

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61546; File No. 4-546]

### Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Order Protection and Locked/Crossed Market Plan To Add the BATS Exchange, Inc. as a Participant

February 19, 2010.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on February 4, 2010, BATS Exchange, Inc. ("BATS" or "Exchange") filed with the Securities and Exchange Commission ("Commission") an amendment to the Options Order Protection and Locked/Crossed Market Plan ("Plan").<sup>3</sup> The amendment proposes to add BATS as a Participant<sup>4</sup> to the Plan. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Description and Purpose of the Amendment

The current Participants in the Linkage Plan are CBOE, ISE, Nasdaq, BOX, Phlx, NYSE Amex, and NYSE Arca. The proposed amendment to the Plan would add BATS as a Participant in the Plan. BATS has submitted a signed copy of the Plan to the Commission in accordance with the procedures set forth in the Plan regarding new Participants. Section 3(c) of the Plan provides for the entry of new Participants to the Plan. Specifically an Eligible Exchange<sup>5</sup> may become a

Participant in the Plan by: (i) Executing a copy of the Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Plan; (iii) effecting an amendment to the Plan, as specified in Section 4(b) of the Plan.

Section 4(b) of the Plan puts forth the process by which an Eligible Exchange may effect an amendment to the Plan. Specifically, an Eligible Exchange must: (a) execute a copy of the Plan with the only change being the addition of the new participant's name in Section 3(a) of the Plan; and (b) submit the executed Plan to the Commission. The Plan then provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

#### II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing proposed Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) of the Act<sup>6</sup> because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (b)(1) of Rule 608,<sup>7</sup> if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment 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 4-546 on the subject line.

Trade-Through and Locked and Crossed Market protection. BATS has represented that it has met the requirements for being considered an Eligible Exchange. See letter from Eric Swanson, SVP and General Counsel, BATS, to David Liu, Assistant Director, Division of Trading and Markets, Commission, dated February 12, 2010.

<sup>6</sup> 17 CFR 242.608(b)(3)(iii).

<sup>7</sup> 17 CFR 242.608(b)(1).

##### 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 4-546. 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 BATS. 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 4-546 and should be submitted on or before March 18, 2010.

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

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

[FR Doc. 2010-3823 Filed 2-24-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[File Nos. SR-Phlx-2009-104, SR-Phlx-2009-116, & SR-Phlx-2010-14; [Release No. 61547]

### NASDAQ OMX PHLX, Inc.; Order of Summary Abrogation

February 19, 2010.

Notice is hereby given that the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(3)(C) of the Securities Exchange

<sup>8</sup> 17 CFR 200.30-3(a)(29).

<sup>1</sup> 15 U.S.C. 78k-1(a)(3).

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> On July 30, 2009, the Commission approved a national market system plan relating to Options Order Protection and Locked/Crossed Markets proposed by Chicago Board Options Exchange, Incorporated ("CBOE"), International Securities Exchange, LLC ("ISE"), The NASDAQ Stock Market LLC ("Nasdaq"), NASDAQ OMX BX, Inc. ("BOX"), NASDAQ OMX PHLX, Inc. ("Phlx"), NYSE Amex, LLC ("NYSE Amex"), and NYSE Arca, Inc. ("NYSE Arca"). See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

<sup>4</sup> The term "Participant" is defined as an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

<sup>5</sup> Section 2(6) of the Plan defines an "Eligible Exchange" as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that: (a) is a "Participant Exchange" in the Options Clearing Corporation ("OCC") (as defined in OCC By-laws, Section VII); (b) is a party to the Options Price Reporting Authority ("OPRA") Plan (as defined in the OPRA Plan, Section 1); and (c) if the national securities exchange chooses not to become party to this Plan, is a participant in another plan approved by the Commission providing for comparable

Act of 1934 ("Act"),<sup>1</sup> is summarily abrogating three proposed rule changes of NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange").

