This proposal is intended to modify the manner in which the Exchange's PHLX XL system disseminates quotes when one side of the quote is exhausted but the opposite side still has marketable size at the disseminated price.

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.[8] Currently, pursuant to Exchange Rule 1017(l)(v)(C)(7), any unexecuted contracts from the opening imbalance not traded or routed are displayed in the Exchange quote at the opening price for a period not to exceed ten seconds, and subsequently, cancelled back to the entering participant if they remain unexecuted and priced through the opening price, 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, if the imbalance is a buy imbalance, an offer that is $200,000, with a size of one contract or, if the imbalance is a sell imbalance, a bid that is $0.00, with a size of one contract, on the opposite side of the market from remaining unexecuted contracts.

The proposed rule change would modify Rule 1017(l)(v)(C)(7) to reflect that, in this situation, the PHLX XL system will disseminate, if the imbalance is a buy imbalance, an offer of $0.00, with a size of zero contracts or, if the imbalance is a sell imbalance, a bid of $0.00, with a size of zero contracts, on the opposite side of the market from remaining unexecuted contracts.

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 order"), and following such exhaustion, contracts remain to be executed from the initiating quote or order.[9]

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. If the remaining size is a buyer, the Exchange disseminates an offer of $200,000, with a size of one contract or, if the remaining size is a seller, a bid of $0.00, with a size of one contract.

The proposed rule change would modify the manner in which the system generates a quote during the Quote Exhaust Timer. Specifically, during the Quote Exhaust Timer, the Exchange will disseminate: (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.

Currently, Exchange Rules 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

[4] The current rules relevant to this proposal are subject to a pilot that was originally scheduled to expire November 30, 2009. In November 2009, the Exchange extended the pilot period through September 30, 2010. *See* Securities Exchange Act Release No. 60951 (November 6, 2009), 74 FR 59275 (November 17, 2009) (SR–Phlx-2009–95). Due to an inadvertent omission, Rules 1017(l)(iv)(C)(7) and 1082(a)(ii)(B)(3)(g)(vi) were not included in the proposed rule change relating to the pilot extension, and both rules currently reflect an incorrect pilot expiration date of November 30, 2009. The Exchange is proposing an alternative to the current pilot (the "new pilot"). The new pilot is scheduled to expire November 30, 2010.

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

[6] Currently, there is no mechanism for the Options Price Reporting Authority ("OPRA") to identify only one side of a quote as non-firm. The Exchange has approached OPRA to attempt to develop the capability to identify and implement such functionality.

[7] *See supra* n.4.

[8] 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).

[9] *See* Exchange Rule 1082(a)(ii)(B)(3).

1082(a)(ii)(B)(3)(g)(iv)(C) describe various scenarios under which the PHLX XL system trades, routes, or posts unexecuted contracts after determining the "Best Price" following a Quote Exhaust. These rules permit an up to 10 second time period during which participants may revise their quotes prior to the PHLX XL system taking action. In all of these scenarios, during the up to 10 second time period, the PHLX XL system currently disseminates an offer of $200,000, with a size of one contract if the remaining size is a buyer or, if the remaining size is a seller, a bid of $0.00, with a size of one contract, on the opposite side of the market from remaining unexecuted contracts.

The Exchange proposes to modify Rules 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 that, during the up to 10 second time period, the Exchange will disseminate: (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 purpose of this provision is to indicate that a quote size at a price level in a particular series on the Exchange is exhausted, and there are unexecuted contra-side contracts remaining at the exhausted price level. Furthermore, this provision will enable the Exchange to indicate that it is in the process of allowing participants to refresh quotations on the exhausted side of the market, while the Exchange's quote is firm at the disseminated price and size for the remaining unexecuted contra-side contracts.

