

Commission designates the proposed rule change operative upon filing with the Commission.

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-BX-2010-091 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-BX-2010-091. 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 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 website 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 publicly available. All submissions should refer to File Number SR-BX-2010-091 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

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

[FR Doc. 2010-32615 Filed 12-27-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63594; File No. SR-Phlx-2010-183]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX LLC to Expand Its Short Term Option Program

December 21, 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 December 15, 2010, NASDAQ OMX PHLX LLC ("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.

#### 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 Short Term Option Program ("STO Program" or "Program")<sup>3</sup> so that the

<sup>17</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> Commentary .11 to Rule 1012 and Rule 1101A(b)(vi). See Securities Exchange Act Release No. 62296 (June 15, 2010), 75 FR 35115 (June 21, 2010) (SR-Phlx-2010-84) (notice of filing and immediate effectiveness permanently establishing STO Program on the Exchange). Other exchanges have also established permanent short term option programs. See Securities Exchange Act Release Nos. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR-CBOE-2009-018) (approval order permanently establishing short term option program); 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR-ISE-2010-72) (approval order [sic] permanently establishing short term option program); 62297 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR-NASDAQ-2010-073) (notice of filing and immediate effectiveness permanently establishing short term option program); 62296 (June 15, 2010), 75 FR 35111 (June 21, 2010) [sic] (SR-Arca-2010-059) (notice of filing and immediate effectiveness permanently establishing short term option program); 62296

Exchange may select fifteen option classes on which Short Term Option Series<sup>4</sup> may be opened.

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, 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 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this proposed rule change is to amend Rule 1012 to expand the STO Program so that the Exchange may select fifteen option classes on which Short Term Option Series may be opened.

The STO Program is codified in Commentary .11 to Rule 1012 and Rule 1101A(b)(vi). These sections state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than five option classes that expire on the Friday of the following business week that is a business day. In addition to the five-option class limitation, there

(June 15, 2010), 75 FR 35111 (June 21, 2010) [sic] (SR-Amex-2010-062) (notice of filing and immediate effectiveness permanently establishing short term option program); and 62505 (July 15, 2010), 75 FR 42792 (July 22, 2010) (SR-BX-2010-047) (approval order [sic] permanently establishing short term option program).

<sup>4</sup> Short Term Option Series are series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. Rules 1000(b)(44), 1000A(b)(16), Commentary .11 to Rule 1012 and Rule 1101A(b)(vi).

is also a limitation that no more than twenty series for each expiration date in those classes that may be opened for trading.<sup>5</sup> Furthermore, the strike price of each short term option has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the short term options are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange does not propose any changes to these additional Program limitations. The Exchange proposes only to increase from five to fifteen the number of option classes that may be opened pursuant to the Program.

The principal reason for the proposed expansion is customer demand for adding, or not removing, short term option classes from the Program. In order that the Exchange not exceed the five-option class restriction, each month since the inception of the Program the Exchange has had to discontinue trading, on the average, more than one short term option class before it could begin trading other option classes within the Program. This has negatively impacted investors and traders, particularly retail public customers, who have on several occasions requested the Exchange not to remove short term option classes or add short term option classes.

As an example, a retail investor recently asked the Exchange to reinstate a short term option class that the Exchange had to remove from trading because of the five-class option limit within the Program. The investor told the Exchange that he had used the removed class as a powerful tool for hedging a market sector, and that various strategies that the investor put into play were disrupted and eliminated when the class was removed. The

<sup>5</sup> However, if the Exchange opens less than twenty (20) short term options for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers (market-makers trading for their own account shall not be considered when determining customer interest under this provision). Commentary .11(d) to Rule 1012 and Rule 1101A(b)(vi)(D).

Exchange feels that it is essential that such negative, potentially very costly impacts on retail investors are eliminated by modestly expanding the Program to enable additional classes to be traded.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes in the Program.

