

Representative Directors<sup>6</sup> to be elected under the terms of the LLC Agreement.”<sup>7</sup> The Exchange recently adopted this provision when it conformed its By-Laws to those of NASDAQ.<sup>8</sup> According to the Exchange, however, it does not have a significant number of original listings as does NASDAQ,<sup>9</sup> and therefore has less available issuer representatives to serve on the Board. Consequently, the Exchange now proposes to change the requirement by broadening it to require a director representative of issuers and investors instead of a director that is representative only of issuers. The Exchange believes that the expansion of the director position from one that is representative of issuers to one that is representative of issuers and investors is more appropriate for Phlx.<sup>10</sup> The nomination and election process for such directors would remain the same. The director representative of issuers and investors would be nominated by the Nominating Committee and elected

a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.” See Exchange By-Law Article I(p).

<sup>6</sup> A Member Representative Director is “a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by a Member pursuant to [the] By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of a Member. See Exchange By-Law Article I(w).”

<sup>7</sup> The Exchange recently adopted this provision to its By-Laws. See Securities Exchange Act Release No. 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR-Phlx-2011-13) (conforming some of the Exchange By-Laws to the By-Laws of The NASDAQ Stock Market LLC (“NASDAQ”)).

<sup>8</sup> See *id.*

<sup>9</sup> See Notice, *supra* note 3, 76 FR at 41550 n.9.

<sup>10</sup> *Id.*

by the sole shareholder, The NASDAQ OMX Group, Inc.<sup>11</sup>

The Exchange also proposes to eliminate the requirement that there be at least two of these director positions representative of issuers if the Board consists of ten or more directors. In its proposal, the Exchange notes that Section 6(b)(3) of the Act<sup>12</sup> only requires that one Director representative represents issuers and investors.<sup>13</sup>

### III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>14</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>15</sup> which requires, among other things, that the rules of an exchange 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 further finds that the proposal is consistent with Section 6(b)(3) of the Act,<sup>16</sup> which requires that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

The Commission believes that the proposed expansion from an issuer representative to a representative of issuers and investors, and elimination of the requirement that the Board have two such representatives if the Board consists of ten or more directors are consistent with the Act. The fair representation requirement in Section 6(b)(3) of the Act<sup>17</sup> is intended to give members a voice in the selection of an exchange's directors and the administration of its affairs. The Commission notes that this change tracks the statutory language included in Section 6(b)(3) of the Act,<sup>18</sup> which requires one or more directors to be “representative of issuers and investors.” The Commission also notes that the elimination of the requirement to have at least two director positions

<sup>11</sup> See Exchange By-Law Article V, Section 5-3 and Article II, Section 2-1.

<sup>12</sup> 15 U.S.C. 78f(b)(3).

<sup>13</sup> See Notice, *supra* note 3, 76 FR at 41550.

<sup>14</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>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78f(b)(3).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

representative of issuers if the Board consists of ten or more directors is consistent with Section 6(b)(3) of the Act,<sup>19</sup> which only requires the Board to have one such representative. Further, the proposed rule change is consistent with the Act in that it is designed to ensure that the Board continues to satisfy compositional requirements, particularly those concerning fair representation. The Exchange will continue to require the Board composition to include the requisite Public Directors, Industry Directors, and Member Representative Directors (the latter will continue to constitute twenty percent of the Board). In addition, the proposed change will not impact the procedures to nominate and elect any director to the Board that are currently in place. Accordingly, the Commission finds that Phlx's revised By-Laws, as proposed, will continue to provide board qualification requirements that are consistent with the Act.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-Phlx-2011-90) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2011-22307 Filed 8-30-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65192; File No. SR-NYSEAmex-2011-62]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding New Commentary .02 to NYSE Amex Options Rule 965NY To Provide for the Nullification of Reported Trades by Mutual Agreement of the Parties Thereto

August 24, 2011.

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 August 16, 2011, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) filed with the Securities and Exchange

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

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<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.

Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 add new Commentary .02 to NYSE Amex Options Rule 965NY to provide for the nullification of reported trades by mutual agreement of the parties thereto. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange is proposing new Commentary .02 to NYSE Amex Options Rule 965NY to provide for the nullification of reported trades by mutual agreement of the parties thereto.

As provided under proposed Commentary .02 to Rule 965NY, a trade would be nullified if all parties to the trade agree to the nullification. After agreeing to a trade nullification, one party would be required to promptly notify the Exchange for dissemination of cancellation information to the Options Price Reporting Authority ("OPRA").<sup>4</sup>

Proposed Commentary .02 to Rule 965NY would provide the parties to a trade with the ability to nullify a trade under circumstances where, for example, an obvious or catastrophic error is not deemed to have occurred,

but the parties to the trade nonetheless desire that the trade be nullified.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change, which would permit a trade to be nullified upon the mutual agreement of all parties to the trade, is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change makes clear the contractual rights of the parties to a trade to nullify the trade upon mutual agreement. The Exchange believes that the proposed rule change is consistent with a free and open market and the public interest because it gives effect to the contractual rights of the parties to a 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 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 or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the 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 prior to 30 days from the date on which it was filed, 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 and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such 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.

### **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-NYSEAmex-2011-62 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 Number SR-NYSEAmex-2011-62. 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

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>4</sup> The obligation to notify the Exchange would also be reflected within proposed new paragraph (f) to NYSE Amex Options Rule 957NY.

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the NYSE's principal office, and on its Web site at <http://www.nyse.com>. The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>. 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-NYSEAmex-2011-62 and should be submitted on or before September 21, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-22306 Filed 8-30-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65191; File No. SR-NYSEArca-2011-60]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding New Commentary .02 to NYSE Arca Options Rule 6.77 To Provide for the Nullification of Reported Trades by Mutual Agreement of the Parties Thereto

August 24, 2011.

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 August 16, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 add new Commentary .02 to NYSE Arca Options Rule 6.77 to provide for the nullification of reported trades by mutual agreement of the parties thereto. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange is proposing new Commentary .02 to NYSE Arca Options Rule 6.77 to provide for the nullification of reported trades by mutual agreement of the parties thereto.

As provided under proposed Commentary .02 to Rule 6.77, a trade would be nullified if all parties to the trade agree to the nullification. After agreeing to a trade nullification, one party would be required to promptly notify the Exchange for dissemination of cancellation information to the Options Price Reporting Authority ("OPRA").<sup>4</sup>

Proposed Commentary .02 to Rule 6.77 would provide the parties to a trade with the ability to nullify a trade under circumstances where, for example, an obvious or catastrophic error is not deemed to have occurred, but the parties to the trade nonetheless desire that the trade be nullified.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change, which would permit a trade to be nullified upon the mutual agreement of all parties to the trade, is consistent with Section 6(b) of

the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change makes clear the contractual rights of the parties to a trade to nullify the trade upon mutual agreement. The Exchange believes that the proposed rule change is consistent with a free and open market and the public interest because it gives effect to the contractual rights of the parties to a 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 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 or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the 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 prior to 30 days from the date on which it was filed, 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 and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<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 obligation to notify the Exchange would also be reflected within proposed new paragraph (f) to NYSE Arca Options Rule 6.69.