

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67412; File No. SR-Phlx-2012-91]

### 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

July 11, 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 July 2, 2012, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 text of the proposed rule change is below. Proposed new language is *italicized*; 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)–(7) No change.

(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 *that crosses the market will [may] be adjusted once and, depending on the election of the*

*member firm, either rest on the book or [multiple times depending upon the election of the member firm and changes to the prevailing NBBO] be canceled if the previously-locking price becomes available. The displayed and undisplayed prices of a Price to Comply order entered through an OUCH port that locks the market will be adjusted once and, depending on the election of the member firm, either rest on the book, be canceled, or adjusted a second time if the previously-locking price becomes available.* 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.

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#### 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

Phlx is proposing to modify how OUCH port-entered Price to Comply Orders<sup>3</sup> will operate. Price to Comply Orders, as described in PSX Rule 3301(f)(8), allow member firms to quote aggressively and still comply with the locked and crossed markets provisions of Regulation NMS.<sup>4</sup> Phlx recently amended PSX Rule 3301(f)(8) to clarify the effect that the methods of order entry have on the processing of Price to Comply Orders.<sup>5</sup> The rule change clarified that OUCH port-entered Price to Comply Orders are now eligible for

<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> See Securities Exchange Act Release No. 66992 (May 15, 2012), 77 FR 30038 (May 21, 2012) (SR-Phlx-2012-62).

price adjustment either once or multiple times, depending on the election of the member firm.<sup>6</sup> The Exchange noted in the rule change that offering OUCH port users the ability to have Phlx reprice a Price to Comply Order multiple times will serve to reduce the excessive volume of orders entered into the System<sup>7</sup> and ultimately canceled.<sup>8</sup> Accordingly, a Price to Comply Order entered through an OUCH port that a member firm has designated for multiple price adjustment will be adjusted more than once in response to changes in the prevailing National Best Bid and Offer (“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. Prior to the clarifying rule change, OUCH port-entered Price to Comply Orders that would lock or cross the market would be adjusted once and thereafter rest on the book. The Exchange has not implemented the recently-adopted changes<sup>9</sup> so that it could subsequently modify how the OUCH port-entered Price to Comply Orders will operate under PSX Rule 3301(f)(8), as described below.

The Exchange has determined to modify PSX Rule 3301(f)(8) so that a Price to Comply Order entered via an OUCH port designated for multiple price adjustment that would lock the market can be adjusted a maximum of two times—once upon entry and once again to move the displayed price to the original entered price when it becomes permissible under Regulation NMS to do so, thereby displaying the best possible price consistent with the provisions of Regulation NMS. Under the proposed rule change, such Price to Comply Orders that would cross the market upon entry would be price adjusted once upon entry to display at a permissible level and thereafter

<sup>6</sup> Member firms must designate each OUCH protocol order port that it wishes to use with the multiple price adjustment functionality, and such ports will also be designated for automatic cancellation or “kick out” of other order types whose price was adjusted upon entry to prevent a violation of Rule 610(d) of Regulation NMS. In the absence of designation from a member firm, the Exchange will default the member’s OUCH port(s) to single price adjustment.

<sup>7</sup> As defined by PSX Rule 3301(a).

<sup>8</sup> The Exchange noted that the OUCH protocol is used by member firms that are able to submit a large volume of orders. Such member firm will often submit a Price to Comply Order at an aggressive price that it anticipates will be at the NBBO, but it is not submitted at the NBBO and is not executed after repricing because the market does not move to the adjusted order price. In such cases, the member firm will typically submit additional aggressive orders, which likewise are not executed. *Supra* note 5.

<sup>9</sup> *Supra* note 5.

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

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

cancelled when the previously locking level becomes available. This cancellation allows the member to resubmit its order at a price more aggressive than the previously locking price should the member still desire to do so.<sup>10</sup> As such, and unlike as described in the recent rule change, the process applied to OUCH ports designated for multiple price adjustment will be similar to, yet different than, the process applied to RASH-entered Price to Comply Orders.

Phlx is not changing how Price to Comply Orders entered via an OUCH port not designated for multiple price adjustment operate. Such orders will continue to be adjusted once and thereafter remain on the book. Likewise, Phlx is not proposing to change how price adjusted orders are treated in terms of priority. Like RASH-entered Price to Comply Orders, each time the OUCH-entered order is price adjusted it will receive a new timestamp for purposes of determining its price/display/time priority.<sup>11</sup> As such, an OUCH-entered Price to Comply Order that is repriced upon entry will initially be prioritized among non-displayed orders at the locking price based on its time of entry. Upon the second repricing of an OUCH-entered Price to Comply Order that is entered at a locking price, the order will be prioritized among displayed orders at the previously locking price based on its time of repricing and thus is treated as a new displayed order in terms of priority. There is no guarantee that the OUCH-entered Price to Comply Order will receive priority amongst displayed orders when it becomes actionable after repricing, as other displayed orders may be entered before the Price to Comply Order is repriced. This priority treatment is identical to the treatment provided to RASH-entered Price to Comply Orders that are price adjusted. The Exchange will provide public notice five business days prior to the implementation date of the changes proposed herein, together with the changes proposed in the recent rule filing<sup>12</sup> not modified by this proposal, and such implementation date will be no later than thirty calendar days from the date of filing this proposal with the Commission.

