

accurate clearance and settlement of securities through increased efficiencies. The Commission agrees with the commenter that the proposed rule change will help promote effective risk management and provides for increased efficiencies by taking into account offsetting positions. Moreover, the Commission has repeatedly found that similar cross-margining programs for "Market Professionals" are consistent with clearing agency requirements under Section 17A of the Act.<sup>37</sup> Because the Market Professional Cross-Margining Program being approved by this Order helps further linked or coordinated facilities for clearance and settlement of transactions while facilitating their prompt and accurate clearance and settlement and safeguards securities and funds in FICC's custody or control or for which it is responsible, the Commission believes that the proposed rule change is consistent with Section 17A of the Act and, therefore, is approving FICC's proposed rule change.

## V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>38</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2)<sup>39</sup> of the Act, that the proposed rule change (File No. SR-FICC-2012-03) be, and hereby is, approved.<sup>40</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66992; File No. SR-Phlx-2012-62]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to PSX Rule 3301(f)(8) Concerning the Processing of the Price To Comply Order

May 15, 2012.

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 4, 2012, 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 to clarify how the processing of a Price to Comply Order under PSX Rule 3301(f)(8) operates based on the method of entry. The Exchange will implement the change effective May 14, 2012.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 3301. Definitions

The following definitions apply to the Rule 3200 and 3300 Series for the trading of securities on PSX.

(a)-(e)

(f) The term "Order Type" shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)-(6) No change.

(7) Reserved.

(8) "Price to Comply Order" are orders that, if, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order *entered through*

*an OUCH port* may be adjusted once or multiple times depending upon [the method of order entry and] *the election of the member firm and changes to the prevailing NBBO. The displayed and undisplayed prices of a Price to Comply order entered through a RASH port may be adjusted multiple times, depending upon changes to the prevailing NBBO.*

(9)-(11) No change.

(g)-(i) No change.

\* \* \* \* \*

#### 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

Phlx is proposing to clarify the effect that the methods of order entry have on the processing of Price to Comply Orders, as described in PSX Rule 3301(f)(8).<sup>3</sup> Price to Comply Orders allow members to quote aggressively and still comply with the locked and crossed markets provisions of Regulation NMS.<sup>4</sup>

As part of the launch of its PSX equities market in October 2010, Phlx adopted many substantially similar equities rules to that of its sister exchange The NASDAQ Stock Market LLC ("NASDAQ"), including the Price to Comply Order type under PSX Rule 3301(f)(8).<sup>5</sup> NASDAQ amended its definition of the Price to Comply Order type under NASDAQ Rule 4751(f)(7) in June 2008.<sup>6</sup> Prior to June 2008, if at the time of entry on NASDAQ a Price to

<sup>3</sup> "Price to Comply Order" is an order such that, if, at the time of entry, it would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers).

<sup>4</sup> 17 CFR 242.610.

<sup>5</sup> Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR-Phlx-2010-79).

<sup>6</sup> Securities Exchange Act Release No. 57910 (June 3, 2008), 73 FR 32776 (June 10, 2008) (SR-NASDAQ-2008-049).

<sup>37</sup> See note 6, *supra*.

<sup>38</sup> 15 U.S.C. 78q-1.

<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>41</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.

Comply Order would create a violation of SEC Rule 610(d) by locking or crossing the protected quote of an external market or would cause a violation of SEC Rule 611 by trading through such a protected quote, the order was converted by the NASDAQ system to a Non-Displayed Order, as defined in NASDAQ Rule 4751(e)(3),<sup>7</sup> and re-priced to the current low offer (for bids) or to the current best bid (for offers). Thereafter, such Non-Displayed Orders were cancelled by the NASDAQ system if the market moved through the price of the order after the order was accepted.

The June 2008 amendment changed how the NASDAQ Price to Comply Order operates so that a locking or crossing order is no longer converted to a Non-Displayed Order, but rather is displayed at the most aggressive price possible, one minimum price increment worse than the locking price. NASDAQ also added language to the rule, subsequently mirrored in PSX Rule 3301(f)(8), which noted that NASDAQ may adjust the displayed and undisplayed prices of a Price to Comply Order once or multiple times, depending on the method of order entry and changes to the National Best Bid and Offer ("NBBO"). In its discussion of the rule change, NASDAQ explained that the displayed and undisplayed price of an individual order may be modified one or more times depending upon the manner of order entry into the system. In particular, if a member chooses to enter a Price to Comply Order via NASDAQ's RASH protocol, the order is priced upon entry and may be adjusted multiple times in response to changes in the prevailing NBBO to move the displayed price closer to the original entered price and display the best possible price consistent with the provisions of Regulation NMS. In addition, each time the displayed price is adjusted, the order will receive a new timestamp for purposes of determining its price/time priority according to NASDAQ's existing processing rules. If a Price to Comply Order is entered via NASDAQ's OUCH protocol, however, the order will be repriced only upon entry and the order is not repriced in the event the prevailing NBBO changes. The PSX Price to Comply Order operates in the same manner as the NASDAQ Price to Comply Order.

