

subject line if email 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 10:00 a.m. and 3:00 p.m. Copies of the 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 Number SR-BX-2013-036 and should be submitted on or before June 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-12035 Filed 5-20-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69586; File No. SR-Phlx-2013-50]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to FLEX Options

May 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on May 2, 2013, 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 proposes to amend Exchange Rule 1079 entitled "FLEX, Index, Equity and Currency Options" and Option Floor Procedure Advice ("OFPA") F-28 entitled "Trading FLEX Index, Equity and Currency Options."

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 the 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 Exchange Rule 1079(a) which concerns the characteristics applicable to FLEX options and 1079(b) and eliminate OFPA F-28 which concerns the procedures for quoting and trading FLEX options.<sup>3</sup> The Exchange is proposing to amend its FLEX rules in Rule 1079 to establish the same procedures for quoting and trading FLEX options as exist today on NYSE MKT LLC ("Amex").<sup>4</sup>

<sup>3</sup> The term "FLEX option" means a FLEX option contract that is traded subject to this Rule. Although FLEX options are generally subject to the rules in this section, to the extent that the provisions of this Rule are inconsistent with other applicable Exchange rules, this Rule takes precedence with respect to FLEX options.

<sup>4</sup> See Amex Rule 904G (FLEX Trading Procedures and Principles).

Today, a Requesting Member shall obtain quotes and execute trades in certain non-listed FLEX options at the specialist post of the non-FLEX option on the Exchange. The Requesting Member is a Phlx member qualified to trade FLEX options pursuant to paragraph (c) of Rule 1079 who initiates a FLEX Request For Quotes ("RFQ") pursuant to paragraph (b) of Rule 1079. FLEX options are not continuously quoted and series are not pre-established.<sup>5</sup> Today a Requesting Member may initiate an RFQ by first announcing all of the following contract terms to the trading crowd of the non-FLEX option and then submitting an RFQ ticket to that specialist post: (1) Underlying index, security or foreign currency, (2) type, size and crossing intention (3) in the case of FLEX index options and FLEX equity options, exercise style, (4) expiration date, (5) exercise price, and, (6) respecting index options, the settlement value. Thereafter, on receipt of an RFQ in proper form, the assigned specialist or Requesting Member shall cause the terms of the RFQ to be disseminated as an administrative text message through the Options Price Reporting Authority ("OPRA").

The Exchange proposes to adopt rules, similar to Amex, which requires a Requesting Member to submit to the FLEX Specialist an RFQ utilizing for that purpose the forms, formats and procedures established by the Exchange. Thereafter, on receipt of an RFQ in proper form, the assigned FLEX Specialist shall cause the terms and specifications of the RFQ to be immediately announced at the post. Such communication shall be disseminated as an administrative text message through the Options Price Reporting Authority ("OPRA").<sup>6</sup>

Today, following the RFQ announcement, a preset response time will begin, during which members may provide responsive quotes. The response time, between two and 15 minutes, will be determined by the Exchange. During the response time, members may provide responsive quotes to the RFQ, which may be entered, modified or withdrawn during such response time. Each assigned ROT

<sup>5</sup> The Exchange's electronic quoting and trading system is not available for FLEX options. The variable terms of FLEX options shall be established through the process described in Rule 1079. All transactions must be in compliance with Section 11 of the Securities Exchange Act of 1934 and the rules promulgated thereunder, which may include yielding priority to customer orders.

<sup>6</sup> See proposed Rule 1079(b)(1).

<sup>16</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.

and assigned specialist<sup>7</sup> who responds is required to respond with a market of the minimum size, but is not required to provide continuous quotes or a minimum bid-offer differential (quotation spread parameters).

