

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63492; File No. SR-Phlx-2010-172]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating To Changing the Starting Time for NASDAQ OMX PSX

December 9, 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 December 3, 2010, NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) 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 self-regulatory organization. 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 amend certain rules of NASDAQ OMX PSX, the Exchange’s equity trading facility (“PSX”), to change the starting time from 9 a.m. Eastern Time (“ET”) to 8 a.m. ET. The Exchange proposes to amend provisions of PSX Rules 3100, 3217, 3301, 3302 and 3306 to reflect the proposed amended starting time.

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to amend certain rules of PSX to change the starting time from 9 a.m. ET to 8 a.m. ET. More specifically, the Exchange proposes to amend the following PSX rules in the following manner:

- i. PSX Rule 3100 (b)(4)(B) to reflect that the trading session begins at 8 a.m. instead of 9 a.m.
- ii. PSX Rule 3217 to reflect that the normal business hours for the automated system for order execution and trade reporting owned and operated by the Exchange for the purpose of trading securities on PSX (“System”) operates from 8 a.m. ET instead of 9 a.m. ET.
- iii. PSX Rule 3301(h)(1) to reflect that System Hours Immediate or Cancel <sup>3</sup> orders must be will be available for entry and execution from 8 a.m. ET instead of 9 a.m. ET.
- iv. PSX Rule 3301(h)(2) to reflect that System Hours Day <sup>4</sup> orders must remain available for potential display and/or execution from 8 a.m. ET instead of 9 a.m. ET.
- v. PSX Rule 3301(h)(4) to reflect that System Hours Expire Time <sup>5</sup> orders must remain for entry and execution from 8 a.m. ET instead of 9 a.m. ET.
- vi. PSX Rule 3301(h)(8) to reflect that “good-til-market close” <sup>6</sup> orders must be available for entry and potential

<sup>3</sup> “System Hours Immediate or Cancel” shall mean, for orders so designated, that if after entry into the System the order (or a portion thereof) is not marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering Participant. See PSX Rule 3301(h)(1).

<sup>4</sup> “System Hours Day” shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution from 9 a.m. until 5 p.m. Eastern Time on the day it was submitted unless cancelled by the entering party. See PSX Rule 3301(h)(2).

<sup>5</sup> “System Hours Expire Time” or “SHEX” shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution for the amount of time specified by the entering Participant (up to 5 p.m. on the day entered) unless canceled by the entering Participant. See PSX Rule 3301(h)(4).

<sup>6</sup> “Good-til-market close” shall mean for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until cancelled by the entering party, or until 4 p.m., after which it shall be returned to the entering party. See PSX Rule 3301(h)(8).

execution from 8 a.m. ET instead of 9 a.m. ET.

vii. PSX Rule 3302 to reflect that the System will be opened for order entry at 8 a.m. instead of 9 a.m.

viii. PSX Rule 3306(a)(3) to reflect that orders can be entered into the System (or previously entered orders cancelled) from 8 a.m. ET instead of 9 a.m. ET.

PSX is a fully electronic system that accommodates diverse business models and trading preferences. PSX utilizes technology to aggregate and display liquidity and make it available for execution of orders. PSX is proposing to expand its operational hours to open the System earlier so that firms can enter orders and execute beginning at 8 a.m. rather than 9 a.m.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Sections 6(b)(1) and 6(b)(5) of the Act,<sup>8</sup> in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members, member organizations, and persons associated with members and member organizations with provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposal is also consistent with Section 6 of the Act in that the proposal 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 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. An earlier open will enhance the national market system by providing market participants increased opportunity to more effectively carryout the execution of orders in the manner addressed by PSX rules. Such improvements will enhance the protection of investors and the public interest.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition not

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(1), (5).

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 foregoing 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>12</sup> The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that Phlx's proposal is substantially similar to the rules of other national securities exchanges and does not raise any new substantive issues. In addition, Phlx notes that other exchanges open their markets for entry of orders prior to 9 a.m.,<sup>13</sup> and, in order to be competitive, the Exchange would like to extend the same opportunity to its market participants. The Exchange would like to implement this proposed rule on December 13, 2010. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.<sup>14</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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**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-2010-172 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-2010-172. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site <http://www.sec.gov/rules/sro.shtml>. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2010-172 and should be submitted on or before January 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63491; File No. SR-Phlx-2010-173]

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to the Clearly Erroneous Transactions Rule**

December 9, 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 December 6, 2010, NASDAQ OMX PHLX LLC ("Exchange"), 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 the Substance of the Proposed Rule Change**

The Exchange proposes to extend the pilot period of recent amendments to Rule 3312, concerning clearly erroneous transactions, so that the pilot will now expire on April 11, 2011.

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

The text of the proposed rule change is below. Proposed new language is

<sup>15</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>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</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>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> *Id.*

<sup>13</sup> See The NASDAQ Stock Market LLC Rule 4617 (opens at 7 a.m. EST). See also NASDAQ OMX BX Rule 4617 (opens at 8 a.m. EST), and NYSE Arca Equities Rule 7.34 (opens at 1 a.m. Pacific Time).

<sup>14</sup> For the 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).