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 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–BX–2010–014 and should be submitted on or before March 18, 2010.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3774 Filed 2–24–10; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61539; File No. SR–Phlx–2010–20]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change To Expand the Number of Components in the PHLX Semiconductor Sector℠ Known as SOX℠, on Which Options Are Listed and Traded

February 18, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on February 2, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission (the "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.

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

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to expand the number of components in the PHLX Semiconductor Sector℠ known as SOX℠, on which options are listed and traded.[3] No other changes are made to the index or options on the index.

A copy of the filing 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 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 proposal is to expand the number of components in the PHLX Semiconductor Sector℠ known as SOX℠ ("SOX" or the "Index"), on which options are listed and traded.

SOX options subsequent to this proposal will be identical to SOX options that are currently listed and trading except for the number of components in the underlying Index, and will trade pursuant to the same (unchanged) contract specifications.[4] The singular post-proposal difference in SOX options is that they will overlie an Index with thirty components where the current Index has twenty-one components.

[3] PHLX Semiconductor Sector℠ may also be known as PHLX Semiconductor Index or PHLX Semiconductor Sector℠ Index.

[4] The contract specifications for SOX options are available at *http://www.nasdaqtrader.com/micro.aspx?id=phlxsectorscontractspecs#SOX.*

Background

The Exchange currently has initial listing and maintenance listing standards for options on indexes in Rule 1009A that are designed to allow the Exchange to list options on narrow-based indexes[5] and broad-based indexes[6] pursuant to generic listing standards (the "Index Listing Standards").[7] SOX is a narrow-based index and SOX options overlying the Index are listed and traded pursuant to Rule 1009A(b). SOX options were originally listed and began trading in 1994 pursuant to Exchange approval.[8]

SOX is a modified market capitalization-weighted index composed of twenty-one companies primarily involved in the design, distribution, manufacture, and sale of semiconductors, and is one of several narrow-based sector indexes on which options are listed and traded on the Exchange.[9] SOX provides exposure to the fast-growing (yet extremely volatile) semiconductor industry. When investors want information and investment opportunities specific to semiconductors, they look most often to the SOX index.[10] Indeed, the popularity of SOX is reflected in the trading volumes of options on the Index.[11] It

[5] A narrow-based index or industry index is defined as: An index designed to be representative of a particular industry or a group of related industries. The term "narrow-based index" includes indices the constituents of which are all headquartered within a single country. *See* Rule 1000A(b)(12).

[6] A broad-based index or market index is defined as: An index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries. *See* Rule 1000A(b)(11).

[7] Rule 1009A establishes generic listing standards for options on narrow-based and broad-based indexes pursuant to Rule 19b–4(e) of the Act. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998). The listing standards in Rule 1009A are similar to those of other options exchanges such as, for example, Chicago Board Options Exchange, Incorporated; International Stock Exchange LLC; and The NASDAQ Stock Market LLC.

[8] *See* Securities Exchange Act Release No. 34546 (August 18, 1994), 59 FR 43881 (August 25, 1994) (SR–Phlx–94–02) (order approving proposal to list and trade the SOX index).

[9] Other sector indexes on which options are listed and traded on the Exchange include: KBW Bank Index℠ (BKX℠); PHLX Gold/Silver Sector℠ (XAU℠); PHLX Housing Sector℠ (HGX℠); PHLX Oil Service Sector℠ (OSX℠); PHLX Utility Sector℠ (UTY℠); NASDAQ OMX China Index℠ (CNZ℠); SIG Energy MLP Index℠ (SVO™); and SIG Oil Exploration & Production Index™ (EPX℠).

[10] Other currently available investment products that evaluate the semiconductor market, albeit differently from SOX, include Semiconductor HOLDRs (SMH) and iShares S&P North American Technology-Semiconductors Index Fund (IGW).