The Exchange proposes to adopt rules, similar to Amex, which provide that Members may enter at the FLEX post FLEX Quotes responsive to each Request for Quotes. FLEX Quotes must be entered during the Request Response Time.<sup>8</sup> Each FLEX Quote shall refer to a reference indicator as the Exchange determines appropriate from time to time. All FLEX Quotes may be entered, modified or withdrawn at any point during the Request Response Time. At the expiration of the Request Response Time, the best bid or offer ("BBO") shall be identified in accordance with the price and time priority principles set forth by the Exchange.<sup>9</sup>

Today, with respect to the BBO, at the end of the response time, the assigned specialist, or if none, the Requesting Member shall determine the BBO, based on price, but not time or size. However, where two or more bids/offers are at parity, bids/offers submitted by an assigned specialist, assigned ROT or customer will have priority over bids/offers submitted by non-assigned ROTs and by controlled accounts as defined in Rule 1014(g)(i). The BBO shall be disseminated with reference to the corresponding RFQ. Further, if the Requesting Member rejects the BBO or the BBO is for less than the entire size requested, the BBO Improvement Interval provides a two minute time period during which the BBO may be matched or improved. An assigned ROT or assigned specialist who responded with a market during the response time may immediately join any new BBO. The new BBO shall be determined, and disseminated with reference to the corresponding RFQ.

The Exchange proposes to amend this portion of the rule to instead state,

<sup>7</sup> Pursuant to Rule 1079(c), a ROT or specialist may apply on a form prescribed by the Exchange to be assigned in FLEX options. At least two members shall be assigned to each FLEX option. Only the specialist in the non-FLEX option may be the assigned specialist in that FLEX option ("FLEX Specialist"). The provisions of Rule 1014(c) regarding market making obligations shall be applicable to assigned ROTs and assigned specialists, such that a market must be provided in any FLEX option when requested by an Options Exchange Official. The Exchange proposes to define "FLEX Specialist" within Rule 1079(c).

<sup>8</sup> The Exchange proposes to notify its members of the time period for the Request Response Time by issuing a memorandum to the Exchange members on the trading floor. The Exchange intends to provide a reasonable notice period to members if it determines to change the Request Response Time.

<sup>9</sup> See proposed Rule 1079(b)(2).

similar to Amex, that at the expiration of the Request Response Time, the BBO shall be displayed on such market data systems as are available. If the Requesting Member has not indicated an intention to cross or act as principal with respect to any part of the FLEX trade, the member shall promptly accept or reject the displayed BBO: Provided, however, that if such a Requesting Member either rejects the BBO or is given a BBO for less than the entire size requested, all FLEX participating members other than the Requesting Member will have an opportunity during the BBO Improvement Interval in which to match, or improve, (as applicable), the BBO. At the expiration of any such BBO Improvement Interval, the Requesting Member must promptly accept or reject the BBO(s). If the Requesting Member has indicated an intention to cross or act as principal with respect to any part of the FLEX trade, acceptance of the displayed BBO shall be automatically delayed until the expiration of the BBO Improvement Interval. Prior to the BBO Improvement Interval, the Requesting Member must indicate at the post the price at which the member expects to trade. In these circumstances, the Requesting Member may participate with all other FLEX-participating members in attempting to improve or match the BBO during the BBO Improvement Interval. At expiration of the BBO Improvement Interval, the Requesting Member must promptly accept or reject the BBO(s). The Requesting Member has no obligation to accept any FLEX bid or offer. Whenever, following the completion of FLEX bidding and offering responsive to a given RFQs, the Requesting Member rejects the BBO or the BBO size exceeds the FLEX transaction size indicated in the RFQs, members may accept the entire order or the unfilled balance of the BBO. The highest bid shall have priority, but where the two or more best bids are submitted at the same price, the bid(s) submitted first in time will have priority. The lowest offer shall have priority, but where the two or more best offers are submitted at the same price, the offer(s) submitted first in time will have priority. In the case of FLEX equity options only and notwithstanding Rule 1079(b)(4), whenever the Requesting Member has indicated an intention to cross or act as principal on the trade and has matched or improved the BBO during the BBO Improvement Interval, the Requesting Member will be permitted to execute the contra side of the trade that is the subject of the RFQs, to the extent of at least 40% of the trade,

provided the order is a public customer order or an order respecting the Requesting Member's firm proprietary account. Notwithstanding the foregoing, all market participants may effect crossing transactions.<sup>10</sup>

