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).

and traded in minimum increments of $0.01 for all series regardless of the price. Currently the Exchange trades 361 options classes pursuant to the Penny Pilot.

The Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal allows the Penny Pilot to continue in its current format for one year through December 31, 2011.

Commensurate with the extension of the Penny Pilot through 2011, the Exchange proposes to extend through 2011 the ability to replace on a semi-annual basis any Penny Pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Pilot, based on trading activity in the previous six months. The replacement issues would be added to the Pilot on the second trading day following January 1, 2011, and July 1, 2011.[4] The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2010 and ending November 30, 2010, for the January 2011 replacement, and the six month period beginning December 1, 2010 and ending May 31, 2011 for the July 2011 replacements.[5]

In conjunction with this extension proposal, the Exchange agrees to submit a report to the Commission regarding the Penny Pilot that will include: (1) Data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of Phlx's automated systems; (4) data reflecting the size and depth of markets; and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] 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, by extending the Penny Pilot.

The Exchange notes that the Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal allows the Penny Pilot to continue in its current format for one year through December 31, 2011.

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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6)(iii) thereunder[9] 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 from the date on which it was filed, or such shorter time as the Commission may designate.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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*. Please include File Number SR–Phlx-2010–167 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-2010–167. 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 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 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 No. SR–Phlx-2010–167 and should be submitted on or before December 28, 2010.

[4] The replacement issues will be announced to the Exchange's membership via an OTA posted on the Exchange's web site.

[5] *See* supra note 3.

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

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). 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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30580 Filed 12–6–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63396; File No. SR–NASDAQ–2010–150]

Self-Regulatory Organizations; the NASDAQ Stock Market 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, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. 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

Nasdaq is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to amend Chapter VI, Section 5 (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 from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com/Filings/,* at Nasdaq's principal office, 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, Nasdaq 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. Nasdaq 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 Chapter VI, Section 5 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 and traded in minimum increments of $0.01 for all series regardless of the price. Currently the Exchange trades 361 options classes pursuant to the Penny Pilot.

The Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal allows the Penny Pilot to continue in its current format for one year through December 31, 2011.

Commensurate with the extension of the Penny Pilot through 2011, the Exchange proposes to extend through 2011 the ability to replace on a semi-annual basis any Penny Pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Pilot, based on trading activity in the previous six months. The replacement issues would be added to the Pilot on the second trading day following January 1, 2011, and July 1, 2011.[4] The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2010 and ending November 30, 2010, for the January 2011 replacement, and the six month period beginning December 1, 2010 and ending May 31, 2011 for the July 2011 replacements.[5]

In conjunction with this extension proposal, the Exchange agrees to submit a report to the Commission regarding the Penny Pilot that will include: (1) Data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of NOM's automated systems; (4) data reflecting the size and depth of markets; and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(5) of the Act [7] 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, by extending the Penny Pilot.

The Exchange notes that the Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and

[10] 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 March 2008 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 62617 (July 30, 2010), 75 FR 47670 (August 6, 2010) (SR–NASDAQ–2010–092) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

[4] The replacement issues will be announced to the Exchange's membership via an OTA posted on the Exchange's Web site.

[5] *See* supra note 3.

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

[7] 15 U.S.C. 78f(b)(5).