

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 NYSEArca. 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-NYSEArca-2010-33 and should be submitted on or before June 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62019; File No. SR-NYSEArca-2010-16]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Amending Rule 6.37A and Rule 6.64

April 30, 2010.

On March 11, 2010, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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 to amend the bid-ask differentials for

market maker quotations outlined in NYSE Arca Rule 6.37A(b)(4) and amend NYSE Arca Rule 6.64(b) to establish bid-ask parameters in the OX System to be used during the opening auction process ("Auction") and to implement an associated conforming change to NYSE Arca Rule 6.87. The proposed rule change was published for comment in the **Federal Register** on March 30, 2010.<sup>3</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

Currently, NYSE Arca Rule 6.37A(b)(4) specifies the bid-ask differential requirements applicable to market maker quotations when electronically bidding and offering on the OX System during an Auction. The Exchange now proposes to replace the applicable bid-ask differentials for market maker quoting obligations during an Auction, with the \$5 quote differential that is in place at all other times.

NYSE Arca also proposes to establish parameters for the opening auction as described in Rule 6.64. Pursuant to this proposed rule change, the OX System will not conduct an Auction in a given series unless the composite NYSE Arca bid-ask is within an acceptable range. For the purposes of the Auction, an acceptable range will be the bid-ask parameters pursuant to Rule 6.37(b)(1)(A)-(E). These bid-ask differentials are identical to the existing legal width differentials for market maker Auction quotations which this filing proposes to delete. The Exchange represented that by establishing price protection parameters within the Auction process of the OX System, rather than just as a requirement for submitted quotes, customers and other market participants will be afforded a higher level of price protection than they presently have on NYSE Arca.

In addition, the Exchange proposes a minor change to Rule 6.87—Obvious Errors and Catastrophic Errors. Rule 6.87(b)(2)(B) presently contains a reference to bid-ask differentials pursuant to Rule 6.37A(b)(4)-(5). Due to the proposed changes contained in this filing related to the bid-ask differentials of Rule 6.37A(b)(4)-(5), the Exchange proposes to now reference the bid-ask differentials contained in Rule 6.37(b)(1)(A)-(E). The bid-ask differentials of each rule are identical, therefore the change will not alter in any way the methods used by the Exchange when making obvious error determinations.

After careful consideration, 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 exchange<sup>4</sup> and, in particular, the requirements of Section 6 of the Act.<sup>5</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of a national securities exchange be 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, and, in general, to protect investors and the public interest.

The Commission notes that the requirements provided under the Exchange's current quote parameters applicable during the Auction are not being eliminated but instead are being transferred and integrated into the Auction process itself. Pursuant to the proposed rule change, the OX System will not conduct an Auction in a given series unless the BBO is within an acceptable range, delineated by the parameters in NYSE Arca Rule 6.37(b)(1)(A)-(E), the identical width differentials for market maker Auction quotations that currently exist. The Commission believes that establishing parameters in the Auction process itself instead should enhance efficiency in pricing for customers and other market participants. Lastly, the proposed conforming changes to NYSE Arca Rule 6.87 are not substantive and thus do not raise any regulatory concerns. For these reasons, the Commission finds that the proposed changes are consistent with the Act.

*Therefore, it is ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NYSEArca-2010-16) is hereby approved.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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> See Securities Exchange Act Release No. 61759 (March 23, 2010), 75 FR 15758 ("Notice").

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-10962 Filed 5-7-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62028; File No. SR-Phlx-2010-65]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. To Add Seventy-Five Options Classes to the Penny Pilot Program

May 4, 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 April 27, 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, 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 designate seventy-five options classes to be added to the Penny Pilot Program (“Penny Pilot” or “Pilot”) on May 3, 2010.<sup>3</sup> The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.<sup>4</sup>

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 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 this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective May 3, 2010.

In the Exchange’s immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,<sup>5</sup> the Exchange proposed expanding the Pilot four times on a quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume (“ADV”) for the six months prior to selection, closing under \$200 per share on the Expiration Friday prior to expansion; however, the month immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on May 3, 2010, based on ADVs for the six months ending March 31, 2010.

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
153	XLV	Health Care Select Sector SPDR Fund	247	JCP	JC Penney Co Inc.
155	CIEN	Ciena Corp	248	ACL	Alcon Inc.
157	AMLN	Amylin Pharmaceuticals Inc	249	STP	Suntech Power Holdings Co Ltd.
158	CTIC	Cell Therapeutics Inc	250	TLB	Talbots Inc.
159	MDT	Medtronic Inc	251	SYMC	Symantec Corp.
162	TIVO	TiVo Inc	253	AMED	Amedisys Inc.
163	MNKD	MannKind Corp	255	TM	Toyota Motor Corp.
171	MDVN	Medivation Inc	257	HK	Petrohawk Energy Corp.
176	BRKB	Berkshire Hathaway Inc	258	ENER	Energy Conversion Devices Inc.
178	APOL	Apollo Group Inc	259	STT	State Street Corp.
181	BSX	Boston Scientific Corp	260	BHP	BHP Billiton Ltd.
185	XLY	Consumer Discretionary Sel. Sec. SPDR Fund.	261	NFLX	NetFlix Inc.
188	CLF	Cliffs Natural Resources Inc	262	LDK	LDK Solar Co Ltd.
190	ZION	Zions Bancorporation	263	SPG	Simon Property Group Inc.
194	IOC	InterOil Corp	264	TIF	Tiffany & Co.
197	ITMN	InterMune Inc	265	BUCY	Bucyrus International Inc.
204	GME	GameStop Corp	266	WAG	Walgreen Co.
209	XLK	Technology Select Sector SPDR Fund	268	IP	International Paper Co.
210	AKS	AK Steel Holding Corp	271	XME	SPDR S&P Metals & Mining ETF.
212	GRMN	Garmin Ltd	272	KGC	Kinross Gold Corp.
213	MRVL	Marvell Technology Group Ltd	273	EP	El Paso Corp.
215	XLP	Consumer Staples Select Sector SPDR Fund.	274	SEED	Origin Agritech Ltd.

<sup>8</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> The Penny Pilot was established in January 2007 and in October 2009 was expanded and extended through December 31, 2010. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-

2006-74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR-Phlx-2009-91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); and 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR-Phlx-2009-94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 61454 (February 1, 2010), 75

FR 6233 (February 8, 2010) (SR-Phlx-2010-12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

<sup>4</sup> See Rule 1034 regarding the Penny Pilot.

<sup>5</sup> See Securities Exchange Act Release No. 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR-Phlx-2009-91) (notice of filing and immediate effectiveness).