

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-2010-078 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-CBOE-2010-078. 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-CBOE-2010-078 and should be submitted on or before October 6, 2010

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2010-22947 Filed 9-14-10; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62867; File No. SR-Phlx-2010-122]

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify What Information Must Be Entered Into the Exchange's Options Floor Broker Management System**

September 8, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on September 2, 2010, NASDAQ OMX PHLX LLC ("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 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 is filing with the Commission a proposal to amend Phlx Rule 1063 (Responsibilities of Floor Brokers) and Phlx Options Procedure Advice C-2 (Options Floor Broker Management System)<sup>3</sup> to clarify what information must be entered into the Exchange's Options Floor Broker Management System.

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

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

In its filing with the Commission, the Exchange included statements

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

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

<sup>3</sup> Options Floor Procedure Advices ("OFPA's" or "Advices") generally correspond to Exchange rules. OFPA C-2 is a corresponding Advice to Rule 1063, which deals, in part, with the Options Floor Broker Management System and is part of the Exchange's minor rule plan ("MRP" or "Minor Rule Plan"). The Exchange's Minor Rule Plan consists of Advices with preset fines, pursuant to Rule 19d-1(c) under the Act. 17 CFR 240.19d-1(c). See Securities Exchange Act Release No. 50997 (January 7, 2005), 70 FR 2444 (January 13, 2005) (SR-Phlx-2003-40) (approval order establishing Floor Broker Management System in OFPA C-2 and Rule 1063).

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on this 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 this proposal is to amend Phlx Rule 1063 and Options Floor Procedure Advice C-2 to clarify that information entered into the Exchange's Options Floor Broker Management System must include order receipt time.

The Exchange's Options Floor Broker Management System ("FBMS")<sup>4</sup> was designed to establish an electronic audit trail for equity, equity index and U.S. dollar-settled foreign currency options<sup>5</sup> orders represented by Floor Brokers<sup>6</sup> on the Exchange.<sup>7</sup> The Options Floor Broker Management System is found in Rule 1063(e) and corresponding Advice C-2 and states that either a Floor Broker or an employee of a Floor Broker has to record all options orders represented by such Floor Broker onto the electronic FBMS (as described in Rule 1080,

<sup>4</sup> Rule 1080, Commentary .06 states, in relevant part: The Options Floor Broker Management System is a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. Rule 1080(a) states, in relevant part: AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of Exchange-listed equity options, index options and U.S. dollar-settled foreign currency options orders to the Exchange trading floor.

<sup>5</sup> U.S. dollar-settled foreign currency options traded on the Exchange are also known as World Currency Options ("WCO") or Foreign Currency Options ("FCO").

<sup>6</sup> Floor Broker is defined in Rule 1060 as: An individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and executing options orders received from members and member organizations.

<sup>7</sup> See Securities Exchange Act Release No. 50997 (January 7, 2005), 70 FR 2444 (January 13, 2005) (SR-Phlx-2003-40) (approval order establishing FBMS in Rule 1063 and OFPA C-2, and adding definition of FBMS in Commentary .06 to Rule 1080).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

Commentary .06) contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd.

Rule 1063(e) and OFPA C-2 specify what information must be entered into FBMS (the "FBMS information"). The FBMS information currently required to be entered includes, among other things, the options symbol and the order type (*i.e.*, customer, firm, broker-dealer, professional), but not the order receipt time. Rule 1063(f), as well the second paragraph of corresponding OFPA C-2, states that Floor Brokers or their employees shall enter FBMS information for FLEX<sup>8</sup> options into the Exchange's electronic audit trail in the same electronic format as the required by Rule 1063(e) and OFPA C-2 for equity, equity index and U.S. dollar-settled foreign currency options. In that per OFPA C-2 the Options Floor Broker Management System is part of the Exchange's Minor Rule Plan,<sup>9</sup> the Advice sets forth a fine schedule for failure to enter FBMS information.<sup>10</sup>

The Exchange notes that the time that an order is entered is being captured by the system in the audit trail created via the FBMS per Rule 1063(e) and OFPA C-2, but is not specifically required in the rule and Advice as currently written. The Exchange is therefore proposing to change Rule 1063 and OFPA C-2 to require entry of order receipt time information into the FBMS, thereby making this information requirement a part of the Minor Rule Plan reflected in OFPA C-2 and conforming the Advice and the rule.

Specifically, the Exchange proposes to state in Rule 1063(e)(i) and OFPA C-2 that Floor Brokers or their employees must record order receipt time in conjunction with order type in FBMS. Proposed Rule 1063(e)(i) and OFPA C-2 as amended will each state, in relevant part: The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's

<sup>8</sup> FLEX options are flexible exchange-traded index, equity, or currency option contracts that provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX options may have expiration dates within five years. See Rule 1079. FLEX currency option contracts traded on the Exchange are also known as FLEX WCO or FLEX FCO contracts.

<sup>9</sup> See *supra* note 3.