The Exchange would eliminate the provisions that today describe trading, such that a trade in FLEX options cannot be executed until the end of the response time or BBO Improvement Interval. Today, once the response time or Improvement Interval ends, the Requesting Member is given the first opportunity to trade on the market, by voicing a bid/offer in the trading crowd. The Requesting Member has no obligation to accept any bid or offer for a FLEX option. If the Requesting Member rejects the BBO or the BBO size exceeds the entire size requested, another member may promptly accept such BBO or the unfilled balance of the BBO. Once the BBO is established and no trade has occurred, the RFQ remains open during that trading day, such that a member may re-quote the market with respect to the open RFQ, as opposed to submitting an additional RFQ. An assigned ROT or assigned specialist who responded to the open RFQ during the response time or BBO Improvement Interval may immediately join the re-quoted market, thus matching for parity purposes. The original Requesting Member is not given the first opportunity to trade on the re-quoted market, nor is the re-quoting member. If a trade occurs, that RFQ is no longer open and a new RFQ is required. The specialist in the listed non-FLEX equity, index or U.S. dollar-settled foreign currency option, whether or not assigned in FLEX options, must accept FLEX orders on the FLEX book after completion of the RFQ process. Only customer day limit orders may be placed on the FLEX index, equity or U.S. dollar-settled foreign currency option book. Booked orders expire at the end of each trading day. The limit price and size must be written on the RFQ ticket and submitted for dissemination. In order to trade with the book, an executing member must quote the market and announce the trade.<sup>11</sup>

Today, the Exchange has procedures for crossing which require that whenever a Requesting Member intends to cross, after the BBO is determined, with or without a BBO Improvement Interval, the Requesting Member, having announced an intention to cross, must bid and offer at or better than the BBO. If the Requesting Member's bid/offer is

<sup>10</sup> See proposed Rule 1079(b)(3).

<sup>11</sup> Acceptance of a bid/offer creates a binding contract under Exchange Rules.

at the BBO, the Requesting Member may execute 25% or a fair split, whichever is greater, of the contra-side of the order that is the subject of the RFQ. The remainder of the contra-side is split in accordance with the parity/priority provision of subparagraph (3) of Rule 1079(b). If the Requesting Member's bid/offer improves the existing BBO, an assigned ROT or assigned specialist who responded with a market during the response time or BBO Improvement Interval, may immediately join the Requesting Member's improved bid or offer, thus matching for parity purposes. However, the Requesting Member may execute 25% or a fair split, whichever is greater, of the contra-side of the order that is the subject of the RFQ. The remainder of the contra-side is split in accordance with the parity/priority provision of sub-paragraph (3) of Rule 1079. Broker-dealer crosses and solicited orders, as defined in Rule 1064, are not eligible for the split afforded by sub-paragraphs (A) and (B) of Rule 1079(6), and instead, are, after the announcement of an intention to cross, executable in accordance with sub-paragraph (5) of Rule 1079.

The Exchange proposes to amend the crossing rules, similar to Amex, in that the Requesting Member would be entitled to cross a transaction where the BBO was matched or improved and could execute the contra side to the extent of at least 40% of the trade, provided the order is a public customer order or an order respecting the Requesting Member's firm proprietary account.<sup>12</sup> The Exchange would not otherwise limit a market participant's ability to cross an order, other market participants other than public customer and firm proprietary orders would not be entitled to execute the contra side of the trade to the extent of at least 40% of the trade.