[11] During 2009, SOX has traded an average of 29,127 contracts per month and has traded as much as 23,339 contracts in a day (June 16, 2009). As of December 31, 2009, there were 11,976 contracts of open interest in SOX.

has been observed that a rise or decline in the SOX usually precedes a similar move in the broader technology market. As such, SOX has served as a leading indicator for technology stocks. Recognizing the market-leading aspects of the Index, the Exchange is proposing a rule change to increase to thirty the number of components in SOX so that this narrow-based index may even more effectively represent the dynamic semiconductor market.[12]

The Exchange submits that in the proposed expanded form SOX would continue to meet the generic Index Listing Standards of Rule 1009A. Specifically, all the index maintenance requirements in subsection (c) of Rule 1009A applicable to options on narrow-based indexes would be met with one exception.[13] The singular exception is the number of components. In particular, subsection (c)(2) of Rule 1009 indicates that the total number of component securities in the index may not increase or decrease by more than 33⅓% from the total number of securities in the index at the time of its initial listing; adding components to equal thirty is outside the (c)(2) parameter, and is the reason why the Exchange is making the current filing.

Index Design and Index Composition

The Index is calculated using a modified market capitalization-weighted methodology. The value of the Index equals the total capitalization of modified shares, divided by the divisor. The divisor serves the purpose of scaling aggregate value to a lower order of magnitude which is more desirable for Index reporting and trading purposes. To maintain continuity for the Index's value, the divisor is adjusted periodically to reflect events such as changes in the number of shares outstanding for component stocks, company additions or deletions, corporate restructurings, or other capitalization changes.

If trading in an Index security is halted while the market is open, the most recent last sale price for that security ("Last Sale Price") [14] is used for all index computations until trading resumes. If trading is halted before the market is open, the most recent Last Sale Price is used. Additionally, the Index ordinarily is calculated without regard to dividends on component securities. The modified capitalization-weighted methodology is expected to retain, in general, the economic attributes of capitalization weighting, while providing enhanced diversification. To accomplish this, NASDAQ OMX, which maintains the Index, rebalances the Index at least twice annually and adjusts the weighting of Index components.

Index eligibility is limited to specific security types only. The security types eligible for the Index include foreign or domestic common stocks, ordinary shares, American Depository Receipts ("ADRs"), shares of beneficial interest or limited partnership interests, and tracking stocks. Security types not included in the Index are closed-end funds, convertible debentures, exchange traded funds, preferred stocks, rights, warrants, units and other derivative securities.

As of December 31, 2009, the following were characteristics of the Index:

—The total weighted capitalization of all components of the Index was $276.43 billion;
—Regarding component capitalization, (a) the highest weighted capitalization of a component was $112.65 billion (Intel Corp.), (b) the lowest weighted capitalization of a component was $0.79 billion (STMicroelectronics N.V.), (c) the mean capitalization of the components was $13.16 billion, and (d) the median capitalization of the components was $6.62 billion;
—Regarding component price per share, (a) the highest price per share of a component was $56.37 (Cree, Inc.), (b) the lowest price per share of a component was $9.27 (STMicroelectronics N.V.), (c) the mean price per share of the components was $23.32, and (d) the median price per share of the components was $22.63;
—Regarding component weightings, (a) the highest weighting of a component was 7.83% (Applied Materials, Inc.), (b) the lowest weighting of a component was 1.36% (STMicroelectronics N.V.), (c) the mean weighting of the components was 4.76%, (d) the median weighting of the components was 4.00%, and (e) the total weighting of the top five highest weighted components was 37.37% (Applied Materials, Inc., Taiwan Semiconductor Manufacturing Co., Broadcom Corporation, Intel Corp., and Texas Instruments, Inc.);
—Regarding component shares, (a) the most available shares of a component was 5.52 billion shares (Intel Corp.), (b) the least available shares of a component was 0.06 billion shares (Atheros Communications, Inc.), (c) the mean available shares of the components was 0.67 billion shares, and (d) the median available shares of the components was 0.24 billion shares;
—Regarding the six-month average daily volumes ("ADVs") of the components, (a) the highest six-month ADV of a component was 61.35 million shares (Intel Corp.), (b) the lowest six-month ADV of a component was 1.71 million shares (STMicroelectronics N.V.), (c) the mean six-month ADV of the components was 11.77 million shares, (d) the median six-month ADVs of the components was 7.07 million shares, (e) the average of six-month ADVs of the five most heavily traded components was 30.21 million shares (Intel Corp., Advanced Micro Devices, Inc., Micron Technology, Applied Materials, Inc., and Taiwan Semiconductor Manufacturing Co.), and (f) 100% of the components had a six-month ADV of at least 200,000; and
—Regarding option eligibility, (a) 100.00% of the components were options eligible, as measured by weighting, and (b) 100.00% of the components were options eligible, as measured by number.

