

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-NYSEArca-2010-46 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-NYSEArca-2010-46. 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

along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

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-NYSEArca-2010-46 and should be submitted on or before July 15, 2010.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62320; File No. SR-Phlx-2010-83]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Rules Relating to Directed Orders and Eligible Orders

June 17, 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 14, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "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 Exchange filed the 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 clarify the definition of "Directed Order" in Rule 1080(l)(i)(A) by removing the limiting word "customer" before the word "order." A conforming change to the definition of "Order Flow Provider" is proposed to be made in Rule 1080(l)(i)(B). Second, amendments to Rule 1080(b)(i)(C) are proposed which specify that orders for the account of an

off-floor broker dealer may be entered into the Exchange's enhanced electronic trading platform for options, Phlx XL,<sup>5</sup> by an agent of the off-floor broker dealer. Third, the Exchange is adding opening-only-market orders and limit on opening orders to the list of eligible orders in Rule 1080(b)(i), as order types eligible for entry into the trading system. The Exchange proposes to add a definition of limit on opening order to Rule 1066.

The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, on the Commission's Internet Web site at <http://www.sec.gov>, 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 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

In May 2005 the Exchange adopted rules for Phlx XL that permit Exchange specialists, Streaming Quote Traders ("SQTs"),<sup>6</sup> and Remote Streaming Quote Traders ("RSQTs")<sup>7</sup> to receive Directed Orders, and to provide a participation guarantee to specialists, SQTs and

<sup>5</sup> See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

<sup>6</sup> An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through Phlx XL in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Phlx Rule 1014(b)(ii)(A).

<sup>7</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through Phlx XL in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Phlx Rule 1014(b)(ii)(B).

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

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

RSQTs that receive Directed Orders.<sup>8</sup> The proposed amendment to Rule 1080(l)(i)(A) is intended to clarify that Rule 1080(l)(i)(A) does not limit Directed Orders to public customer orders. The Exchange notes that other exchanges' Directed Orders rules do not limit Directed Orders to public customer orders.<sup>9</sup>

Currently, the term "Directed Order" is defined in Rule 1080(l)(i)(A) as "any customer order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider \* \* \*" The Exchange proposes to remove the word "customer" from this definition to avoid any suggestion that Directed Orders are limited to orders of "public" customers. Directed Orders can be broker-dealer orders as well as public customer orders.

Rule 1080(b)(i)(A) provides in relevant part that "[f]or purposes of Exchange options trading, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest." In adopting the Directed Order program, the Exchange did not limit Directed Orders to agency orders as defined in Rule 1080(b)(i)(A). The Exchange believes, however, that use of the word "customer" in the definition of Directed Order is potentially confusing and unnecessary and is therefore deleting it. For the same reason, the modifier "customer" is deleted before the word "order" in the definition of Order Flow Provider in Rule 1080(l)(i)(B). Accordingly, this change clarifies that Directed Orders can be sent not only on behalf of public customers but also on behalf of broker dealers. Directed Orders are limited to orders sent on an agency basis by Order Flow Providers and not on behalf of the sender's proprietary account.

Currently, Rule 1080(b)(i)(C) provides that certain "off-floor broker-dealer" limit orders may be entered into Phlx XL. The rule currently defines "off-floor broker-dealer" as a broker-dealer that delivers orders from off the floor of the Exchange for the proprietary account(s) of such broker-dealer. Rule 1080(b)(i)(C) is being revised to specify that orders for an off-floor broker-dealer's proprietary account may be entered into Phlx XL by

an agent, on behalf of the off-floor broker-dealer as well as by the off-floor broker-dealer itself. This situation occurs, for example, where the off-floor broker-dealer is not itself a Phlx member and uses a Phlx member for execution of its proprietary orders on Phlx.

Rule 1080(b)(i) lists the types of orders that are eligible for entry into the Phlx XL trading system by various categories of market participants. The Exchange is proposing to add opening-only-market orders to the list of agency orders eligible for entry into the system in Rule 1080(b)(i)(A).<sup>10</sup> It also proposes to add limit-on-opening orders to each of the lists of eligible orders that market participants are permitted to enter in Rules 1080(b)(i)(A), (B) and (C). "Limit-on-Opening Order" would be defined in new Section 9 of Rule 1066(c) as meaning a limit order which is to be executed in whole or in part during the opening rotation of an options series or not at all. Phlx notes that at least one other options exchange already accepts opening only limit and market orders.<sup>11</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup> 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, by permitting the Exchange to modify its rules relating to Directed Orders and eligible orders for the benefit of investors.

### 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 rule 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 from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

At any time within 60 days of the filing of such 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-Phlx-2010-83 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-2010-83. This file number should be included on the

<sup>8</sup> See Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005). See also Phlx Rule 1014(g)(viii) (setting forth the automatic trade allocation algorithm for Directed Orders).