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. During this up to 10 second period, the PHLX XL system currently disseminates, on the opposite side of the market from the unexecuted contracts: (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 proposes to modify Rule 1082(a)(ii)(B)(3)(g)(vi) to reflect that, in this situation, during the up to 10 second time period, the Exchange will disseminate, 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 purpose of this provision is to indicate that the exchange is in the process of allowing participants to submit quotations on the exhausted side of the market while the Exchange's quote is firm at the disseminated price and size for the remaining unexecuted contra-side contracts.

Market Exhaust

Market Exhaust occurs when there are no PHLX XL participant quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received. In such a circumstance, the PHLX XL system initiates a "Market Exhaust Auction" for the initiating order.[10]

In this situation, the PHLX XL system will first determine if the initiating order, or a portion thereof, can be executed on the PHLX. Thereafter, if there are unexecuted contracts remaining in the initiating order the PHLX XL system will initiate a Market Exhaust Timer.[11] During the Market Exhaust Timer, the Exchange disseminates any unexecuted size of the initiating order at the "Reference Price," which is the execution price of a portion of the initiating order, or one MPV from a better-priced away market price if the Reference Price would lock the away market. The PHLX XL system currently disseminates, on the opposite side of the market from the remaining unexecuted contracts: (i) A bid price of $0.00, with a size of one 0 contracts 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 proposes to modify Rules 1082(a)(ii)(B)(4)(a)and (b) to reflect that, during the Market Exhaust Timer, the PHLX XL system will disseminate, 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 purpose of this provision is to indicate that the Exchange is in the process of allowing participants to submit quotations on the exhausted side of the market while the Exchange's quote is firm at the disseminated price and size for the remaining unexecuted contra-side contracts.

Provisional Auction

Exchange Rule 1082(a)(ii)(B)(4)(d)(iv)(E) describes what PHLX XL does after it has explored all alternatives and there still remain unexecuted contracts. During the "Provisional Auction," any unexecuted contracts from the initiating order are displayed in the Exchange quote for the remaining size for a brief period not to exceed ten seconds and subsequently cancelled back to the entering participant if they remain unexecuted, 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 the brief period, the Phlx XL system currently disseminates an offer of $200,000 with a size of one contract if the remaining size is a buyer, or a bid of $0.00, with a size of one contract, if the remaining size is a seller, on the opposite side of the market from remaining unexecuted contracts.

The Exchange proposes to modify Rule 1082(a)(ii)(B)(4)(d)(iv)(E) to reflect that, in this situation, during the brief period, the PHLX XL system will disseminate, 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 purpose of this provision is to indicate that the Exchange is in the process of allowing participants to submit quotations on the exhausted side of the market while the Exchange's quote is firm at the disseminated price and size for the remaining unexecuted contra-side contracts.

The Exchange believes that this proposed rule change benefits customers and the marketplace as a whole by enabling PHLX to effectively reflect the market interest the Exchange has that is firm and executable, while at the same time indicating the other side of the Exchange market is not firm and therefore not executable. This allows the Exchange to protect orders on its book and attempt to attract interest to execute against such order.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

[10] *See* Exchange Rule 1082(a)(ii)(B)(4)(b).

[11] The Exchange proposes a technical amendment to Rule 1082(a)(ii)(B)(4)(b) to remove an incorrect reference to a "Quote Exhaust Timer" and refer instead to a "Market Exhaust Timer."

of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] 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.[14] 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 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 proposing to disseminate a bid of $0.00 for a size of zero contracts, or an offer of $0.00 for a size of zero contracts in certain situations delineated above in the Exchange's rules, the Exchange believes that it is adequately communicating that it is non-firm on that side of the market in compliance with the Quote Rule.

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[15] and Rule 19b–4(f)(6)[16] 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–2010–134 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–2010–134. 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 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 a.m. and 3 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–2010–134 and should be submitted on or before October 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25138 Filed 10–5–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63023; File No. SR–Phlx–2010–125]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Clearly Erroneous Transactions

September 30, 2010.

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 September 22, 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.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* 17 CFR 242.602(a)(3)(i) and (ii).

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

[16] 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.

[17] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.