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The collection of information under Form N-PX is mandatory. The information provided under the form is not kept confidential. 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 OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; 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 Thomas Bayer, 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).

Dated: September 23, 2011.

**Elizabeth M. Murphy,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65389; File No. SR-Phlx-2011-101]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Change Regarding Streaming Quote Traders and Remote Streaming Quote Traders Entering Certain Option Day Limit Orders

September 23, 2011.

#### I. Introduction

On July 17, 2011, NASDAQ OMX PHLX LLC ("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

19b-4 thereunder,<sup>2</sup> a proposed rule change to allow Streaming Quote Traders ("SQTs") and Remote Streaming Quote Traders ("RSQTs") to enter day limit orders. The proposed rule change was published for comment in the **Federal Register** on August 11, 2011.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposal.

#### II. Description of the Proposal

The purpose of the proposal is to amend two subsections of Exchange Rule 1080 to allow entry of day limit orders for the proprietary accounts of SQTs and RSQTs.

Current Rule 1080 (Phlx XL and XL II) discusses the Exchange's enhanced electronic order, trading, and execution system (the "electronic interface"). The current iteration of the Exchange's electronic interface is known as Phlx XL II.<sup>4</sup> Rule 1080 states that it governs the orders, execution reports and administrative order messages transmitted between the offices of member organizations and the trading floors of the Exchange. Rule 1080 also discusses what agency and proprietary orders are eligible for entry into the Exchange's electronic interface.

Subsection (b)(i)(B)(2) states that the following types of orders for the proprietary account(s) of SQTs and RSQTs are eligible for entry via electronic interface: limit on opening, IOC, and ISO. Currently, there is no ability for SQTs and RSQTs to enter day limit orders in their proprietary accounts. The proposal allows day limit orders for the proprietary account(s) of SQTs and RSQTs to be entered pursuant to subsection (b)(i)(B)(2). The proposed change will promote consistency among ROTs by allowing SQTs and RSQTs to do what Rule 1080 and Commentary .04 now allow non-SQT ROTs to do: enter certain day limit orders (10 or more contracts) in their proprietary accounts.<sup>5</sup>

Commentary .04 of Rule 1080 states that orders for the proprietary accounts of SQTs, RSQTs and non-SQT ROTs may be entered for delivery via electronic interface through the use of

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

<sup>3</sup> See Securities Exchange Act Release No. 65050 (August 5, 2011), 76 FR 49816.

<sup>4</sup> See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32) (order approving Phlx XL II). Phlx XL II is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of Exchange-listed equity options, index options and U.S. dollar-settled foreign currency options orders to the Exchange trading floor. Rule 1080(a).

<sup>5</sup> For example, subsection (b)(i)(B)(1) allows non-SQTs and specialists to enter certain day limit orders (10 or more contracts) in their proprietary accounts.

Exchange approved proprietary systems of members that interface with the Exchange's electronic interface.<sup>6</sup> Currently, proprietary non-SQT ROT orders with a size of less than 10 contracts have to be submitted as IOC and larger orders may be submitted as day limit and other order types; while proprietary SQT and RSQT orders may only be submitted as IOC.

The Exchange is proposing to put all the ROTs (SQTs, RSQTs and non-SQT ROTs) on an equal footing. Specifically, the Exchange proposes to state in Commentary .04 that orders for the proprietary account(s) of SQTs, RSQTs, and non-SQT ROTs with a size of less than 10 contracts shall be submitted as IOC only. Thus, where SQT and RSQT orders under the current rule could only be submitted as IOC, the proposed change to Commentary .04 would allow these SQTs and RSQTs to enter non IOC orders (e.g. day orders) in proprietary accounts if they are for 10 or more contracts.

#### III. Discussion

After careful review, 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>7</sup> and, in particular, the requirements of Section 6 of the Act.<sup>8</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>9</sup> in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes that it is consistent with the Act for SQTs and RSQTs to enter non IOC orders (e.g. day orders) in proprietary accounts if they are for 10 or more contracts. The Commission believes that allowing these order types should help to enhance liquidity on the Exchange. The Commission notes that SQTs and RSQTs would still be required to comply with their electronic quoting obligations.

#### IV. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-PHLX-2011-101) is approved.

<sup>6</sup> Such orders have to be for a minimum of one (1) contract.