<sup>10</sup> Similarly, orders other than Price to Comply Orders that are re-priced on entry due to Regulation NMS and submitted via OUCH ports designated for multiple price adjustment of Price to Comply Orders will be cancelled when the previously locking price level becomes available.

<sup>11</sup> As described in PSX Rule 3307(a)(1).

<sup>12</sup> *Supra* note 5.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>13</sup> in general, and with Section 6(b)(5) of the Act<sup>14</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. The Exchange 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 the market or trading through protected quotes, while also promoting a more efficient market. In this regard, the Exchange 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. The proposed rule change will accomplish this by providing the member firms that tend to enter the greatest number of such orders via OUCH ports an option to have the Exchange reprice two times a single order that would lock the market upon entry. The Exchange 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 on this function will continue to operate without disruption.

### B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### 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.

<sup>13</sup> 15 U.S.C. 78f.

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

## 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup>

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. The Exchange has provided 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.

## 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 Number SR-Phlx-2012-91 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-Phlx-2012-91. 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

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

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

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 publicly available. All submissions should refer to File Number SR-Phlx-2012-91 and should be submitted on or before August 7, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67408; File No. SR-NYSE-2012-22]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes to the Transaction Fees and Credits Within Its Price List

July 11, 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 June 29, 2012, New York Stock Exchange LLC (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("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 certain changes to the transaction fees and credits within its Price List, which the Exchange proposes to become operative on July 1, 2012. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 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 certain changes to the transaction fees and credits within its Price List, which the Exchange proposes to become operative on July 1, 2012.

The Exchange recently amended Rule 107B, which currently operates on a pilot basis,<sup>3</sup> to add a class of Supplemental Liquidity Providers ("SLPs") that are registered as market makers at the Exchange ("SLMMs").<sup>4</sup> SLPs in the original class ("SLP-Props") are eligible for credits when adding liquidity on the Exchange. The amount of the credit is determined by the "tier" for which the SLP-Prop qualifies, which is based on (i) whether the SLP-Prop meets the 10% average or more quoting requirement in all assigned securities

pursuant to Rule 107B; and (ii) whether the SLP-Prop (a) adds liquidity of an average daily volume ("ADV") of more than 10 million shares for all assigned SLP securities in the aggregate; and (b) for each assigned SLP security, adds liquidity within a specified range of percentages of consolidated ADV ("CADV") for that security.

The Exchange hereby proposes that transaction credits for SLMMs would be identical to those that are applicable to SLP-Props, both with respect to the rate of the credit and the qualification requirements for the tiers. The Exchange also proposes to specify that, for purposes of determining whether an SLP has added liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate, shares of an SLP-Prop and an SLMM of the same member organization would be aggregated.<sup>5</sup> The Exchange has proposed this aggregation because, as described in SR-NYSE-2012-10, if a member organization has more than one business unit, and the SLP-Prop business unit is walled off from the SLMM business unit, the member organization may engage in both an SLP-Prop and SLMM business from those different business units.<sup>6</sup> Accordingly, because the 10 million share threshold applies to all of an SLP's shares in the aggregate, the Exchange believes that the activity of an SLP-Prop and an SLMM of the same member organization should be aggregated.<sup>7</sup> However, for purposes of determining whether an SLP has satisfied the 10% average or more quoting requirement pursuant to Rule 107B as well as the per-security percentage of added liquidity, shares of an SLP-Prop and an SLMM of the same member organization would not be aggregated. As described in SR-NYSE-2012-10, provided there is no coordinated trading between the SLP-Prop and SLMM business units, they may be assigned the same securities.<sup>8</sup> In

<sup>5</sup> The Exchange proposes to add "in the aggregate" to the \$0.0005 tier for securities with a per-share price of less than \$1.00 to make this language consistent with the other tiers. This aspect of the proposed rule change would not be a substantive change.

<sup>6</sup> See *supra* note 4 at 35456.

<sup>7</sup> Additionally, this would be consistent with the manner in which the Exchange aggregates the activity of an SLP-Prop and an SLMM of the same member organization for purposes of determining whether the 10 million share requirement of Rule 107B(a) has been satisfied.

<sup>8</sup> See *supra* note 4 at 35456. See also Rule 107B(i)(2)(B), which provides that an SLP-Prop shall not also act as an SLMM in the same securities in which it is registered as an SLP-Prop and vice versa, provided, however, that if a member organization maintains information barriers between an SLP-Prop unit and an SLMM unit, the SLP-Prop and SLMM units may be assigned the same securities.

<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> See Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR-NYSE-2008-108). The pilot is currently scheduled to end on July 31, 2012.

<sup>4</sup> See Securities Exchange Act Release No. 67154 (June 7, 2012), 77 FR 35455 (June 13, 2012) (SR-NYSE-2012-10). The Exchange notes that pursuant to SR-NYSE-2012-10 the addition of the SLMM class would not be effective until the first day of the month following Commission approval, which is July 2, 2012.