

offered by the financial institution.<sup>45</sup> FINRA also noted that, where necessary, members may use the short form legend as provided in proposed FINRA Rule 3160(a)(4)(B) on business cards.

#### IV. Discussion and Finding

After careful review, 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 association.<sup>46</sup> The Commission believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>47</sup> In particular, the proposed rule change, as amended, will clarify and streamline the FINRA requirements for broker-dealer networking arrangements and better align FINRA requirements with GLB and Regulation R. This, in turn, should promote member firm's compliance efforts.

#### V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>48</sup> for approving the proposed rule change, as amended by Amendment No. 1 thereto, prior to the 30th day after the date of publication in the **Federal Register**. The changes proposed in Amendment No. 1 are minor, and do not raise novel regulatory concerns. Moreover, accelerated approval of this proposal should benefit FINRA member firms and investors by more closing aligning, without undue delay, FINRA requirements with both GLB and Regulation R.

#### VI. 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-FINRA-2009-047 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-FINRA-2009-047. 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 FINRA. 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-FINRA-2009-047 and should be submitted on or before April 12, 2010.

#### VII. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>49</sup> that the proposed rule change (SR-FINRA-2009-047), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>50</sup>

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

[FR Doc. 2010-6214 Filed 3-19-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61710; File No. SR-ISE-2010-02]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change To Amend Exchange Rules Related to Cut-Off Time for Contrary Exercise Advice Submissions

March 15, 2010.

#### I. Introduction

On January 11, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change relating to the cut-off time for submitting contrary exercise advices to the Exchange. The proposed rule change was published for comment in the **Federal Register** on February 8, 2010.<sup>3</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange has proposed to amend Rule 1100 to extend the cut-off time to submit contrary exercise advices ("CEAs")<sup>4</sup> to the Exchange to 7:30 p.m. The Exchange also has proposed to make certain non-substantive changes to reorganize the text of Rule 1100 to more clearly present the existing requirements and to eliminate duplicative language.

Pursuant to Rule 805 of the Options Clearing Corporation ("OCC"), certain options that are in-the-money by a specified amount will be automatically exercised. This procedure is known as "Exercise-by-Exception" or "Ex-by-Ex." Under the Ex-by-Ex process, options holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need take no

<sup>45</sup> See FINRA Interpretive Letter to Tamara K. Salmon, Investment Company Institute (September 6, 2007).

<sup>46</sup> In approving the proposed rule change, the Commission has considered the rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>47</sup> See 15 U.S.C. 78o-3(b)(6).

<sup>48</sup> 15 U.S.C. 78o-3(b)(5).

<sup>49</sup> 15 U.S.C. 78s(b)(2).

<sup>50</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. 61458 (February 1, 2010), 75 FR 6237.

<sup>4</sup> Contrary exercise advices are also referred to as Expiring Exercise Declarations in the OCC rules.

further action. However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under parameters different than the Ex-by-Ex procedures must instruct OCC of their "contrary intention." Pursuant to ISE Rule 1100 option holders must also file a CEA with the Exchange notifying the Exchange of the option holder's contrary intention. ISE Rule 1100 is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder's timely decision to exercise or not exercise expiring equity options. Members satisfy this evidentiary requirement by submitting a CEA directly to the Exchange, or by electronically submitting the CEA to the Exchange through OCC's electronic communications system. The submission of the CEA allows the Exchange to satisfy its regulatory obligation to verify that the decision to make a contrary exercise was made timely and in accordance with ISE Rule 1100.

ISE Rule 1100 currently provides option holders until 5:30 p.m. on the day prior to expiration to make a final decision to exercise or not exercise an option that would otherwise either expire or be automatically exercised. An Exchange member may not accept CEA instructions from its customer or non-customer accounts after 5:30 p.m. The current rule, however, gives Exchange members up to 6:30 p.m. to actually submit these CEA instructions to the Exchange where such member uses an electronic submission process. Pursuant to the rule, if members do not employ an electronic submission procedure, they are required to submit CEAs for non-customer accounts by the 5:30 p.m. deadline. This 5:30 p.m. deadline for manual submission of CEAs for non-customer accounts is earlier than the electronic submission deadline to prevent firms from improperly extending the 5:30 p.m. deadline to exercise or not exercise an option.<sup>5</sup> In either case, whether or not submitting the CEA electronically or manually, the final decision to issue a CEA instruction must be made at 5:30 p.m.

This current process of submitting CEAs was approved by the Commission in 2003.<sup>6</sup> The Exchange represents that

in 2003, the Ex-by-Ex thresholds were \$0.75 for customers and \$0.25 for broker-dealer accounts. In 2009, the Ex-by-Ex threshold had narrowed significantly to \$0.01 for all accounts. The Exchange notes that this decrease in the Ex-by-Ex threshold, coupled with the dramatic increase in option trading volume from 2003 to 2009, has led to a larger number of CEA instructions and has increased the burden on firms to process and submit instructions on a timely basis.

As a result of these concerns, the Exchange has proposed to extend the current 6:30 p.m. deadline for electronic submission of CEA instructions to the Exchange by one additional hour, to 7:30 p.m. In its filing, the Exchange stated that the proposed rule change is necessary to address concerns expressed by members that, given the decrease in the Ex-by-Ex threshold and the increase in trading, the existing deadline for submitting CEAs to the Exchange is problematic for timely back-office processing. According to the Exchange, the proposed additional one hour will address this concern by further enabling firms to more timely manage, process, and submit the instructions to the Exchange.

