

Specifically, the FIF Letter raises concerns regarding the November 10, 2010 implementation date for the proposed rule changes given other regulatory initiatives with similar implementation timeframes. In response to these concerns, FINRA points out that the proposed amendments are to facilitate its surveillance efforts concerning firms' compliance with amendments to Regulation SHO, which becomes effective November 10, 2010. FINRA believes that it is necessary that the implementation date of the proposed amendments coincide with the implementation date of the amendments to Regulation SHO.

The FIF Letter also raises concerns with the amount of time allowed for testing prior to implementation of the proposed amendments. In response, FINRA has represented that it has moved up the testing timetable to allow firms to begin testing on October 11th, rather than on October 20th as initially proposed.

The FIF Letter expresses concerns regarding the complexity of the proposed changes and cites the creation of certain route reports for post trade agency allocation as an example of such complexity. FINRA explains that the requirement to provide the price of a routed order on route reports does not change any of the reporting requirements for orders handled on an agency average price or post trade allocation basis. FINRA also states that it has published a new FAQ on its OATS Web site on this issue.

Lastly, the FIF Letter indicates that there may be confusion regarding the proposed November 10th implementation date of the proposed rule change and the November 8th date when the changes will be available in the OATS production environment.<sup>18</sup> FINRA clarifies that although the OATS field format changes will be placed in the production environment on November 8th, they will not be required to be populated until the proposed November 10th implementation date of the proposed rule change. FINRA also states that it has published a new FAQ on its OATS Web site to this effect.

The Wiesenberg Letter raises an issue, not with respect to one of the proposed amendments in the proposed rule change, rather with respect to one of the

proposed requirements in FINRA's OATS Reporting Technical Specifications<sup>19</sup> related to the proposed rule change, the addition of the Routed Order Type Indicator. The commenter believes that the proposed requirement "can be determined from [other OATS] information supplied" by the reporting member, "serve[s] no purpose" and "provides no useful additional information."<sup>20</sup> The commenter also generally questions whether such requirement is consistent with the Act and urges FINRA to reconsider the proposed requirement in FINRA's OATS Reporting Technical Specifications and re-file the proposed rule change<sup>21</sup> or, in the alternative, that the Commission reject the proposal. FINRA disagrees with the commenter and responds that the Routed Order Type Indicator "helps FINRA to validate whether a price must be included on a Route Report, particularly since the order type of a route may not be the same as the order type of the parent order received from the firm."<sup>22</sup>

#### IV. Discussion and Commission's Findings

After careful review of the proposed rule change, the comment letters received and the FINRA Response Letter, the Commission believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.<sup>23</sup> In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, in that it is 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.

With regard to the comments received, the Commission believes that FINRA has adequately responded to the commenters' concerns. Additionally, the Commission agrees with FINRA and believes that the proposed rule change

<sup>19</sup> FINRA's OATS Reporting Technical Specifications outline detailed reporting requirements concerning the OATS rules, including, among other things, providing firms with record and file formats and transmission requirements.

<sup>20</sup> See Wiesenberg Letter.

<sup>21</sup> The commenter's suggestion that FINRA re-file the proposed rule change would not address the addition of the Routed Order Type Indicator, as such requirement is contained in FINRA's OATS Reporting Technical Specifications, not the proposed rule change.

<sup>22</sup> See FINRA Response Letter.

<sup>23</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

to amend FINRA's trade reporting and OATS rules, including changes relating to recent amendments to SEC Regulation SHO, will enhance FINRA's surveillance for member compliance, including with SEC Regulation SHO.

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act.

#### V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (File No. SR-FINRA-2010-043) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63034; File No. SR-Phlx-2010-124]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Send Certain Information Over the Specialized Quote Feed

October 4, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on September 22, 2010, NASDAQ OMX PHLX LLC ("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 is filing with the Commission a proposal to establish a new non-fee liable administrative data feed. The text of the proposed rule change is available at the Exchange, the Commission's Web site at <http://>

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>18</sup> The FIF Letter also raises concerns regarding the ISO Indicator on route reports. FINRA notes that firms are already required to indicate on route reports whether an order is routed as an Intermarket Sweep Order. FINRA also points out that the ISO indicator is not one of the proposed amendments in the proposed rule change and therefore should not affect the Commission's consideration of the proposal.

