"X" to indicate that the offer side of a quote is not firm while the bid side is firm, and "Y" to indicate that the bid side of a quote is not firm while the offer side is firm. The use of "X" and "Y" in these circumstances is similar to the use of "E" and "F" by the CQS network in respect of stock quotations (the letter "F" is already used by OPRA and thus is unavailable for this purpose), so the concept should be familiar to most OPRA subscribers.

Consistent with the addition of these two new codes to Sections 4.04 and 4.15, Appendix D of the OPRA Spec, which describes how options Best Bids and Offers (BBOs) are determined, is proposed to be revised to provide that when one side of a quote is indicated as not firm, that side will not be considered for the purpose of determining what is the BBO in the subject option, but the firm side of the quote will be so considered.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission's Public Reference Room, *http://opradata.com,* and on the Commission's Web site at *http://www.sec.gov*.

II. Implementation of the OPRA Plan Amendment

OPRA designated this amendment as qualified to be put into effect upon filing with the Commission in accordance with clause (iii) of paragraph (b)(3) of Rule 608 under the Act[4] since the proposed changes to the Data Recipient Interface Specification and Participant Interface Specification are solely technical or ministerial in nature. OPRA intends to implement the revised OPRA Spec in late January or early February, 2011, when the necessary systems work is expected to be completed by OPRA's Processor. As required by OPRA's Vendor and Subscriber Agreements, OPRA will provide its Vendors and Subscribers with not less than sixty days notice of this change.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 608(b)(2) under the Act[5] 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 proposed OPRA Plan 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.* Please include File No. SR–OPRA–2010–04 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–OPRA–2010–04. 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 plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 OPRA. 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–OPRA–2010–04 and should be submitted on or before December 28, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30575 Filed 12–6–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63403; File No. SR–BATS–2010–034]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Create a Directed Order Program

December 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("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 for the BATS Exchange Options Market ("BATS Options") to create new BATS Rule 21.1(d)(13), entitled "Market Maker Price Improving Orders," create new BATS Rule 21.1(d)(14), entitled "Directed Orders," and amend existing BATS Rule 21.1(d)(2), entitled "Price Improving Orders."

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* 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

[4] 17 CFR 242.608(b)(3)(iii).

[5] 17 CFR 242.608(b)(2).

[6] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing certain modifications and additions to its rules related to the trading of options. First, the Exchange is proposing the establishment of new Rule 21.1(d)(13), entitled Market Maker Price Improving Orders. Second, the Exchange is proposing the establishment of new Rule 21.1(d)(14), entitled Directed Orders. Third, the Exchange is proposing to modify Rule 21.1(d)(6), entitled Price Improving Orders.

The Exchange is proposing the rule changes described below to establish a directed order program through which Options Members can direct an order to a particular BATS Options Market Maker for potential execution at a price improved over the existing National Best Bid ("NBB") or National Best Offer ("NBO"). As part of this program, BATS is proposing to define two new order types. The first would be new Rule 21.1(d)(13), entitled Market Maker Price Improving Orders, which are orders from a BATS Options Market Maker to buy or sell an option that has a displayed price and size and a non-displayed price at which the BATS Options Market Maker is willing to trade with a Directed Order. As proposed, a Market Maker Price Improving Order would be ranked on the BATS Options Book at its displayed price. The non-displayed price of the Market Maker Price Improving Order would not be entered into the BATS Options Book, but would be, along with its displayed size, converted to a buy or sell order at its non-displayed price in response to a Directed Order directed to the BATS Options Market Maker.

The second new order type proposed would be new Rule 21.1(d)(14), entitled Directed Orders, which are orders from a BATS Options Member that are directed for execution to a particular BATS Options Market Maker. For a BATS Options Market Maker to participate in an execution against a Directed Order, (1) the Directed Order must be from a BATS Options Member that is on a list of eligible Options Members provided to the Exchange by the BATS Options Market Maker, in a manner prescribed by the Exchange, (2) the BATS Options Market Maker must be publicly quoting on BATS at the NBB (for sell Directed Orders) or NBO (for buy Directed Orders) with a Market Maker Price Improving Order that contains a non-displayed amount of price improvement over the NBB or NBO at the time the Directed Order arrives to the Exchange, and (3) the Directed Order must be marketable against the non-displayed price of the Market Maker Price Improving Order.

If the above conditions are met, and if there are no other non-displayed orders at prices equal to or better than the non-displayed price of the Market Maker Price Improving Order, the Directed Order will trade with the Market Maker Price Improving Order up to the full size of the Market Maker Price Improving Order. Any remaining contracts from the Directed Order will be handled, consistent with the instructions on the Directed Order, in accordance with the order display and book processing requirements of Rule 21.8 and, if applicable, processed in accordance with the order routing requirements of Rule 21.9.