<sup>9</sup> See, e.g., NYSE Amex Rule 900.3NY(s), NYSE Arca Rule 6.62(z) and ISE Rule 811(a)(1).

<sup>10</sup> Rule 1066(c)(5) provides that "[a]n opening-only-market order is a market order which is to be executed in whole or in part during the opening rotation of an options series or not at all."

<sup>11</sup> See NYSE Arca Rule 6.62(r) which defines an "Opening Only Order" as "a market order or limit order which is to be executed in whole or in part during the opening auction of an options series or not at all. Any portion not so executed is to be treated as cancelled."

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

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give 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.

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-2010-83 and should be submitted on or before July 15, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62319; File No. SR-ISE-2010-57]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

June 17, 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 1, 2010, the International Securities Exchange, LLC (the "ISE" or "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 ISE is proposing to amend its Schedule of Fees in order to increase the number of options classes to be included in the Exchange's current schedule of transaction fees and rebates for adding and removing liquidity. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

#### 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 Exchange proposes to increase liquidity and attract order flow by amending its transaction fees and rebates for adding and removing liquidity ("maker/taker fees").<sup>3</sup> The Exchange's maker/taker fees currently apply to the following categories of market participants: (i) Market Maker;

<sup>3</sup> These fees are similar to the "maker/taker" fees currently assessed by NASDAQ OMX PHLX ("PHLX"). PHLX currently charges a fee for removing liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT, (iv) Firm, (v) Broker-Dealer, and (vi) Professional. PHLX also provides a rebate for adding liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT, and (iv) Professional. See Securities Exchange Act Release Nos. 61684 (March 10, 2010), 75 FR 13189 (March 18, 2010); 61932 (April 16, 2010), 75 FR 21375 (April 23, 2010); and 61961 (April 22, 2010), 75 FR 22881 (April 30, 2010).

(ii) Market Maker Plus;<sup>4</sup> (iii) Non-ISE Market Maker;<sup>5</sup> (iv) Firm Proprietary; (v) Customer (Professional);<sup>6</sup> (vi) Priority Customer;<sup>7</sup> 100 or more contracts; and (vii) Priority Customer, less than 100 contracts.<sup>8</sup>

#### Current Transaction Charges for Adding and Removing Liquidity

The Exchange currently assesses a per contract transaction charge to market participants that remove, or "take," liquidity from the Exchange in the following 20 options classes: PowerShares QQQ trust ("QQQQ"), Bank of America Corporation ("BAC"), Citigroup, Inc. ("C"), Standard and Poor's Depository Receipts/SPDRs ("SPY"), iShares Russell 2000 ("IWM"), Financial Select Sector SPDR ("XLF"), Apple, Inc. ("AAPL"), General Electric Company ("GE"), JPMorgan Chase & Co. ("JPM"), Intel Corporation ("INTC"), Goldman Sachs Group, Inc. ("GS"), Research in Motion Limited ("RIMM"), AT&T, Inc. ("T"), Verizon

<sup>4</sup> A Market Maker Plus is a market maker who is on the National Best Bid or National Best Offer 80% of the time in that symbol during the current trading month for series trading between \$0.03 and \$5.00 in premium. The Exchange determines whether a market maker qualifies as a Market Maker Plus at the end of each month by looking back at each market maker's quoting statistics during that month. If at the end of the month, a market maker meets the 80% criteria, the Exchange rebates \$0.10 per contract for transactions executed by that market maker during that month. The Exchange provides market makers a report on a daily basis with quoting statistics so that market makers can determine whether or not they are meeting the 80% criteria. On May 26, 2010, the Exchange submitted a proposed rule change, SR-ISE-2010-54, to be effective on June 1, 2010, to amend the qualification standards for market makers to receive the \$0.10 per contract rebate. Pursuant to that proposed rule change, a market maker must be on the National Best Bid or National Best Offer 80% of the time for series trading between \$0.03 and \$5.00 in premium in each of the front two expiration months and 80% of the time for all series trading between \$0.03 and \$5.00 in order to receive the rebate.

<sup>5</sup> A Non-ISE Market Maker, or Far Away Market Maker ("FARMM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), registered in the same options class on another options exchange.

<sup>6</sup> A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

<sup>7</sup> A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

<sup>8</sup> The Chicago Board Options Exchange ("CBOE") currently makes a similar distinction between large size customer orders that are fee liable and small size customer orders whose fees are waived. CBOE currently waives fees for customer orders of 99 contracts or less in options on exchange-traded funds ("ETFs") and Holding Company Depository Receipts ("HOLDERS") and charges a transaction fee for customer orders that exceed 99 contracts. See Securities Exchange Act Release No. 59892 (May 8, 2009), 74 FR 22790 (May 14, 2009).

<sup>16</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.