[www.sec.gov](http://www.sec.gov), the Commission's Public Reference Room, and <http://www.nasdaq.com>.

## 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

SQF is an interface that allows specialists, streaming quote traders and remote streaming quote traders to connect and send quotes into Phlx XL.<sup>4</sup> SQF 5.0, the current version, today is the sole interface used by market makers for sending quotes to the Exchange.<sup>5</sup> Presently, quoting participants (users of SQF 5.0) do not receive execution reports that happen against their quote or other information that is relevant to their quoting application over SQF 5.0. The Exchange is proposing to provide additional information than what is currently provided by SQF 5.0 to quoting participants over SQF and that the Exchange believes is relevant to their quoting application; the new version will be called SQF 6.0.<sup>6</sup>

SQF 6.0 will increase efficiency for interested participants by allowing them to access in a single feed available to all participants, rather than through

accessing multiple feeds, information such as execution reports and other relevant data. In order for participants to access all of this information currently or for any that do not use SQF 6.0 in the future, they must rely on a risk management feed and the TOPO/TOPO Plus Orders Exchange interfaces. Non quoting firms that would like to receive the relevant information available over SQF will be allowed to connect to the SQF interface, but not send quotes.

The set of data to be offered over this data feed is administrative in nature or is used to attract liquidity to the Exchange in response to an auction. The Exchange believes the data included in this feed is necessary for participants who have written systems to interface with the Exchange in the case of administrative messages or information regarding auctions and used to attract liquidity.

Participants who have written interfaces to the Phlx system would use the administrative data to determine the current state of the trading system. For example, this data would show which symbols are trading on the Phlx, the current state of an options symbol (i.e., open for trading, trading, halted or closed from trading), as well as similar information regarding complex order strategies. This administrative data will also include the definition of complex order strategies. All of this information is vital to a participant's quoting application and by including this information on the interface used for quoting, participants can streamline their respective system architectures.

Phlx holds auctions throughout the day to open trading in an option and following a trading halt in the option,<sup>7</sup> following a market exhaust event<sup>8</sup> or quote exhaust event,<sup>9</sup> and for complex orders<sup>10</sup> and will in the future hold PIXL Price Improvement Auctions.<sup>11</sup> During these auction events, the Exchange advertises liquidity it has available for immediate execution, but will only have available until the conclusion of the auction. These auction notifications are available on other data feeds and are made available to all exchange participants. They are being added to SQF 6.0 for convenience purposes so that market participants utilizing SQF 6.0 have an additional means to access the notifications directly impacting their quoting behavior and are not required to take

other feeds simply to have access to notifications.

A participant's quoting application can receive these notifications over the same interface it sends quotes to the Exchange, SQF, and can now use the data to respond to auctions quickly and efficiently. This data is not sent as a quote to the market because it represents interest that is not immediately executable or, in the case of complex orders, represents a complex strategy which is not disseminated by the Options Price Reporting Authority.

Data proposed for SQF 6.0 will initially include the following:

- (1) Options Auction Notifications (e.g., opening imbalance, market exhaust, PIXL<sup>12</sup> or other information currently provided on SQF 5.0);
- (2) Options Symbol Directory Messages (currently provided on SQF 5.0);
- (3) System Event Messages (e.g., start of messages, start of system hours, start of quoting, start of opening);
- (4) Complex Order Strategy Auction Notifications (COLA);
- (5) Complex Order Strategy messages;
- (6) Option Trading Action Messages (e.g., halts, resumes); and
- (7) Complex Strategy Trading Action Message (e.g., halts, resumes).