<sup>10</sup> The OFPA C-2 fine schedule is as follows: FINE SCHEDULE (Implemented on a two-year calendar basis): 1st Occurrence—\$500.00; 2nd Occurrence—\$1,000.00;—3rd Occurrence—\$2,000.00; 4th Occurrence and Thereafter—Sanction is discretionary with the Business Conduct Committee.

The Exchange does not propose any changes in this filing to the Fine Schedule.

employees: (i) The order type (*i.e.*, customer, firm, broker-dealer, professional) and order receipt time; (ii) the option symbol; (iii) buy, sell, cross or cancel;<sup>11</sup> (iv) call, put, complex (*i.e.*, spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position; and (viii) The Options Clearing Corporation ("OCC") clearing number of the broker-dealer that submitted the order (collectively, the "required information").<sup>12</sup>

The Exchange believes that the proposal would codify current practice, ensure that violations of FBMS in terms of failure to enter order receipt time are part of the Exchange's Minor Rule Plan, and harmonize Rule 1063(e) and OFPA C-2.<sup>13</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> 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. In particular, the Exchange proposes to codify current practice, ensure that violations of the Options Floor Broker Management System in terms of failure to enter order receipt time are part of the Exchange's Minor Rule Plan, and harmonize Rule 1063(e) and OFPA C-2.

<sup>11</sup> To ensure conformity of Rule 1063 and Advice C-2, which both contain the list of specific information, the exchange proposes to insert the word "cross" into Advice C-2.

<sup>12</sup> The Exchange notes also that Rule 17a-3(a)(7) pursuant to the Act states, in relevant part, that broker-dealers that transact a business in securities through members of a national securities exchange shall make and keep current the books and records relating to its business including, but not limited to, among other things: A memorandum of each purchase and sale for the account of the member, broker, or dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where the purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt. 17 CFR 240.17a-3.

<sup>13</sup> The Exchange has filed a proposal to make unrelated changes to Rule 1063 and OFPA C-2 at SR-Phlx-2010-116 that we believe do not impact the changes proposed herein. We would update this rule change proposal should it become necessary in light of SR-Phlx-2010-116.

<sup>14</sup> 15 U.S.C. 78f(b).

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

## 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: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

At any time within 60 days of the filing of such 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.

## 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-2010-122 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Phlx has given 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 on which the Exchange filed the proposed rule change. See 17 CFR 240.19b-4(f)(6)(iii).

Securities and Exchange Commission,  
100 F Street, NE., Washington, DC  
20549-1090.

All submissions should refer to File Number SR-Phlx-2010-122. 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,<sup>18</sup> 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-2010-122 and should be submitted on or before October 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Elizabeth M. Murphy,**

Secretary.

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62874; File No. SR-NYSE-2010-59]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend NYSE Rule 452 and Listed Company Manual Section 402.08 To Eliminate Broker Discretionary Voting on Executive Compensation Matters

September 9, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 26, 2010, New York Stock Exchange LLC ("NYSE" 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 NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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

The Exchange is proposing to amend NYSE Rule 452, and corresponding NYSE Listed Company Manual Section 402.08, to prohibit member organizations from voting uninstructed shares if the matter voted on relates to executive compensation, in accordance with the provisions of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which was signed by the President on July 21, 2010.

The text of the proposed rule change is available at <http://www.nyse.com>, at the Exchange's principal office, 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 changes. The text of these statements may be examined at the places specified in Item

III below and is set forth in Sections A, B and C below.

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

##### 1. Purpose

The Exchange is proposing to amend NYSE Rule 452, titled *Giving Proxies by Member Organizations*, and corresponding NYSE Listed Company Manual Section 402.08, to prohibit member organizations from voting uninstructed shares if the matter voted on relates to executive compensation, in accordance with the provisions of Section 957 of the Dodd-Frank Act, which was signed by the President on July 21, 2010. Because Section 957 of the Dodd-Frank Act does not provide for a transition phase, the Exchange is proposing to adopt the proposed rule changes pursuant to Section 19(b) of the Act to comply with Section 957 of the Dodd-Frank Act and is requesting that the Commission approve the proposal on an accelerated basis. We are also proposing to add the words "or authorize" in certain places throughout the rule to clarify that the rule includes not only the giving of a proxy but also the authorization of such proxy.

##### Current Requirements of NYSE Rule 452

Under current NYSE and Commission proxy rules, brokers must deliver proxy materials to beneficial owners and request voting instructions in return. If voting instructions have not been received by the tenth day preceding the meeting date, Rule 452 provides that a broker may vote on certain matters when the broker has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders, and does not include authorization for a merger, consolidation or any matter which may affect substantially the rights or privileges of such stock. In addition, the Rule currently identifies 20 matters with respect to which brokers may not vote without instructions from beneficial owners.

##### Enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Prior to the July 21, 2010 enactment of the Dodd-Frank Act, under Rule 452 and the Exchange's prior interpretations, member organizations were permitted to cast votes on some matters, including some executive compensation proposals, without specific instructions from beneficial owners of the stock. However, the Dodd-

<sup>18</sup> The text of the proposed rule change is available on Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, on the Commission's Web site at <http://www.sec.gov>, at Phlx, and at the Commission's Public Reference Room.

<sup>19</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.