<sup>7</sup> "Non-Displayed Order" is a limit order that is not displayed in the NASDAQ system, but nevertheless remains available for potential execution against all incoming orders until executed in full or cancelled. Phlx's definition of Non-Displayed Order under Rule 3301(e)(2) mirrors in substance that of NASDAQ's definition.

Phlx is proposing to amend PSX Rule 3301(f)(8) to clarify the effect that the method of order entry has on the processing of the Price to Comply Order. As noted above, the method of entry of a Price to Comply Order determines whether the order is repriced once or multiple times. This will continue to be the case under the amended rule; however, an OUCH subscriber will be afforded the choice to have its Price to Comply Order be subject to repricing either only once or multiple times. Member firms will designate each OUCH protocol order port to use either the single or multiple repricing functionality for Price to Comply Orders entered via that port.<sup>8</sup> A RASH subscriber will continue to have all Price to Comply Orders repriced multiple times, when appropriate. The methodology for repricing Price to Comply Orders will not vary based on how the order is entered. Like RASH-entered Price to Comply Orders, each time the OUCH-entered order is repriced it will receive a new timestamp for purposes of determining its price/time priority. As such, a repriced Price to Comply order is treated as a new order in terms of priority and, as such, there is no guarantee that the OUCH-entered Price to Comply Order will receive priority when it becomes actionable after repricing.

Phlx believes that the new functionality and related rule change will serve to reduce the order traffic received using the OUCH protocol. Phlx notes that, in certain cases, a member will submit a Price to Comply Order at an aggressive price that it anticipates will be at the NBBO. Often such an order is not submitted at the NBBO and is not executed after repricing because the market does not move to the adjusted order price. In these cases, the member firm will typically submit additional aggressive orders, which likewise are not executed. Because the OUCH protocol is used by member firms that are able to submit a large volume of orders, Phlx believes that offering such firms the ability to have Phlx reprice their Price to Comply Orders multiple times will serve to reduce the excessive volume of orders entered into the system which are ultimately canceled.

As noted, Phlx will continue to offer OUCH subscribers an alternative to the multiple repricing functionality so that such member firms may elect to have their locked or crossed Price to Comply Orders repriced only once, consistent

<sup>8</sup> In the absence of designation from a member firm, Phlx will default the member's OUCH port(s) to single repricing.

with the current process. Phlx believes that this will accommodate member firms that seek the certainty of repricing at most once or whose trading systems depend on the existing repricing mechanism.

Phlx is also making a technical change to PSX Rule 3301(f) to add an omitted subsection (7) to the numbering under the rule, noting that it is reserved for future use.

## 2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Section 6(b)(5) of the Act<sup>10</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 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. Phlx believes this proposal is consistent with the Exchange Act and, specifically, Rules 610 and 611 of Regulation NMS in that it is designed to prevent orders from locking and crossing market or trading through protected quotes, while also promoting a more efficient market. In this regard, Phlx believes that the proposed rule change will promote the efficient use of the Exchange by reducing the number of orders entered into the market and ultimately canceled. As noted, OUCH users tend to enter a relatively large number of aggressive orders that are ultimately canceled after repricing. The proposed rule change will reduce the excessive order traffic experienced by the Exchange due to these cancelled orders and promote the more efficient use of the market by providing OUCH subscribers, who tend to enter the greatest number of such cancelled orders, an option to have the Exchange reprice a single order multiple times. Phlx also believes that permitting a high volume user the option to continue to have the Exchange reprice its Price to Comply Order only upon order entry, when appropriate, will ensure member firms with internal systems that act in reliance of this function will continue to operate without disruption.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

### *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 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 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2012-62 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-Phlx-2012-62. 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, 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 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-2012-62 and should be submitted on or before June 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66994; File No. SR-NYSE-2012-12]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Sections 102.01C and 103.01B of the Exchange's Listed Company Manual To Permit the Listing of Emerging Growth Companies on the Basis of Two Years of Reported Financial Data**

May 15, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 4, 2012, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "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 Sections 102.01C and 103.01B of the Exchange's Listed Company Manual (the "Manual") to permit the listing of companies on the basis of two years of reported financial data as permitted under the JOBS Act.<sup>4</sup> The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### **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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Commission notes that the JOBS Act permits companies that meet the definition of an "emerging growth company" to include two years of audited financial data in their registration statement rather than the normally required three years and does not specifically address exchange listings.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</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 Commission notes that the Exchange has satisfied this requirement.

<sup>13</sup> 17 CFR 200.30-3(a)(12).