The Exchange also proposes to allow a member to submit a CEA to the Exchange by 7:30 p.m. on a day when there is a modified close of trading. The current rule allows a member to submit an electronic CEA to the Exchange up to 2 hours and 30 minutes after the close of trading on a day when there is a modified close of trading. The proposed rule change will make the submission deadline for electronic CEAs on both regular and modified close expiration days uniform and, according to the Exchange, this should help to reduce errors.

The ISE noted in its filing that the proposed rule change does not change the substantive requirement that option holders make a final decision by 5:30 p.m. whether to exercise or not exercise an option that would otherwise either expire or be automatically exercised. The Exchange represented that it will continue to enforce the 5:30 p.m. decision making requirement, while also allowing additional time to process and submit the CEA instructions. As noted in the filing, the Exchange believes that the proposed rule change will benefit the marketplace, particularly back-office processing. The Exchange also represents that the

additional processing time and Exchange submission deadline will not conflict with OCC submission rules or cause any OCC processing issues.

### III. Discussion and Commission's Findings

After careful review of the proposed rule change, 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>7</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that ISE rules must 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 Commission believes that the proposed rule change is appropriate because, by extending the deadline to submit electronic CEAs from 6:30 p.m. to 7:30 p.m., the proposal should provide Exchange members with sufficient additional time to process the CEAs submitted by options holders which, according to the Exchange, have steadily increased with the increased options trading volume of recent years and the narrowing of the Ex-by-Ex threshold. Thus, consistent with Section 6(b)(5) of the Act,<sup>9</sup> the proposal will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, by addressing the back-office processing problems noted by the Exchange that exist under the current 6:30 p.m. deadline for electronic submission of CEAs.

In approving the proposal, the Commission emphasizes that the Exchange is not changing the time by which options holders must notify Exchange members of the contrary intention, which will remain at 5:30 p.m., and will continue to be enforced by the Exchange as it is currently.

<sup>7</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

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

<sup>9</sup> *Id.*

<sup>5</sup> According to the Exchange, this requirement is based on the difficulty of monitoring a manual procedure that has different times for deciding whether or not to exercise the option and for the submission of the CEA.

<sup>6</sup> See Securities Exchange Act Release Nos. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR-Amex-2001-92); 48505 (September 17, 2003), 68

FR 55680 (September 26, 2003) (SR-ISE-2003-20); 48640 (October 16, 2003), 68 FR 60757 (October 23, 2003) (SR-PCX-2003-47); and 48639 (October 16, 2003), 68 FR 60764 (October 23, 2003) (SR-Phlx-2003-65).

Because the deadline for options holders to make a decision to exercise or not exercise an expiring option that would otherwise either expire or be automatically exercised is not changing, the Commission also believes that proposal will not compromise one key goal of the rule, which is to prevent individuals from taking improper advantage of late-breaking news.

The Commission also notes that the time for submission of CEAs for non-customer accounts on a manual basis will remain at 5:30 p.m. The Commission continues to believe that this time difference for manual submissions is warranted given the potential difficulties in monitoring compliance with a manual procedure, as noted by the Exchange.<sup>10</sup>

The Commission also believes that the Exchange's proposal to change the deadline for submitting CEAs to the Exchange to 7:30 p.m. on days when there is a modified close of trading is appropriate. A uniform deadline for submitting CEAs, irrespective of the closing time, will eliminate any possibility for error when determining what the submission deadline is on a modified close expiration day. As described above, current rules set the deadline on modified close expiration day at 2 hours and 30 minutes after the close. Since the modified close time does vary on these modified days, the CEA times could vary as well, which may have proved confusing to Exchange members. Thus, the change to a 7:30 p.m. cut-off for all electronic submission of CEAs, irrespective of the market's closing time, should help to avoid confusion and reduce the potential for errors. Finally, the Commission also finds that the Exchange's non-substantive changes to the text of Rule 1100 to more clearly present the existing requirements and to eliminate duplicative language is appropriate.

Based on the above, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>11</sup> in that it will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-ISE-2010-002) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61711; File No. SR-Phlx-2010-37]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Controller Space Fee

March 15, 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 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, 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 proposes to offer the Controller Space storage service at no charge. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, on the Commission's Web site at <http://www.sec.gov>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

<sup>13</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.

#### 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 proposed rule change is to offer the Controller Space service at no charge. Currently, the Exchange assesses a Controller Space storage fee of \$250.00 per month on Members, Member Organizations, participants and participant organizations on the options and foreign currency trading floors. The Controller Space storage refers to space near the Exchange's trading floor that stores Member equipment that is used by Members, Member Organizations, participants and participant organizations to support their floor operations.

Previously, NASDAQ OMX PHLX's match infrastructure was located at 1900 Market Street in Philadelphia, PA, the location of the NASDAQ OMX PHLX trading floor. The NASDAQ OMX PHLX match infrastructure was relocated to the New York City area. As a result of this relocation, NASDAQ OMX PHLX now only offers a storage facility at the 1900 Market Street location for member equipment. The Controller Space storage services being offered to Members by NASDAQ OMX PHLX have been subsumed by co-location services which are currently being offered by NASDAQ Technology Services LLC ("NTS") pursuant to agreements with the owner/operator of its data center where both the Exchange's quoting and trading facilities and co-located customer equipment are housed.<sup>3</sup> A recent proposed rule change proposes to codify fees for these existing co-location

<sup>3</sup> Currently, the Exchange provides its current co-location services through data centers located in the New York City and Mid-Atlantic areas.

<sup>10</sup> See footnote 5 and accompanying text.

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