

that operate internal broker-dealer systems. Those records are to be used in monitoring compliance with the Commission's financial responsibility program and antifraud and antimanipulative rules, as well as other rules and regulations of the Commission and the self-regulatory organizations. It is estimated that approximately 105 active broker-dealer respondents registered with the Commission incur an average burden of 2,835 hours per year (105 respondents multiplied by 27 burden hours per respondent equals 2,835 total burden hours) to comply with this rule.<sup>1</sup>

Rule 17a-3(a)(16) does not contain record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self-regulatory organization of which the broker-dealer is a member. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Jeffrey Heslop, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: October 18, 2010.

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

[FR Doc. 2010-26678 Filed 10-21-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

*Extension:*  
Regulation S-AM; SEC File No. 270-

548; OMB Control No. 3235-0609.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information provided for in Regulation S-AM (17 CFR part 248, subpart B), under the Fair and Accurate Credit Transactions Act of 2003 (Pub. L. 108-159, Section 214, 117 Stat. 1952 (2003)) ("FACT Act"), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), and the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S-AM implements the requirements of Section 214 of the FACT Act as applied to brokers, dealers, and investment companies, as well as investment advisers and transfer agents that are registered with the Commission (collectively, "Covered Persons"). As directed by Section 214 of the FACT Act, before a receiving affiliate may make marketing solicitations based on the communication of certain consumer financial information from a Covered Person, the Covered Person must provide a notice to each affected individual informing the individual of his or her right to prohibit such marketing. The regulation potentially applies to all of the approximately 21,496 Covered Persons registered with the Commission, although only approximately 12,038 of them have one or more corporate affiliates, and the regulation would require only approximately 2,150 to provide consumers with notice and an opt-out opportunity.

The Commission staff estimates that there are approximately 12,038 Covered Persons having one or more affiliates, and that they would require an average one-time burden of 1 hour to review affiliate marketing practices, for a total of 12,038 hours, at a total staff cost of approximately \$2,527,929. The staff also estimates that approximately 2,150 Covered Persons would be required to provide notice and opt-out opportunities to consumers, and would incur an average first-year burden of 18 hours in doing so, for a total estimated first-year burden of 38,700 hours, at a total staff cost of approximately \$10,294,200. With regard to continuing notice burdens, the staff estimates that each of the approximately 2,150 Covered Persons required to provide notice and opt-out opportunities to

consumers would incur a burden of approximately 4 hours per year to create and deliver notices to new consumers and record any opt outs that are received on an ongoing basis, for a total of 8,600 hours, at a total staff cost of approximately \$490,200 per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Jeffrey Heslop, Acting Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: October 13, 2010.

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

[FR Doc. 2010-26679 Filed 10-21-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63121; File No. SR-Phlx-2010-119]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Change To Amend Exchange Rule 652 ("Limitation of Exchange Liability and Reimbursement of Certain Expenses") To Require Member Organizations on the Exchange's Trading Floor To Procure and Maintain Liability Insurance

October 18, 2010.

#### I. Introduction

On September 1, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule

<sup>1</sup> The average cost per hour is \$258. Therefore the total cost of compliance for the respondents is \$731,430.

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

19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Exchange Rule 652 (“Limitation of Exchange Liability and Reimbursement of Certain Expenses”) to require member organizations on the Exchange’s trading floor to procure and maintain liability insurance. The proposed rule change was published for comment in the **Federal Register** on September 17, 2010.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange proposes to require that member organizations located on the Exchange’s trading floor procure and maintain liability insurance by December 31, 2010. The insurance would provide defense and indemnity coverage for the member organization, any person associated with the member organization and the Exchange for any action or proceeding brought, or claim made, to impose liability upon the member organization, associated person or the Exchange which results from the member organization’s or associated person’s conduct.

According to the Exchange, it does not intend this amendment to provide relief associated with financial loss related to buying and selling securities; the insurance coverage is intended to provide coverage to the Exchange for its sole, concurrent, or contributory negligence or other wrongdoing connected to a claim arising from the member organization’s or associated person’s conduct. The member organization would be required to maintain insurance with a limit that is not less than \$1,000,000 without erosion by defense costs. Each member organization located on the trading floor would be required to provide a certificate of insurance to be issued directly to the Exchange demonstrating the insurance was procured and is maintained. The Exchange also proposes to expand the language in Rule 652 to apply the rule to individuals of the Exchange, specifically officers, directors and employees. The Exchange believes that this change will clarify that individuals serving as officers, directors or employees are also the subject of Rule 652.

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules

and regulations thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires, among other things, that the proposed rule change be 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. The Commission believes that the proposed rule change is a reasonable means of protecting the Exchange’s financial resources that are normally used to support the Exchange’s surveillance and self-regulatory responsibilities, rather than having this capital diverted to defending litigation claims.

The Commission believes that requiring member organizations to obtain insurance coverage to protect the Exchange from claims resulting from their own conduct is not an undue burden. Furthermore, the Commission believes that the proposed rule change may conserve Exchange capital resources, and will provide additional coverage for member organizations since the member organizations are within the scope of the required insurance’s coverage.

Finally, the Commission believes that amending Exchange Rule 652 to add officers, directors and employees in addition to the Exchange will remove any ambiguity or confusion by explicitly stating that the word “Exchange” as used in Rule 652 includes such individuals.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-Phlx-2010-119) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

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

[FR Doc. 2010-26676 Filed 10-21-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63122; File No. SR-BATS-2010-028]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposal To Make Clean Up Changes by Amending Certain Rules

October 18, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 6, 2010, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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 Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) 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 is proposing to amend BATS Rule 2.3 to clarify that a broker or dealer must be a member of another national securities exchange or association other than BATS Y-Exchange, Inc. (“BYX”) in order to become or remain a Member of the Exchange, to remove the text of Rule 2.4 because the waive-in period for the Exchange has expired, and to make a technical correction to BATS Rule 14.5. The text of the proposed rule change is available at the Exchange’s Web site at <http://www.batstrading.com>, 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

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</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)(iii).

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

<sup>3</sup> See Securities Exchange Act Release No. 62892 (September 10, 2010), 75 FR 57090.