<sup>7</sup> The Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

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

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

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011-25071 Filed 9-28-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65388; File No. SR-FINRA-2011-051]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Create an Exemption From Certain Reporting Obligations Under the Equity Trade Reporting Rules for Certain Alternative Trading Systems

September 23, 2011.

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, 2011, the Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 FINRA. 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

FINRA is proposing to adopt new Rules 6183 and 6625 to provide FINRA with authority to exempt a member alternative trading system (“ATS”) that meets the specified criteria from the trade reporting obligation under the equity trade reporting rules. In addition, FINRA is proposing a conforming change to Rule 9610 to specify that FINRA has exemptive authority under proposed Rules 6183 and 6625.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA trade reporting rules require that over-the-counter (“OTC”) transactions in equity securities<sup>3</sup> between members be reported to FINRA by the “executing party.”<sup>4</sup> “Executing party” is defined as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction. An ATS, which term includes electronic communications networks, is the “executing party” and has the trade reporting obligation where the transaction is executed on the ATS.<sup>5</sup>

FINRA is proposing to adopt new Rules 6183 and 6625 to provide FINRA with authority to exempt, upon application and subject to specified terms and conditions, a member ATS from the trade reporting obligation under certain limited circumstances. FINRA will only grant an exemption

<sup>3</sup> Specifically, these transactions are: (1) Transactions in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS, effected otherwise than on an exchange, which are reported through the Alternative Display Facility or a Trade Reporting Facility; and (2) transactions in OTC Equity Securities and Restricted Equity Securities, as those terms are defined in Rule 6420, which are reported through the OTC Reporting Facility.

FINRA notes that the proposed rule change applies to OTC transactions in equity securities only. It does not apply to TRACE-eligible securities, nor does it impact the reporting rules applicable to transactions in TRACE-eligible securities, which are subject to a separate reporting structure under the Rule 6700 Series.

<sup>4</sup> See Rules 6282(b), 6380A(b), 6380B(b) and 6622(b). For transactions between a member and a non-member or customer, the member must report the trade.

<sup>5</sup> See Securities Exchange Act Release No. 58903 (November 5, 2008), 73 FR 67905 (November 17, 2008) (Order Approving File No. SR-FINRA-2008-011); and *Regulatory Notice* 09-08 (January 2009). See also, e.g., Trade Reporting Frequently Asked Questions, Sections 307 and 308, available at <http://www.finra.org/Industry/Regulation/Guidance/P038942>.

where all of the conditions set forth in the proposed rule are satisfied.

First, trades must be between ATS subscribers that are both FINRA members. For any trades between non-members or a FINRA member and a non-member, the exemption will not apply, and the ATS will have the trade reporting obligation under FINRA rules.

The ATS also must demonstrate that it meets the following criteria. First, the member subscribers must be fully disclosed to one another at all times on the ATS. Second, although the system brings together the orders of buyers and sellers and uses established, non-discretionary methods under which such orders interact with each other, the system does not permit automatic execution. A member subscriber must take affirmative steps beyond the submission of an order to agree to a trade with another member subscriber. Third, the trade does not pass through any ATS account, and the ATS does not in any way hold itself out to be a party to the trade. Fourth, the ATS does not exchange shares or funds on behalf of the member subscribers, take either side of the trade for clearing or settlement purposes, including, but not limited to, at DTC or otherwise, or in any other way insert itself into the trade.

In addition, the ATS and the member subscribers must acknowledge and agree in writing that the ATS shall not be deemed a party to the trade for purposes of trade reporting and that trades shall be reported by the member subscriber that, as between the two member subscribers, would satisfy the definition of “executing party” under FINRA trade reporting rules. An ATS that is granted an exemption must obtain such written agreements from all of its member subscribers prior to relying on the exemption.<sup>6</sup>

Finally, the ATS must agree to provide to FINRA on a monthly basis, or such other basis as prescribed by FINRA, data relating to the volume of trades by security executed by the ATS’s member subscribers using the ATS’s system (e.g., number of trades, number of shares traded and total settlement value for each security traded). Importantly, although an ATS exempted under the proposed rule will not have trade reporting obligations under FINRA rules, the trading occurring through the ATS is still considered volume of the ATS for purposes of, among other

<sup>6</sup> FINRA reminds members of their books and records obligations under FINRA rules, the Exchange Act and applicable Exchange Act rules. Thus, any ATS that is granted an exemption under the proposed rule change would be required to retain the written agreements and be able to produce them to FINRA upon request.

<sup>11</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.