The Exchange does not propose to amend the current reporting requirements which require RFQs, responsive quotes and completed trades to be promptly reported to OPRA and disseminated as an administrative text message.<sup>13</sup> Nor does the Exchange propose to amend the provisions related to trading rotations which provide that there will be no trading rotations in FLEX options, either at the opening or at the close of trading.<sup>14</sup> Finally, the Exchange does not propose to amend the hours of trading must currently state that FLEX options trading must be effected during the hours established by the Exchange.

Such hours shall be within regular Exchange trading hours (for the non-FLEX option) on each business day, except that the Exchange in its discretion may determine at any time to narrow or expand FLEX trading hours to encompass, but not exceed, the trading hours of the non-FLEX option.<sup>15</sup>

Provision (c) of Rule 1079 related to who may trade FLEX Options, provision (d) relating to position limits and position (e) related to exercise limits are not being amended. Section (f) which provides that FLEX equity and currency options shall be subject to the exercise-by-exercise procedure of Rule 805 of the Options Clearing Corporation ("OCC") is being amended to capitalize the OCC title.

The Exchange is also proposing to amend Rule 1079(a) to add certain defined terms in connection with the proposed amendments to Rule 1079(b). Specifically, the Exchange proposes to define the term "Request for Quotes" as the initial request supplied by a Requesting Member to initiate FLEX bidding and offering. The Exchange proposes to define the term "Request Response Time" as the minimum period of time established by the Exchange, during which Exchange members participating in FLEX options may provide FLEX Quotes in response to a Request for Quotes. The Exchange proposes to define the term "FLEX Quote" as (i) FLEX bids and offers entered by specialists<sup>16</sup> and Registered Options Traders<sup>17</sup> and (ii) orders to purchase and orders to sell FLEX Options entered by Floor Brokers, in each case in response to a Request for Quotes. The Exchange proposes to define the term "BBO" as the best bid or offer, or both, as applicable, entered in response to a Request for Quotes. The Exchange proposes to define the term "BBO Improvement Interval" as the minimum period of time, to be established by the Exchange, during which members may submit FLEX Quotes to meet or improve the BBO established during the Request Response Time.

Finally, the Exchange proposes to eliminate OFPA F-28, which reiterates the procedures for quoting and trading

FLEX options similar to Rule 1079, as this rule is no longer necessary. OFPA-F28 was enacted to parallel most of the provisions in Rule 1079(b), including those pertaining to requesting quotations, responses, determining the BBO, the BBO Improvement Interval, executing a trade and crossing. OFPA F-28 does not contain a fine schedule and is not included in the Exchange's minor rule violation enforcement and reporting plan.<sup>18</sup> The Exchange noted in its rule change that the purpose of adopting OFPA F-28 was to incorporate it into the Floor Procedure Advice Handbook for easy reference on the trading floor.<sup>19</sup>

The Exchange believes that these amendments to the FLEX rules to model the rules after the current Amex rules, streamlines the current process for quoting and trading FLEX Options. Amex initially amended its rule in 2006<sup>20</sup> to increase the participation guarantee of a Requesting Member from 25% to 40% of the order.<sup>21</sup> Amex noted in its filing that they believed that providing Requesting Members or Requesting Member firms who are eligible to trade FLEX options and are seeking to cross or facilitate a trade with an across-the-board 40% member firm guarantee will provide an additional incentive for such Requesting Member or Requesting Member firm to bring large FLEX orders to the floor of the Amex rather than to the floor of another options exchange or to the over-the-counter ("OTC") market.<sup>22</sup> Additionally, Amex noted that the liquidity provided by such Requesting Member or Requesting Member firm seeking to facilitate their orders gives the Exchange the ability to provide deep liquid markets for investors.

The Exchange believes that the amendments proposed to Rule 1079(b) would also allow Phlx to remain competitive with other options exchanges. The proposal streamlines the current FLEX rules related to quoting and trading FLEX options and creates new opportunities for members and member organizations to trade FLEX options on the floor of the Exchange. The proposal provides for transparency in displaying the terms and specifications of the RFQ at the post and continues to provide for the dissemination of information through

<sup>15</sup> See Rule 1079(b)(9).