If there are non-displayed orders on the BATS Options Book at prices equal to or better than the non-displayed price of the Market Maker Price Improving Order, those other non-displayed orders will in all cases have priority over the non-displayed price of the Market Maker Price Improving Order. In such circumstances, the Market Maker Price Improving Order may still execute at its non-displayed price against the Directed Order consistent with the price/time priority provisions of Rule 21.8 to the extent of any remaining contracts of the Directed Order. Any contracts remaining of the Directed Order will continue to be processed in a manner consistent with the order display and book processing provisions of Rule 21.8, and if applicable, the order routing provisions of Rule 21.9.

As proposed, an Options Market Maker Price Improving Order would be required to have a non-displayed price better than the displayed limit price that could be entered in an increment as small as (1) one cent or may be designated at the midpoint of the National Best Bid and Offer ("NBBO"). In addition, BATS is proposing to amend existing Rule 21.1(6), entitled Price Improving Orders, to provide all BATS Options Members with the ability to enter Price Improving Orders in an increment designated at the midpoint of the NBBO. Price Improving Orders will in all cases include a displayed price and a better, non-displayed price. Price Improving Orders with a non-displayed price designated at the midpoint of the NBBO will receive a new timestamp each time the non-displayed midpoint price automatically adjusts in response to changes in the NBBO and will be displayed at the NBBO at the time of entry. The displayed price will not subsequently adjust to changes in the NBBO. Price Improving Orders with a non-midpoint price will be displayed at the minimum price variation in that security and will be rounded up for sell orders and rounded down for buy orders.

Market Maker Price Improving Orders with a non-displayed price designated at the midpoint of the NBBO will not receive a new timestamp in response to changes in the NBBO. Unlike Price Improving Orders, the non-displayed price of a Market Maker Price Improving Order is not entered into the BATS Options Book, and is only eligible to trade with a Directed Order to the extent that certain conditions precedent are satisfied, including (1) that the displayed price of the Market Maker Price Improving Order is equal to the NBB (for sell directed orders) or the NBO (for buy directed orders) at the time the Directed Order arrives to the Exchange, and (2) that there are no other orders on the BATS Options Book at prices equal to or better than the non-displayed prices of the Market Maker Price Improving Order.[3]

The Exchange is also proposing to delete certain language from its existing Price Improving Order rule text. In particular, as currently written, Rule 21.1(d)(6) states that "Price Improving Orders *that are available for display* * * *."[4] The Exchange is proposing to delete the clause "that are available to display," which although intended to simply distinguish an order executed upon arrival to the Exchange from an order posting to the BATS Options Book, has the potential to cause confusion to the extent it may suggest that Price Improving Orders can be posted on the BATS Options Book without a displayed price. That is not the case today, would not be the case under the proposed changes to the rule, and BATS is proposing to delete this clause to eliminate any confusion on this point.

The elements of the Exchange's proposal to create a directed order program are specifically designed to enhance opportunities available in the market for Options Members to obtain price improvement for customer orders

[3] As described in proposed Rule 11.9(c)(13)(B), all other interest on the BATS Book at prices equal to or better than the non-displayed price of the Market Maker Price Improving Order has priority over the Market Maker Price Improving Order and, hence, will execute first against the Directed Order.

[4] Emphasis added.

in the context of BATS' price/time priority, continuous auction market. By requiring BATS Options Market Makers to be quoting at the NBB or NBO to participate in an execution against a Directed Order directed to it, BATS' proposal incentivizes market makers to competitively quote and thereby furthers the public price discovery process. By further requiring BATS Options Market Makers to include a non-displayed price better than the displayed limit price at an increment as small as (1) one cent or the midpoint of the NBBO, the proposal increases the opportunities for customer orders to receive price improvement over the NBBO. Moreover, by permitting all Options Members to enter orders in the same increments as Market Maker Price Improving Orders, including as proposed at the midpoint of the NBBO, and according those orders in all cases priority at their non-displayed prices over Market Maker Price Improving Orders, the proposal avoids creating participation guarantees in place at other markets and instead promotes market-wide competition for executions at prices between the NBBO.

Pursuant to the proposed directed order program, a BATS Options Member who notifies a BATS Options Market Maker of its intention to submit a Directed Order to BATS Options so that the BATS Options Market Maker could change its quotation to match the NBB or NBO immediately prior to submission of the Directed Order would be engaging in conduct inconsistent with just and equitable principles of trade in violation of Rule 3.1 and Rule 18.4(f). In addition, a BATS Options Market Maker who becomes aware of a customer order from an affiliated broker-dealer or desk within the same broker-dealer and acts on such information to change its quotations to match the NBB or NBO immediately prior to submission of a Directed Order would be in violation of the Exchange's Rule 22.10, "Limitations on Dealings". BATS will proactively conduct surveillance for such conduct and enforce against such violations.

2. Statutory Basis

Approval of the rule changes proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[6] because it would promote just and equitable principles of trade, 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.