[12] A listing of the component securities in SOX is available at *https://indexes.nasdaqomx.com/weighting.aspx?IndexSymbol=SOX&menuIndex=0.*

[13] The maintenance provisions in subsection (c) of Rule 1009A state, in part, as applicable to SOX:

(1) The conditions stated in subparagraphs (b)(1), (3), (6), (7), (8), (9), (10), (11) and (12) [regarding A.M. settlement; market capitalization; component weighting; components being NMS stock; non-U.S. components, reporting at least every fifteen seconds; and rebalancing], must continue to be satisfied, provided that the conditions stated in subparagraph (b)(6) [regarding component weighting] must be satisfied only as to the first day of January and July in each year; (2) The total number of component securities in the index may not increase or decrease by more than 33⅓% from the number of component securities in the index at the time of its initial listing, and in no event may be less than nine component securities; (3) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; (4) In a capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months.

Moreover, the Index in its current and proposed expanded form would substantially meet the initial option listing provisions in subsection (b) of Rule 1009A.

[14] For purposes of the Index, Last Sale Price refers to the following: For a security listed on NASDAQ, it is the last sale price on NASDAQ which normally would be the official closing, known as the Nasdaq Official Closing Price (NOCP), when NASDAQ is closed. For any NYSE-listed or NYSE AMEX-listed security, it is the last regular way trade reported on such security's primary U.S. listing market. If a security does not trade on its primary listing market on a given day, the most recent last sale price from the primary listing market (adjusted for corporate actions, if any) is used.

Index Calculation and Index Maintenance

The Index is maintained by NASDAQ OMX and index levels are calculated continuously, using the last sale price for each component stock in the Index. Index values are publicly disseminated at least every fifteen seconds throughout the trading day through a major market data vendor, namely NASDAQ OMX's index dissemination service. The Exchange expects that such dissemination will continue through one or more (NASDAQ OMX-owned or unrelated) major market data vendors.[15]

Appurtenant to review of the Index for purposes of rebalancing, component securities are evaluated by NASDAQ OMX. In the event that an Index component security no longer meets the requirements for continued security eligibility, it will be replaced with a security that meets all of the initial security eligibility criteria and additional criteria which follows. Securities eligible for inclusion will be ranked descending by market value, current price and greatest percentage price change over the previous six months. The security with the highest overall ranking will be added to the Index provided that the Index then meets the following criteria: No single Index security is greater than 30% of the weight of the Index and the top five Index securities are not greater than 50% of the weight of the Index; and non-U.S. component securities that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the Index.[16] In the event that the highest-ranking security does not permit the Index to meet the above criteria, the next highest-ranking security will be selected and the Index criteria will again be applied to determine eligibility. The process will continue until a qualifying replacement security is selected.

The list of annual additions and deletions to the Index will be publicly announced in early June, and changes to the Index will be made effective after the close of trading on the third Friday in June. If at any time during the year, a component security is determined to become ineligible for continued inclusion in the Index based on the continued eligibility criteria, that component security will be replaced with a component not currently in the Index that met the appropriate eligibility criteria.[17]

In the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards, the Exchange shall not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Act.[18]

The Exchange represents that, if the Index ceases to be maintained or calculated, or if the Index values are not disseminated at least every fifteen seconds by a widely available source, the Exchange will promptly notify the Division of Trading and Markets of the Commission, and the Exchange will not list any additional series for trading and will limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

Contract Specifications

The contract specifications for the proposed expanded Index options are, as previously noted, identical to the current narrow-based Index options that are currently listed and traded on the Exchange.[19] Options on the Index are American-style and A.M. cash-settled. The Exchange's trading hours for index options (9:30 a.m. to 4 p.m. ET), will apply to options on SOX.[20] Exchange rules that are applicable to the trading of options on indexes will continue to apply to the trading of options on SOX.[21]