The Exchange believes that the STO Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Furthermore, the Exchange has had to eliminate option classes on numerous occasions because of the limitation imposed by the Program. For these reasons, the Exchange requests an expansion of the current Program and the opportunity to provide investors with additional short term option classes for investment, trading, and risk management purposes.

Finally, the Commission has requested, and the Exchange has agreed for the purposes of this filing, to submit one report to the Commission providing an analysis of the STO Program (the "Report"). The Report will cover the period from the date of effectiveness of the STO Program through November of 2010, and will describe the experience of the Exchange with the STO Program in respect of the options classes included by the Exchange in such program.<sup>6</sup> The Report will be submitted on a confidential basis under separate cover within one week of the filing.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup>

<sup>6</sup> The Report would include the following: (1) Data and written analysis on the open interest and trading volume in the classes for which Short Term Option Series were opened; (2) an assessment of the appropriateness of the option classes selected for the STO Program; (3) an assessment of the impact of the STO Program on the capacity of the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the STO Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the STO Program and how the Exchange addressed them; and (6) any additional information that would assist in assessing the operation of the STO Program.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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 believes that expanding the current STO Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities.

### 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 solicited or received.

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

Within 45 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 or disapprove 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-183 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-2010-183. 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-2010-183 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63589; File No. SR-EDGX-2010-24]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 11.5

December 21, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 13, 2010, EDGX Exchange, Inc. (the "Exchange" or the "EDGX") 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 self-regulatory organization. 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

EDGX proposes to amend EDGX Rule 11.5(a)(2) to provide that the system functionality that cancels any portion of a market order submitted to the Exchange that would execute at a price that is more than \$0.50 or 5 percent worse than last sale at the time the order initially reaches the Exchange, whichever is greater, does not apply to Destination-on-Open orders, as defined in Rule 11.5(c)(10). The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.directedge.com>, on the Commission's Web site at <http://www.sec.gov>, 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 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

As provided in SR-EDGX-2010-14,<sup>3</sup> Exchange Rule 11.5(a)(2) protects market participants from executions at prices that are significantly worse than the last sale at the time of order entry by providing Exchange system functionality that cancels any portion of a market order (as defined in Rule 11.5(a)(2)) that would execute at a price that is 50 cents or 5 percentage points worse than the consolidated last sale, whichever is greater. Any portion of a market order that would otherwise execute outside of these thresholds is immediately cancelled back to the User.<sup>4</sup>

The Exchange proposes to modify Rule 11.5(a)(2) to provide that Destination-on-Open orders, as defined in Rule 11.5(c)(10),<sup>5</sup> are not subject to these market collars.<sup>6</sup> The rationale for this exception is twofold. First, using a reference price calculation for market collar thresholds at the open of trading is problematic because of the potential lack of trading activity just prior to the open and the resulting price dislocation. Therefore, the reference price for a market collar on a Destination-on-Open order could be out of line with the market at the open of the regular trading session. In addition, other Exchanges also address this issue similarly by excluding market on open orders as well.<sup>7</sup>

##### 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the

<sup>3</sup> See Securities Exchange Act Release No. 63163 (October 22, 2010), 75 FR 66408 (October 28, 2010) (SR-EDGX-2010-14).

<sup>4</sup> A User is defined in Exchange Rule 1.5(cc) as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3".

<sup>5</sup> Rule 11.5(c)(10) defines a Destination-on-Open order, in part, as "a market or limit order that instructs the System to route the order to a specified away trading center to participate in said trading center's opening process, without being processed by the System as described below in Rule 11.9(b)(1)."

<sup>6</sup> The Exchange notes that when orders are routed to an away trading center, such away trading centers' collar rules apply, when applicable, regardless of the Exchange's proposed exclusion for Destination-on-Open orders.

<sup>7</sup> See, e.g., Nasdaq Rule 4751(f)(13) which excludes market on open orders from the definition of "collared orders." See also Securities Exchange Act Release No. 60371 (July 23, 2009), 74 FR 38075 (July 30, 2009) (SR-Nasdaq-2009-070).

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

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

<sup>9</sup> 17 CFR 200.30-3(a)(12).