

any burden on competition that is 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 solicited nor received.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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, or such shorter time as designated by the Commission. 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. The Exchange requests that the Commission waive the 30-day operative delay as well as the five business-day pre-filing requirement so that the Exchange is able to compete with other options exchanges that are currently permitted to list and trade options on Index-Linked Securities. The Commission believes that waiving the 30-day operative delay and five business-day pre-filing requirement is consistent with the protection of investors and the public interest.<sup>15</sup> The Commission notes the proposal is substantively identical to proposals that were recently approved by the Commission, and does not raise

any new regulatory issues.<sup>16</sup> For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2008-60 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2008-60. 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 inspection and copying 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 the filing also will be available

for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2008-60 and should be submitted on or before October 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58582; File No. SR-Phlx-2008-66]

**Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Quotation Size Decrementation**

September 18, 2008.

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 September 16, 2008, the NASDAQ OMX PHLX, Inc. ("Phlx" or "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 Phlx. Phlx filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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, pursuant to Section 19(b)(1) of the Act<sup>5</sup> and Rule 19b-4 thereunder,<sup>6</sup> proposes to amend Exchange Rule 1082, Firm Quotations, to reflect a change to its fully electronic

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> For purposes only of waiving the 30-day operative delay and five business-day pre-filing requirement, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> See Securities Exchange Act Release Nos. 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (SR-NYSEArca-2008-57) and 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (SR-CBOE-2008-64).

<sup>17</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>3</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>5</sup> 15 U.S.C. 78s(b)(1).

<sup>6</sup> 17 CFR 240.19b-4.

trading platform for options, Phlx XL,<sup>7</sup> in which automatic executions will decrement the Exchange's disseminated size by the amount of the automatic execution.

The text of the proposed rule change is available on the Exchange's Web site at [http://www.phlx.com/regulatory/reg\\_rulefilings.aspx](http://www.phlx.com/regulatory/reg_rulefilings.aspx).

## 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 the proposed rule change is to enhance the ability of Exchange Streaming Quote Traders ("SQTs"),<sup>8</sup> Remote Streaming Quote Traders ("RSQTs"),<sup>9</sup> non-SQT ROTs,<sup>10</sup> and specialists (collectively, "Phlx XL participants") to better manage risk by modifying the Phlx XL system such that when a trade occurs, the Phlx XL system will decrement the quote size by the number of contracts traded in the affected option series on the side of the market that has traded (*i.e.*, bid size for sell transactions and offer size for buy transactions).

Phlx XL currently does not decrement quotation size in real time. Instead, a

Phlx XL participant has control over his or her quotation size and can refresh the size (and price) for which he or she is firm at the disseminated price. Phlx XL participants have experienced situations where they execute more contracts at a particular price than they intended due to the fact that Phlx XL currently does not decrement quote size in real time.

The following example illustrates the issue that the proposed system change would solve:

A Phlx XL participant submits an electronic quotation (a bid) to buy 100 contracts. Under the current system functionality, if a single trade of 100 contracts to sell interacts with that bid for 100 contracts, all 100 contracts will be executed and the Phlx XL participant's quotation will be exhausted and removed from the market place until that Phlx XL participant refreshes his or her quotation.<sup>11</sup>

If, however, a single trade of 100 contracts to sell interacts with that bid for anything less than its full size, the Phlx XL system currently does not decrement the size of the bid, and the bid is still firm for the full original size of 100 contracts. For example, a single trade of 90 contracts occurs on the bid price, all 90 contracts would be executed automatically, but the disseminated size of the quotation will continue to be 100 contracts. Phlx XL participants have experienced situations where a quotation could be for a size of 100 contracts and an execution occurs for 99 contracts, followed by an additional execution of 100 contracts at the same price before the Phlx XL participant can revise his or her quotation in the affected series, for a total execution of 199 contracts when the quotation was only intended to be for a size of 100 contracts at the disseminated price. The Exchange believes that this aspect of the current system exposes Phlx XL participants to undue risk respecting the size for which they are firm at a particular price in a particular option series.

Accordingly, under the proposal, every trade executed automatically in the Phlx XL system would cause the Exchange's disseminated size to be reduced by the number of contracts traded in the affected series at the disseminated price. Receipt of a revised quote from the affected Phlx XL participant would reset the price and size for that series.

