

book. The Exchange is not currently proposing to charge professional customers a fee for taking liquidity from ISE's order book.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Exchange Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed rule change will help equalize competition between market makers, proprietary traders and professional customers on the Exchange.

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

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act<sup>7</sup> and Rule 19b-4(f)(2)<sup>8</sup> thereunder. 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.<sup>9</sup>

## 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-ISE-2010-06 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-ISE-2010-06. 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>10</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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 am and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. 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-ISE-2010-06 and should be submitted on or before February 25, 2010.

<sup>10</sup> The text of the proposed rule change is available on ISE's Web site at <http://www.ise.com>, on the Commission's Web site at <http://www.sec.gov>, at ISE, and at the Commission's Public Reference Room.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

[FR Doc. 2010-2334 Filed 2-3-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61438; File No. SR-Phlx-2010-13]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating To Amending Rule 1092, Obvious Errors and Catastrophic Errors

January 28, 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 January 26, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 proposes to amend Exchange Rule 1092, Obvious Errors and Catastrophic Errors, to adopt the ability to review transactions on the Exchange's own motion.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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

<sup>11</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>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 19b-4(f)(2).

<sup>9</sup> The Commission considers the 60-day period within which the Commission may summarily abrogate the proposal pursuant to Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), to commence on January 27, 2010, the date ISE filed Amendment No. 2 to the proposal.

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 proposed rule change is to amend Rule 1092 pertaining to the nullification and adjustment of options transactions. Specifically, the Exchange proposes to adopt a provision which provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the President of the Exchange or his/her designee who is an officer (collectively "Exchange officer"), may, on his or her own motion or upon request, determine to review any transaction occurring on the Exchange that is believed to be erroneous.<sup>3</sup> A transaction reviewed pursuant to this provision may be nullified or adjusted only if it is determined by the Exchange officer that the transaction is an obvious error as provided in Rule 1092. A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction. The Exchange officer may be assisted by an Options Exchange Official in reviewing a transaction.

The Exchange officer shall act pursuant to this paragraph as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the rule provides that the Exchange officer shall act no later than 9:30 a.m. (ET) on the next trading day following the date of the transaction in question. A party affected by a determination to nullify or adjust a transaction pursuant to this provision may appeal such determination in accordance with Rule 1092; however, a determination by an Exchange officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. The Exchange believes it is appropriate to limit review on appeal to only those situations in which a

transaction is actually nullified or adjusted.

This provision is not intended to replace a party's obligation to request a review, within the required time periods under Rule 1092, of any transaction that it believes meets the criteria for an obvious error. And, if a transaction is reviewed and a determination has been rendered pursuant to Rule 1092, no additional relief may be granted under this new provision. Moreover, the Exchange does not anticipate exercising this new authority in every situation in which a party fails to make a timely request for review of this transaction pursuant to Rule 1092. The Exchange believes this provision should help to protect the integrity of its marketplace by vesting an Exchange officer with the authority to review a transaction that may be erroneous, in those situations where a party failed to make a timely request for a review.

The Exchange believes that the provision would also be useful in situations where some parties, but not all, to trades around the same time have requested a review. Under the rule, reviews are currently request-based. Under the proposal, in this situation, the Exchange would be able to invoke this provision to review a series of trades, whether or not all parties requested it.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>5</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. The Exchange notes that the Exchange officer can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the objective criteria for an obvious error under the Exchange rules.

*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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days after the date of the filing, 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>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may promptly implement the proposed rule change. The Exchange believes that a recent trading situation that resulted in divergent outcomes on some other options markets could have been handled in a more clear and orderly way if the new provision had been in place. The Commission notes that the proposed rule change is substantively identical to a previously approved proposal from CBOE<sup>8</sup> and thus presents no new regulatory issues. The Commission believes that, under the circumstances, it is appropriate and consistent with the protection of investors and the public interest to waive the 30-day operative delay. Therefore, the Commission hereby designates the proposed rule change operative upon filing.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

<sup>8</sup> See Exchange Act Release No. 60978 (November 10, 2009), 74 FR 59296 (November 17, 2009) (approving SR-CBOE-2009-68).

<sup>9</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>3</sup> In the event a party to a transaction requests that the Exchange review a transaction, the Exchange officer nonetheless would need to determine, on his or her own motion, whether to review the transaction.

<sup>4</sup> 15 U.S.C. 78f(b).

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

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 No. SR-Phlx-2010-13 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 No. SR-Phlx-2010-13. 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 inspection and copying 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 Phlx. 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-Phlx-2010-13 and should be submitted on or before February 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-2335 Filed 2-3-10; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61443; File No. SR-NASDAQ-2010-007]

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating To Elimination of Market Maker Requirement for Each Option Series**

January 29, 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 January 14, 2009, The NASDAQ Stock Market LLC ("NASDAQ") 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 NASDAQ. On January 26, 2009, the Exchange filed Amendment No. 1 to the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASDAQ is filing a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to delete from the NASDAQ rulebook Section 5, Minimum Participation Requirement for Opening Trading of Option Series,<sup>3</sup> of Chapter IV, Securities Traded on NOM.

The text of the proposed rule change is available from NASDAQ's website at <http://nasdaq.cchwallstreet.com>, at NASDAQ's principal office, 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

NASDAQ is proposing the elimination of a requirement that at least one Options Market Maker be registered for trading a particular series before it may be opened for trading on NOM.

An Options Market Maker is a Participant<sup>4</sup> registered with NASDAQ as a Market Maker.<sup>5</sup> Market Makers on NOM have certain obligations such as maintaining two-sided markets and participating in transactions that are "reasonably calculated to contribute to the maintenance of a fair and orderly market."<sup>6</sup> To register as a Market Maker, a Participant must file a written application with NASDAQ Regulation, which will consider an applicant's market making ability and other factors it deems appropriate in determining whether to approve an applicant's registration.<sup>7</sup> All Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder.<sup>8</sup> The NOM Rules place no limit on the number of qualifying entities that may become Market Makers.<sup>9</sup> The good standing of a Market Maker may be suspended, terminated, or withdrawn if the conditions for approval cease to be maintained or the Market Maker violates any of its agreements with NASDAQ or any provisions of the NOM Rules.<sup>10</sup> A Participant that has qualified as a Market Maker may register to make markets in individual series of options.<sup>11</sup>

Currently Section 5 of Chapter IV of the NOM rulebook provides in relevant part that after a particular class of options has been approved for listing on

<sup>4</sup> The term "Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange pursuant to Chapter II of the NOM Rules for purposes of participating in options trading on NOM as a "NASDAQ Options Order Entry Firm" or "NASDAQ Options Market Maker."

<sup>5</sup> See NOM Rules, Chapter VII, Section 2.

<sup>6</sup> See NOM Rules, Chapter VII, Section 5(a).

<sup>7</sup> See NOM Rules, Chapter VII, Section 2(a).

<sup>8</sup> See NOM Rules, Chapter VII, Section 2.

<sup>9</sup> See NOM Rules, Chapter VII, Rule 2(c).

<sup>10</sup> See NOM Rules, Chapter VII, Section 4(b).

<sup>11</sup> See NOM Rules, Chapter VII, Section 3(a).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> See Amendment No. 1.