

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62522; File No. SR-CBOE-2010-067]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Two Pilot Programs Related to the Exchange's Automated Improvement Mechanism Until July 18, 2011

July 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 15, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 extend two pilot programs related to the Exchange's Automated Improvement Mechanism. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Exchange's Office of the Secretary and at the Commission.

#### 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 self-regulatory organization 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 those 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 parts of such statements.

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

##### 1. Purpose

In February, 2006, CBOE obtained approval of a filing adopting the AIM auction process.<sup>5</sup> AIM exposes certain orders electronically to an auction process to provide such orders with the opportunity to receive an execution at an improved price. The AIM auction is available only for orders that an Exchange member represents as agent and for which a second order of the same size as the "Agency Order" (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).

Two components of AIM were approved on a pilot basis: (1) That there is no minimum size requirement for orders to be eligible for the auction, and (2) that the auction will conclude prematurely anytime there is a quote lock on the Exchange pursuant to Rule 6.45A(d).<sup>6</sup> In connection with the pilot programs, the Exchange has submitted to the Commission reports providing detailed AIM auction and order execution data. In July 2006, the Exchange extended the pilot program until July 18, 2007.<sup>7</sup> In July 2007, the Exchange extended the pilot program until July 18, 2008.<sup>8</sup> In July 2008, the Exchange extended the pilot program until July 18, 2009.<sup>9</sup> In July 2009, the Exchange extended the pilot program until July 17, 2010.<sup>10</sup> The proposed rule change merely extends the duration of the pilot programs until July 18, 2011. Extending the pilots for an additional year will allow the Commission more time to consider the impact of the pilot programs on AIM order executions.

<sup>5</sup> See Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) approving SR-CBOE-2005-60.

<sup>6</sup> That rule relates to situations where a Market-Maker's quote interacts with the quote of another CBOE Market-Maker (*i.e.* when internal quotes lock).

<sup>7</sup> See Securities Exchange Act Release No. 54147 (July 14, 2006), 71 FR 41487 (July 21, 2006) approving SR-CBOE-2006-64.

<sup>8</sup> See Securities Exchange Act Release No. 56094 (July 18, 2007), 72 FR 40910 (July 25, 2007) approving SR-CBOE-2007-80.

<sup>9</sup> See Securities Exchange Act Release No. 58196 (July 18, 2008), 73 FR 43803 (July 28, 2008) approving SR-CBOE-2008-76. In this filing, the Exchange agreed to provide additional information relating to the AIM auctions each month in order to aid the Commission in its evaluation of the pilot program. The Exchange will continue to provide this information.

<sup>10</sup> See Securities Exchange Act Release No. 60338 (July 24, 2009), 74 FR 36803 (July 24, 2009) approving SR-CBOE-2009-051.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Exchange Act in general<sup>11</sup> and furthers the objectives of Section 6(b)(5)<sup>12</sup> in particular in that by allowing the Commission additional time to evaluate the AIM pilot programs, it should serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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

The Exchange neither solicited nor received comments on the proposal.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> Because the 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) by its terms, become operative prior to 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, the proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>16</sup>

The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 met this requirement.

<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)(3)(A)(iii).

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

protection of investors and the public interest because such waiver will allow the AIM pilot programs to continue without interruption. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.<sup>17</sup>

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.

#### 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-CBOE-2010-067 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 200 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2010-067. 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 Number SR-CBOE-2010-067 and should be submitted on or before August 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62519; File No. SR-Phlx-2010-79]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change Relating to the Establishment of NASDAQ OMX PSX as a Platform for Trading NMS Stocks

July 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 8, 2010, NASDAQ OMX PHLX, Inc. (the "Exchange" or "PHLX") 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 the Substance of the Proposed Rule Change

PHLX is filing a proposed rule change to establish NASDAQ OMX PSX, a new electronic platform for trading NMS stocks. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com>, on the Commission's Web site at <http://www.sec.gov>, at the Exchange's principal office, and at the

Commission's Public Reference Room. PHLX will implement the proposed rule change as soon as practicable following approval by the Commission.

#### 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

###### a. Introduction and Background

PHLX proposes to introduce NASDAQ OMX PSX ("PSX" or the "System"), a new fully integrated order display and execution system for all NMS stocks (as defined in SEC Rule 600(b)(47) under Regulation NMS).<sup>3</sup> Like the NASDAQ Market Center and the NASDAQ OMX BX Equities System, PSX will be an open-access, fully electronic system that accommodates diverse business models and trading preferences, using technology to aggregate and display liquidity and make it available for execution. PSX will not list stocks, but rather will trade only stocks listed on other exchanges.

PSX will allow PSX Participants to enter unlimited orders at multiple price levels. Orders of all PSX Participants will be integrated and displayed via data feeds to Participants and other data subscribers. PSX Participants will be able to access the aggregated trading interest of all other PSX Participants in accordance with non-discretionary order execution algorithms. In contrast with most markets, which use a price-time algorithm, however, PSX will use a price-display-pro rata size algorithm. Incoming orders will be allocated first to resting orders with the best price. As among orders with the same price, incoming orders will be allocated first to resting Displayed Orders and then to resting Non-Displayed Orders. As among Displayed Orders at the same price or Non-Displayed Orders at the same price, incoming orders will be

<sup>17</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 242.600(b)(47).