<sup>16</sup> A specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>17</sup> A Registered Options Trader ("ROT") includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader and a Non-SQT, which by definition is neither a SQT or a RSQT. A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

<sup>18</sup> See Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998) (SR-Phlx-96-38).

<sup>19</sup> *Id.*

<sup>20</sup> See Securities Exchange Act Release No. 54104 (July 5, 2006), 71 FR 39374 (July 12, 2006) (SR-Amex-2006-47).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>12</sup> See proposed Rule 1079(b)(5).

<sup>13</sup> See Rule 1079(b)(7).

<sup>14</sup> See Rule 1079(b)(8).

OPRA. The proposal eliminates the minimum response times imposed by the current rules and instead adopts Amex's more flexible approach to permit responses during the Request Response Time as designated by the Exchange. The amendments provide for opportunities to match or improve the BBO and sets priority rules as first in time as compared to price, as is the case today. The Exchange believes that these rules will permit the Exchange to remain competitive and will continue to encourage market participants to shift OTC options trading to the Exchange in order to eliminate counter-party risk. The Exchange is proposing to increase its guarantee from 25% to 40% consistent with current firm facilitation guarantees and, similar to Amex, offer requesting members that cross public customer and firm proprietary orders the opportunity to participate in 40% of the trade.<sup>23</sup> The Exchange believes that, as noted in the Amex filing, the liquidity provided by such Requesting Member or Requesting Member firm seeking to facilitate their orders gives the Exchange the ability to provide deep liquid markets for investors. The Exchange believes this proposal will allow the Exchange to remain competitive with other options exchanges and provide a comparable alternative to the OTC market.

The Exchange proposes, similar to Amex Rule 904G(f), to limit crossing orders that are entitled to participate in the trade and be guaranteed at least 40% of the trade to public customer orders and firm proprietary orders. Unlike Amex, the Exchange would not otherwise limit a market participant's ability to effect a crossing transaction. The Exchange is proposing to permit all market participants to cross a transaction, as is the case today. The Exchange does not believe this proposal would amend the current practice of permitting market participants to participate in crossing orders, except for Broker-Dealer crosses which today are not eligible for the split referenced in current Rule 1079(b)(6)(A) and (B),<sup>24</sup> but they are executable as described in

current Rule 1079(b)(5). The proposal would permit all market participants to effect crossing transactions, which is not a departure from the current rule, but would limit crossing orders that are entitled to participate in the trade and receive the 40% guarantee to public customer orders and firm proprietary orders, which is not a change for Broker-Dealers but is a change for other market participants that today may be eligible for the 25% guarantee in the current rule.

The Exchange is not adopting language in Amex Rule 904(G)(g). The Exchange does not trade the particular currencies listed in 904(G)(g) and is therefore not adopting language similar to section 904G(g).<sup>25</sup>

In addition, the Exchange proposes in Rule 1079(b)(1) to immediately announce the terms and specifications of the RFQ at the specialist post instead of posting the terms and specifications. The practice of announcing terms at the post is in line with current practices on Phlx's floor. The Exchange will continue to disseminate an administrative text message through OPRA, as is the case today.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities and Exchange Act of 1934 ("Exchange Act"),<sup>26</sup> in general, and with Section 6(b)(5) of the Exchange Act,<sup>27</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

FLEX options permit customization of certain variable terms as agreed between the buyer and seller. The Exchange believes that its proposed rules allow market participants to continue to trade FLEX options in a transparent environment with the same requisite disclosure requirements in order to ensure that presence of a price discovery process for such orders on the Exchange's trading floor. The Exchange believes that the proposed amendments will create new opportunities for members and member organizations to trade FLEX options. The amendments create clear guidelines for transacting

FLEX options, which are complicated customized options. Additionally, the amendments streamline the process and adopt procedures for quoting and trading FLEX options similar to Amex.<sup>28</sup> The Exchange desires to provide investors deep liquid markets in which to trade FLEX options and believes that adopting rules similar to Amex will allow the Exchange to provide investors the tools to transact FLEX options in a transparent environment.