#### 2. Statutory Basis

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

of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup> in particular, in that it is designed 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, by providing Phlx XL participants with additional protection from exposure to undue market risk through the real-time decrementation of the Exchange's disseminated size.

The Exchange further believes that the proposed rule change is consistent with the Act because the risk protection afforded Phlx XL participants should encourage them to quote options series with greater size, adding liquidity to the Exchange's markets against which customers can trade.

### 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

Written comments were neither solicited nor received.

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

*Because the proposed rule change:* (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the

<sup>12</sup> 15 U.S.C. 78ff(b).

<sup>13</sup> 15 U.S.C. 78ff(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give 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, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to waive this requirement.

<sup>7</sup> See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 44612 (August 3, 2004) (SR-Phlx-2003-59). [sic]

<sup>8</sup> An SQT is a Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

<sup>9</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

<sup>10</sup> A non-SQT ROT is an ROT who is neither an SQT nor an RSQT. See Exchange Rule 1014(b)(ii)(C).

<sup>11</sup> See Exchange Rule 1082(a)(ii)(B)(1).

Act<sup>16</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that under the proposal, the Exchange's disseminated size should accurately reflect revised quotation sizes based on automatic executions through Phlx XL in real time. Accordingly, the Commission designates that the proposed rule change become operative immediately.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2008-66 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2008-66. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. 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-2008-66 and should be submitted on or before October 15, 2008.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58569; File No. SR-NASDAQ-2008-033]

#### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Related to Submission of Non-Tape Reports

September 17, 2008.

##### I. Introduction

On April 18, 2008, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change related to submission of non-tape reports. On July 3, 2008, Nasdaq filed Amendment No. 1 to the proposed rule change. The

proposed rule change was published for comment in the **Federal Register** on July 11, 2008.<sup>3</sup> Two comments were received in support of the proposed rule change.<sup>4</sup> On August 11, 2008, Nasdaq filed Amendment No. 2 to the proposed rule change to make certain technical, non-substantive modifications to the original rule filing. This order approves the proposed rule change, as amended.

##### II. Description of the Proposal

*The proposed rule change would:* Expand the scope of step-outs<sup>5</sup> to include all securities transfers from one Nasdaq member to another provided the transfer does not constitute a reportable trade,<sup>6</sup> eliminate the requirement for an authorizing agreement when Nasdaq members use the Automated Confirmation Transaction service ("ACT") to effect a step-out along with the transfer of a sales fee or similar fee,<sup>7</sup> describe riskless transactions,<sup>8</sup> state that members may not use the step-out function in lieu of reporting a trade,<sup>9</sup> and establish a fee for the use of the step-out function to transfer a transaction fee.<sup>10</sup>

Nasdaq will allow members to submit records for riskless transfers using the following capacities: "Riskless Principal" where the member acted as principal on the trade or trades related to the riskless submission; "Agent" where the member acted as agent on the trade or trades related to the riskless submission; and "Intra-Broker" where the transfer is occurring strictly within a member firm.

##### *Transaction Fees*

According to Nasdaq, trade reporting rules of other SROs allow transaction fees to be included in clearing reports. Nasdaq proposes to permit members to include transaction fees in clearing reports submitted under Rule 7038 or 7042, if the members agree in advance to transfer the transaction fee and if they are parties to a written agreement

<sup>3</sup> See Securities Exchange Act Release No. 58101 (July 3, 2008), 73 FR 40002.

<sup>4</sup> See e-mail from Kirk Allen, Managing Director, Trading, NWQ Investment Management, dated August 1, 2008 ("NWQ Investment Letter") and letter from William D. Edick, Pickard and Djinis LLP, to Florence E. Harmon, Acting Secretary, Commission, dated September 11, 2008 ("Pickard Letter").

<sup>5</sup> Nasdaq states that a step-out is a clearing entry used to transfer a broker's position in a security to another broker, or within accounts at a firm.

<sup>6</sup> Rule 7038(b).

<sup>7</sup> Rule 7038(c).

<sup>8</sup> Rule 7042. Nasdaq states that this requirement follows the general standard for riskless principal transactions articulated in Financial Industry Regulatory Authority ("FINRA") Rule 4632(d)(3)(B).

<sup>9</sup> Rule 7038(d), 7042(b) and 7043(a).

<sup>10</sup> Rule 7043.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

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