The strike price intervals for SOX options contracts will remain the same as those currently in use: $2.50 and $1 if the strike price is below $200.[22] The minimum increment size for series trading below $3 will remain $0.05, and for series trading at or above $3 will remain $0.10.[23] The Exchange's margin rules will be applicable.[24] The Exchange will continue to list options on SOX in up to three months from the March, June, September, December cycle plus two additional near-term months (that is, as many as five months at all times).[25] The trading of SOX options will continue to be subject to the same rules that govern the trading of all of the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options traded on the Index and intends to apply those same program procedures that it applies to the Exchange's current SOX options and other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement, dated June 20, 1994.[26] ISG members generally work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

The Exchange represents that it has the necessary systems capacity to continue to support listing and trading SOX options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[27] in general, and furthers the objectives of Section 6(b)(5) of the Act[28] in particular, in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposal to

[15] Rule 1009A(b)(12) states that should an underlying index be maintained by a broker-dealer, however, the index must be calculated by a third party who is not a broker-dealer, and the broker-dealer will have to erect a "Chinese Wall" around its personnel who have access to information concerning changes in and adjustments to the index.

[16] *See* Rule 1009A(b).

[17] Moreover, changes in the price of an Index component security driven by corporate events such as stock dividends, stock splits, certain spin-offs, and rights issuances will be adjusted on the ex-date. In the case of a special cash dividend, a determination will be made on an individual basis whether to make a change to the price of an Index security in accordance with its Index dividend policy. If it is determined that a change will be made, it will become effective on the ex-date and advance notification will be made. Ordinarily, whenever there is a change in the price of an Index security due to stock dividends, stock splits, spin-off, rights issuances, or special cash dividends, the divisor is adjusted to ensure that there is no discontinuity in the value of the Index, which might otherwise be caused by any such change.

[18] 15 U.S.C. 78s(b)(2).

[19] *See* supra note 5.

[20] *See* Rule 101.

[21] For trading rules applicable to trading index options, *see* Rules 1000A et seq. For trading rules applicable to trading options generally, *see* Rules 1000 *et seq.*

[22] *See* Phlx Rule 1101A(a).

[23] *See* Phlx Rule 1034(a).

[24] *See* Phlx Rule 721 *et seq.*

[25] *See* Phlx Rule 1101A(b).

[26] A list of the current members and affiliate members of ISG can be found at *http://www.isgportal.com.*

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

expand the SOX index will allow the Exchange to seamlessly continue listing this premiere index in a manner that even more effectively reflects the semiconductor sector.

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

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-2010–20 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-2010–20.* 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 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-2010–20* and should be submitted on or before March 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3777 Filed 2–24–10; 8:45 am]

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[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61542; File No. SR–FINRA–2009–093]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Repeal NASD Rule 2450 (Installment or Partial Sales), NASD Interpretive Material 2830–2 ("IM–2830–2") (Maintaining the Public Offering Price) and Incorporated NYSE Rule 413 (Uniform Forms) as Part of the Process of Developing a Consolidated FINRA Rulebook

February 18, 2010.

On December 23, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to repeal NASD Rule 2450 (Installment or Partial Sales), NASD Interpretive Material 2830–2 ("IM–2830–2") (Maintaining the Public Offering Price), and Incorporated NYSE Rule 413 (Uniform Forms), as part of the process of developing a consolidated FINRA rulebook. The proposed rule change was published for comment in the **Federal Register** on January 19, 2010.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[4] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is appropriate to eliminate confusion and reduce regulatory overlap by eliminating rules that are outdated, duplicative of other FINRA rules, or addressed by the Federal rules or regulations. As further described in the Notice, FINRA stated that NASD Rule 2450 should be repealed in light of the explicit provisions in Regulation T requiring the deposit of sufficient funds within the specified payment period. FINRA also stated that the hypothecation prohibition in NASD Rule 2450 should be repealed because it would no longer be relevant as it is predicated on a partial or installment payment under the rule. In addition, FINRA noted that, since the adoption of NASD IM–2830–2, the laws governing broker-dealers have changed, and today virtually all broker-dealers doing business with the public are FINRA members. FINRA also noted that NASD IM–2830–2 largely duplicates the requirement in Section 22(d) of the Investment Company Act to sell mutual fund shares to investors at the current public offering price. As a

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61319 (January 8, 2010), 75 FR 2897 ("Notice").

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(6).