## 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. The Exchange proposes to adopt rules to permit the quoting and trading of FLEX options on the Exchange's trading floor similar to Amex.<sup>29</sup> The Exchange believes that its ability to remain competitive and provide market participants multiple venues in which to trade FLEX options in a similar manner benefits market participants by providing them choices in which to seek markets to transact these products. The Exchange believes that this filing does not impose a burden on competition in as much as the rules are not novel but rather are the same as the rules of Amex.

## 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>30</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>31</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: (i) Necessary or appropriate in

<sup>23</sup> See Exchange Rule 1064 at Commentary .02.

<sup>24</sup> Today, if the Requesting Member's bid/offer is at the BBO, the Requesting Member may execute 25% or a fair split, whichever is greater, of the contra-side of the order that is the subject of the RFQ. If the Requesting Member's bid/offer improves the existing BBO, an assigned ROT or assigned Specialist who responded with a market during the response time or BBO Improvement Interval, may immediately join the Requesting Member's improved bid or offer, thus matching for parity purposes. However, the Requesting Member may execute 25% or a fair split, whichever is greater, of the contra-side of the order that is the subject of the RFQ.

<sup>25</sup> The Exchange has separate rules relating to trading FLEX foreign currencies minimum increments. See Exchange Rule 1005C.

<sup>26</sup> 15 U.S.C. 78f.

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> See note 19. [sic]

<sup>29</sup> *Id.*

<sup>30</sup> 15 U.S.C. 78s(b)(3)(a)(ii). [sic]

<sup>31</sup> 17 CFR 240.19b-4(f)(6).

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. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

#### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-50 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-2013-50. This file number should be included on the subject line if email 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 on official business days between the hours of 10:00 a.m. and 3:00 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-2013-50, and should be submitted on or before June 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-12040 Filed 5-20-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69588; File No. SR-Phlx-2013-51]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change to Its Schedule of Fees and Rebates for Execution of Quotes and Orders on NASDAQ OMX PSX

May 15, 2013.

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 May 3, 2013, 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 Substance of the Proposed Rule Change

The Exchange proposes changes to its schedule of fees and rebates for execution of quotes and orders on NASDAQ OMX PSX ("PSX"). Phlx proposes to implement the proposed rule change on May 3, 2013. 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, and at the Commission's Public Reference Room.

<sup>32</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 Commission recently approved modifications to the rules governing the operation of Phlx's PSX trading platform in order to replace its price/size/pro rata allocation model with a price/time model, and to permit member organizations to register as market makers in securities traded on PSX.<sup>3</sup> Phlx is now proposing to modify its schedule of fees and rebates for transactions occurring on PSX.

Currently, the Exchange charges the following fees for execution of orders that access liquidity on PSX: A volume-based discounted fee of \$0.0028 per share executed for an order entered through a market participant identifier ("MPID") through which a member organization provides shares of liquidity that represent more than 0.10% of Consolidated Volume<sup>4</sup> during the month; \$0.0028 per share executed for an order that is designated as eligible for routing, and \$0.0030 per share executed for other orders. The Exchange is proposing to reduce significantly the criterion for the volume-based discounted fee, from 0.10% of Consolidated Volume to an average daily volume of 10,000 or more shares of liquidity provided. Moreover, for securities listed on the NASDAQ Stock Market ("NASDAQ") or the New York Stock Exchange ("NYSE"), Phlx proposes to lower the volume-based discounted fee to \$0.00275 per share executed. For securities listed on exchanges other than NASDAQ or NYSE, the Exchange proposes to make

<sup>3</sup> Securities Exchange Act Release No. 69452 (April 25, 2013), 78 FR 25512 (May 1, 2013) (SR-Phlx-2013-24).

<sup>4</sup> "Consolidated Volume" is defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities.