

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 ("QQQ")®, 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.

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<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/NASDAQOMXBX/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).

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 remove Supplementary Material .03 to Chapter XII, Section 5, to make the rules governing the outbound order routing process permanent. On October 16, 2009 the Commission approved<sup>5</sup> the Exchange's proposal to amend Chapter XII of the BOX Rules to provide for the use by BOX of certain non-affiliated third party routing broker/dealers ("Routing Broker(s)") to route options orders to one or more Away Exchange(s) when such Away Exchange(s) display the Best Bid or Best Offer in accordance with the Options Order Protection and Locked/Crossed Market Plan ("Decentralized Plan").<sup>6</sup>

The Exchange requested that the proposal be approved on a pilot basis for three (3) months starting from the date of the approval of submission of filing. The Commission approved the Exchange's proposal on an accelerated basis<sup>7</sup> for a pilot period to expire on January 15, 2010.<sup>8</sup> On January 15, 2010, the effective date of the Order Routing Pilot was extended until March 15, 2010.<sup>9</sup> The Exchange believes permanent approval is appropriate. There have been no comments, or complaints pertaining to the Order

<sup>5</sup> See Securities Exchange Act Release No. 60832 (October 16, 2009), 74 FR 54607 (October 22, 2009) (SR-BX-2009-066)(Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Chapter XII of the BOX Rules) ("Approval Order"). See also Chapter XII, Section 5 of the BOX Rules. Chapter XII, Section 5 is consistent with rules approved for other national securities exchanges. See e.g. Approval Order at 54609, note 24. Terms not otherwise defined herein shall have the meaning proscribed in the BOX Rules.

<sup>6</sup> See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Market Plan).

<sup>7</sup> The Exchange requested accelerated approval to allow BOX to establish and implement mechanisms to remain fully compliant with the Decentralized Plan and BOX Rules and to no longer rely upon a Commission-granted exemption from Rule 608(c) of Regulations NMS. The pilot period also allowed interested parties an opportunity to comment on the proposal before it was permanently approved.

<sup>8</sup> See *Supra* note 5.

<sup>9</sup> See Securities Exchange Act Release No. 61399 (January 22, 2010), 75 FR 4603 (January 28, 2010) (SR-BX-2010-007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Order Routing Pilot on the Boston Options Exchange Facility).

Routing Pilot. The routing process is operating as intended. Moreover, as previously noted, Chapter XII, Section 5 is consistent with rules approved for other national securities exchanges.<sup>10</sup>

**2. Statutory Basis**

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>11</sup> in general, and Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that permanent approval of the Order Routing Pilot will result in an ongoing benefit to investors by affording BOX Options Participants the choice, on a voluntary basis, to have their orders routed to one or more Away Exchange(s) when such Away Exchange(s) display the Best Bid or Best Offer, in accordance with the Decentralized Plan.

*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*

The Exchange has neither solicited nor received comments on the proposed rule change.

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

This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> This proposed rule change does not significantly affect the protection of investors or the public

<sup>10</sup> See *Supra* note 5.

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, as required under Rule 19b-4(f)(6)(iii), the Exchange has submitted to the Commission written notice of its intent to file the proposed rule change, along with a brief description and the 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.

interest, does not impose any significant burden on competition, and, by its terms, does not 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. The Exchange believes that this proposed rule change, which is essential for competitive purposes and to promote a free and open market for the benefit of investors, does not raise any new, unique or substantive issues from those raised in the Exchange's initial proposal to implement the Order Routing Pilot or the recent extension to the Pilot,<sup>15</sup> and the rules are consistent with those of other exchanges.<sup>16</sup> The Exchange believes permanent approval is appropriate. There have been no comments, or complaints pertaining to the Order Routing Pilot. The routing process is operating as intended.

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, 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-2010-014 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-2010-014. 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

<sup>15</sup> See *Supra* note 5 and note 9.

<sup>16</sup> See *Supra* note 5.

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 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 Number SR-BX-2010-014 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>17</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61539; File No. SR-Phlx-2010-20]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change To Expand the Number of Components in the PHLX Semiconductor Sector<sup>SM</sup> Known as SOX<sup>SM</sup>, on Which Options Are Listed and Traded

February 18, 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 February 2, 2010, NASDAQ OMX PHLX, Inc. ("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 number of components in the PHLX Semiconductor Sector<sup>SM</sup> known as SOX<sup>SM</sup>, on which options are listed and traded.<sup>3</sup> No other changes are made to the index or options on the index.

A copy of the filing 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 the proposal is to expand the number of components in the PHLX Semiconductor Sector<sup>SM</sup> known as SOX<sup>SM</sup> ("SOX" or the "Index"), on which options are listed and traded.

SOX options subsequent to this proposal will be identical to SOX options that are currently listed and trading except for the number of components in the underlying Index, and will trade pursuant to the same (unchanged) contract specifications.<sup>4</sup> The singular post-proposal difference in SOX options is that they will overlie an Index with thirty components where the current Index has twenty-one components.

<sup>3</sup> PHLX Semiconductor Sector<sup>SM</sup> may also be known as PHLX Semiconductor Index or PHLX Semiconductor Sector<sup>SM</sup> Index.

<sup>4</sup> The contract specifications for SOX options are available at <http://www.nasdaqtrader.com/micro.aspx?id=phlxsectorscontractspecs#SOX>.

#### Background

The Exchange currently has initial listing and maintenance listing standards for options on indexes in Rule 1009A that are designed to allow the Exchange to list options on narrow-based indexes<sup>5</sup> and broad-based indexes<sup>6</sup> pursuant to generic listing standards (the "Index Listing Standards").<sup>7</sup> SOX is a narrow-based index and SOX options overlying the Index are listed and traded pursuant to Rule 1009A(b). SOX options were originally listed and began trading in 1994 pursuant to Exchange approval.<sup>8</sup>

SOX is a modified market capitalization-weighted index composed of twenty-one companies primarily involved in the design, distribution, manufacture, and sale of semiconductors, and is one of several narrow-based sector indexes on which options are listed and traded on the Exchange.<sup>9</sup> SOX provides exposure to the fast-growing (yet extremely volatile) semiconductor industry. When investors want information and investment opportunities specific to semiconductors, they look most often to the SOX index.<sup>10</sup> Indeed, the popularity of SOX is reflected in the trading volumes of options on the Index.<sup>11</sup> It

<sup>5</sup> A narrow-based index or industry index is defined as: An index designed to be representative of a particular industry or a group of related industries. The term "narrow-based index" includes indices the constituents of which are all headquartered within a single country. See Rule 1000A(b)(12).

<sup>6</sup> A broad-based index or market index is defined as: An index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries. See Rule 1000A(b)(11).

<sup>7</sup> Rule 1009A establishes generic listing standards for options on narrow-based and broad-based indexes pursuant to Rule 19b-4(e) of the Act. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998). The listing standards in Rule 1009A are similar to those of other options exchanges such as, for example, Chicago Board Options Exchange, Incorporated; International Stock Exchange LLC; and The NASDAQ Stock Market LLC.

<sup>8</sup> See Securities Exchange Act Release No. 34546 (August 18, 1994), 59 FR 43881 (August 25, 1994) (SR-Phlx-94-02) (order approving proposal to list and trade the SOX index).

<sup>9</sup> Other sector indexes on which options are listed and traded on the Exchange include: KBW Bank Index<sup>SM</sup> (BKX<sup>SM</sup>); PHLX Gold/Silver Sector<sup>SM</sup> (XAU<sup>SM</sup>); PHLX Housing Sector<sup>SM</sup> (HGX<sup>SM</sup>); PHLX Oil Service Sector<sup>SM</sup> (OSX<sup>SM</sup>); PHLX Utility Sector<sup>SM</sup> (UTY<sup>SM</sup>); NASDAQ OMX China Index<sup>SM</sup> (CNZ<sup>SM</sup>); SIG Energy MLP Index<sup>SM</sup> (SVO<sup>TM</sup>); and SIG Oil Exploration & Production Index<sup>TM</sup> (EPX<sup>SM</sup>).

<sup>10</sup> Other currently available investment products that evaluate the semiconductor market, albeit differently from SOX, include Semiconductor HOLDERS (SMH) and iShares S&P North American Technology-Semiconductors Index Fund (IGW).

<sup>11</sup> During 2009, SOX has traded an average of 29,127 contracts per month and has traded as much as 23,339 contracts in a day (June 16, 2009). As of December 31, 2009, there were 11,976 contracts of open interest in SOX.

<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.