The Exchange believes that the proposed rule meets these requirements in that it promotes competition for customer orders and furthers the public price discovery process by both incentivizing BATS Options Market Makers to publicly display aggressive quotes at the NBBO, as well as incentivizing BATS Options Market Makers and all other BATS Options Members to post non-displayed prices better than the NBBO. BATS notes that the Commission has previously found consistent with the Act non-displayed order types designed to provide price improvement at prices smaller than the minimum price variation in listed options.[7] While those order types have to date been limited to permitting increments as small as (1) one cent, BATS notes that the Commission has previously found midpoint order types consistent with the Act in the equity markets,[8] and as the options market structure has converged with the equity market structure in recent years through expansion of the penny pilot as well as the implementation of Regulation NMS-like protections, BATS believes customers in the options markets would similarly benefit from the potential price improvement afforded by midpoint executions.

Moreover, the Commission has previously approved rules that provide specialist or market maker guarantees up to a certain percentage so long as the specialist or market maker is quoting at the NBBO and such guarantees do not rise to a level that could have a material adverse impact on quote competition with a particular exchange.[9] While BATS' directed order program requires BATS Options Market Makers to be quoting at the NBB or NBO to be eligible to trade with an incoming Directed Order directed to it, in contrast to prior rules approved by the Commission, BATS' proposed directed order program provides no participation guarantees that could negatively impact quote competition. By not providing such guarantees, BATS's proposed directed order program provides incentives to BATS Options Market Makers as well as all other BATS Options Members to aggressively quote, both at the NBBO and at non-displayed prices better than the NBBO.

In addition, the Commission has previously approved rules that permit a specialist or market maker to determine the firms from which it will accept directed or preferenced orders. The Commission has explicitly approved a process similar to that proposed by BATS in the equity markets in which only those members who have been permissioned by a market maker are eligible to submit directed orders to the market maker.[10] And, the Commission has implicitly approved such processes in the options markets by allowing certain price improvement auctions to exist pursuant to pilot programs, which auctions provide the ability of an options member to submit a customer order along with a contra-side principal order from the options member into a brief price improvement auction in which all members have the ability to compete for the execution.[11] BATS' proposed rule changes are similar in nature to these price improvement auctions, except that under BATS' proposal, competition for the execution with a Directed Order occurs in the context of BATS' continuous, price/time priority auction, and as previously mentioned, BATS Options Market Makers would have no participation guarantees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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 written comments on the proposed rule change.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See, e.g.,* BATS Options Rule 21.1(d)(6) "Price Improving Orders"; Nasdaq Options Market Rule Chapter VI, Section 1(e)(6) "Price Improving Orders".

[8] *See, e.g.,* BATS Rule 11.9(c)(9) "Mid-Point Peg Order".

[9] *See, e.g.,* Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR–Phlx–2004–91) (order approving the establishment of a directed order process with certain specialist participation guarantees).

[10] *See* Securities Exchange Act Release No. 52827 (November 23, 2005), 70 FR 72193 (December 1, 2005) (SR–PCX–2005–56) (order approving certain modifications to the PCX Equities, Inc.'s Directed Order Process on the Archipelago Exchange).

[11] *See, e.g.,* BOX Rule Section 18 "The Price Improvement Period" and ISE Rule 723 "Price Improvement Mechanism for Crossing Transactions" (both of which providing a mechanism for options members that want to internalize customer orders the ability to do so on the exchanges subject to a requirement that such orders first be exposed to all other options members through a brief price improvement auction).

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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.* Please include File No. SR–BATS–2010–034 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 No. SR–BATS–2010–034. 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 changes 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, 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 will also 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 No. SR–BATS–2010–034 and should be submitted on or before December 28, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30577 Filed 12–6–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63395; File No. SR–Phlx-2010–167]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement, on a Semi-Annual Basis, of Penny Pilot Issues that Have Been Delisted

November 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 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, 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 the Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Phlx Rule 1034 (Minimum Increments) to: Extend through December 31, 2011, the Penny Pilot Program in options classes in certain issues ("Penny Pilot" or "Pilot"); and replace, on a semi-annual basis, any Penny Pilot issues that have been delisted.[3]

The text of the proposed rule change is available on the Exchange's Website 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 amend Phlx Rule 1034 to: (1) Extend through December 31, 2011, the Penny Pilot; and (2) replace, on a semi-annual basis, any Penny Pilot issues that have been delisted.

For a pilot period scheduled to expire on December 31, 2010, the Penny Pilot allows certain options to be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00; and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher. Options overlying the PowerShares QQQ Trust ("QQQQ"),® SPDR S&P 500 Exchange Traded Funds ("SPY"), and iShares Russell 2000 Index Funds ("IWM"), however, are quoted

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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); 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); 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); 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010)(SR–Phlx–2010–65)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 62616 (July 30, 2010), 75 FR 47664 (August 6, 2010)(SR–Phlx–2010–103)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).