On December 22, 2009, on December 31, 2009, and on January 26, 2010, Phlx filed proposed rule changes to amend its fee schedule. In SR-Phlx-2009-104, Phlx proposed to amend its fee schedule, to among other things, assess a transaction fee of \$0.05 per contract on Phlx specialists, Streaming Quote Traders ("SQTs") and Remote Streaming Quote Traders ("RSQTs")<sup>2</sup> for equity option orders directed to them by an order flow provider and executed electronically. A Phlx specialist, SQT, or RSQT would be assessed a transaction fee of \$0.21 per contract when it trades with an order not directed to it. In SR-Phlx-2009-116, Phlx proposed to amend its fee schedule to adopt, for a two-month pilot period expiring March 2, 2010, a per contract transaction fee on market participants who remove liquidity from the Exchange in options on Standard & Poor's Depository Receipts/SPDRs ("SPY") and a per contract rebate or transaction fee for market participants who add liquidity in SPY options.<sup>3</sup> The amount of such transaction fees and rebates vary depending on the type of market participant. In SR-Phlx-2010-14, Phlx proposed to amend its fee schedule to apply, for a pilot period expiring March 2, 2010, the same per contract transaction fees and rebates Phlx adopted in SR-Phlx-2009-116 for transactions in options on SPY to transactions in options overlying the PowerShares QQQ Trust ("QQQQ")®, Ishares Russell 2000 ("IWM"), and Citigroup Inc. ("C").

The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>4</sup> Pursuant to Section 19(b)(3)(C) of the Act,<sup>5</sup> at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>6</sup> the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of

Section 19(b)(1) of the Act<sup>7</sup> and reviewed in accordance with Section 19(b)(2) of the Act,<sup>8</sup> 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.

The Commission is concerned about whether the proposals are consistent with the statutory requirements applicable to a national securities exchange under the Act, including, among other provisions, Section 6(b)(4) of the Act,<sup>9</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities; Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and Section 6(b)(8) of the Act,<sup>11</sup> which requires that the rules of a national securities exchange do not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Accordingly, the Commission believes that the procedures provided by Section 19(b)(2) of the Act<sup>12</sup> will provide a more appropriate mechanism for determining whether the proposed rule changes are consistent with the Act. Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule changes.

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>13</sup> that File Nos. SR-Phlx-2009-104, SR-Phlx-2009-116, as modified by Amendment No. 1, and SR-Phlx-2010-14, be and hereby are, summarily abrogated. If Phlx chooses to re-file the proposed rule changes, it must do so pursuant to Sections 19(b)(1)<sup>14</sup> and 19(b)(2) of the Act.<sup>15</sup>

By the Commission.

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2010-3791 Filed 2-24-10; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(8).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

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

<sup>14</sup> 15 U.S.C. 78s(b)(1).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61536; File No. SR-BX-2010-014]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Order Routing on the Boston Options Exchange Facility

February 18, 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 February 8, 2010, NASDAQ OMX BX, Inc. (the "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 self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

NASDAQ OMX BX, Inc. (the "Exchange") proposes to amend Chapter XII, Section 5 (Order Routing to Away Exchanges) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to make the Order Routing Pilot Permanent. The text of the proposed rule change is available from the principal office of the Exchange, on the Commission's Web site at <http://www.sec.gov> and also on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXB/BX/Filings/>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and the 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>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).

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

<sup>1</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>2</sup> Streaming Quote Traders, or "SQTs," and Remote Streaming Quote Traders, or "RSQTs," are Phlx market makers who may generate and submit option quotations electronically on the Phlx. RSQTs may only submit quotations from off the floor.

<sup>3</sup> Phlx filed Amendment No. 1 to SR-Phlx-2009-116 on January 5, 2010 to correct a typographical error in the purpose section to make it consistent with the fee schedule provided in Exhibit 5 thereto.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> 15 U.S.C. 78s(b)(1).