The Exchange currently provides Exchange members with execution reports through two interfaces. Execution reports are made available to all exchange participants on a Risk Management Feed known as "RMP," as well as an interface replacing RMP known as the Clearing Trade Interface or "CTI."<sup>13</sup> An additional difference between SQF 5.0 and SQF 6.0 will be the inclusion of execution report messages on SQF 6.0 where none are currently sent over SQF 5.0 today. Execution reports are being added to SQF 6.0 for convenience purposes so that market participants utilizing SQF 6.0 have an additional means to receive execution reports that are relevant to their quoting application and are not required to take and integrate either of these feeds simply to get execution reports. These messages are sent to the participants when the quote they entered over the SQF interface executes.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

<sup>12</sup> If PIXL is not operative at the time this filing becomes operative, it will be included once PIXL does become operative.

<sup>13</sup> See Securities Exchange Act Release No. 62155 (May 24, 2010), 75 FR 30081 (May 28, 2010) (SR-Phlx-2010-67). The Exchange assesses its members a Real-time Risk Management Fee of \$.003 per contract for receiving this information. The Exchange is not proposing to amend this fee.

<sup>4</sup> See Securities Exchange Act Release No. 61878 (April 8, 2010), 75 FR 20023 (April 16, 2010) (SR-Phlx-2010-48). SQF operates as an interface today, receiving quotations from quoting participants and sending out messages related to a particular participant's quotes.

<sup>5</sup> Participants receive access through payment of a port fee.

<sup>6</sup> Although SQF is not new, Phlx has not made a SQF-related filing before because the Exchange believes that such a filing was not required previously, as SQF operated as an interface rather than a data feed. However, in conjunction with the new Commission guidance for data feed changes and in light of the changes in SQF 6.0 that involve sending non-participant-specific messages, the Exchange believes that it is now required to submit such a filing. Also, the Exchange has submitted previous filings that reference SQF. See e.g., Securities Exchange Act Release Nos. 61878 (April 8, 2010), 75 FR 20023 (April 16, 2010) (SR-Phlx-2010-48); and 61665 (March 5, 2010), 75 FR 11967 (March 12, 2010) (SR-Phlx-2010-25).

<sup>7</sup> See Phlx Rule 1017.

<sup>8</sup> See Phlx Rule 1082(a)(ii)(B)(4).

<sup>9</sup> See Phlx Rule 1082(a)(ii)(B)(3).

<sup>10</sup> See Phlx Rule 1080.08(e).

<sup>11</sup> See Securities Exchange Act Release No. 62678 (August 10, 2010), 75 FR 50021 (August 16, 2010) (SR-Phlx-2010-108).

of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> in particular, in that it is 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 Exchange believes that this proposal is in keeping with those principles by providing data that is administrative in nature or that is used to attract liquidity to the Exchange in response to an auction.

#### *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 proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6)<sup>17</sup> thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay and designate the proposed rule change to become operative during the week of October 11, 2010. The Exchange has represented that it is important to the Exchange's

internal technology roll-out to be able to have SQF 6.0 in place by this time in order for other technological plans to be implemented. The Exchange has also represented that the proposed rule change is a non-controversial system change to data and would not affect the execution of trades. The Exchange has argued that the prompt implementation of the proposal would extend the benefits and new features of SQF 6.0 to its users promptly. On the basis of the Exchange's representations, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change as operative on October 11, 2010.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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-Phlx-2010-124 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-Phlx-2010-124. 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 website (<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 website 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 the 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-Phlx-2010-124 and should be submitted on or before October 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63028; File No. SR-NASDAQ-2010-099]

### **Self-Regulatory Organizations; NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked**

October 1, 2010.

#### **I. Introduction**

On August 6, 2010, The NASDAQ Stock Market ("NASDAQ"), 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 to amend Chapter I, Section 1 (Definitions) of the rules of the Nasdaq Options Market ("NOM") to adopt a definition of "Professional" and require that all Professional orders be appropriately marked by NOM

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

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</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 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>18</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>19</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.