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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-18163 Filed 7-24-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67469; File No. SR-Phlx-2012-92]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rules 1014, 1051, and OFPA F-2

July 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on July 6, 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 is filing with the Commission a proposal to amend Exchange Rules 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, and 1051, General Comparison and Clearance Rule, and Options Floor Procedure Advice ("OFPA") F-2, Allocation, Time Stamping, Matching and Access to Matched Trades, to delete obsolete and unnecessary provisions in the Rules and OFPA concerning ticket matching and trade reporting requirements for options trades executed in open outcry.

The text of the proposed rule change is available on the Exchange's Web site

at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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 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

The purpose of the proposed rule change is to modify unnecessary or obsolete provisions currently contained in Exchange Rules 1014(g)(vi), 1051, and OFPA F-2 that set forth ticket matching and trade reporting requirements for members executing transactions on the Exchange. The proposed rule change is intended to adopt rules that reflect the current process for matching and reporting options trades executed in open outcry on the floor of the Exchange.

The matching and trade reporting requirements in the current rules apply to trades that are executed in open outcry, which may require the participants to submit written paper trade tickets for reporting. Portions of the Rules and OFPA apply to electronically executed trades, which are matched and reported to the consolidated tape automatically by the Exchange's automated options trading system, PHLX XL<sup>3</sup>. The vast majority

<sup>3</sup> PHLX XL, formerly known as "AUTOM," 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. See Exchange Rule 1080(a). This proposal refers to "PHLX XL" as the Exchange's automated options trading and reporting system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from

of options trades that are executed on the Exchange are reported to the consolidated tape and to the participants in the trade automatically. In certain instances, however, trades are executed in open outcry in the trading crowd without the use of electronic connectivity to PHLX XL (such as a verbal trade between market makers). The Exchange proposes to modify the Rules and OFPA to reflect the current procedures for reporting such trades.

###### Current Rules

Rule 1051(b) currently requires that all Exchange options transactions be reported at the time of execution to the Exchange for comparison of trade information at the specialist's post. Currently, not "all" options trades are executed in open outcry. In fact, the majority of option trades executed on the Exchange are executed electronically via PHLX XL. Upon the electronic execution of an options trade, PHLX XL sends an immediate report of the trade to the Options Price Reporting Authority ("OPRA"), the Options Clearing Corporation ("OCC"), and to the participants in the trade. Therefore, trades executed electronically via PHLX XL require no trade reporting action by participants.

Some trades still occur verbally in the trading crowd, such as when market makers trade with one another, or in very rare instances where there is a malfunction of the Exchange's system or the Options Floor Broker Management System ("FBMS," described below). In such instances, participants in the verbal trade are required to produce written trade tickets. Current Rule 1014(g)(vi) and OFPA F-2 require participants to allocate, match and time stamp executed trades as well as to submit the matched trade to the appropriate person at the respective specialist post. Once a trade has been matched and submitted for reporting at the post, current OFPA F-2(d) states that the respective Specialist Unit must preserve the matched tickets for a period of not less than three years.

Current Rule 1051(a) and OFPA F-2(b) require a member or member organization initiating an options transaction, whether acting as principal or agent, to report or ensure that the transaction is reported within 90 seconds of the execution to the tape, except that, when an order represented by a Floor Broker is executed against a limit order on the book, the Specialist must report or ensure that the portion of

"AUTOM" and "Phlx XL II" to "PHLX XL" for branding purposes.

<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.

the transaction represented by such Specialist is reported to the tape.

#### The Proposal

The Exchange proposes to: (i) Amend Rule 1014(g)(vi) to require matched tickets in manually executed trades to be submitted to an Exchange Data Entry Technician (“DET”) located on the options trading floor immediately upon execution; (ii) to delete from Rules 1014(g)(vi) and 1051(b), the provision that currently states that all Exchange options transactions shall be reported at the time of execution to the Exchange for comparison of trade information at the specialist’s post;<sup>4</sup> (iii) delete from Rule 1051(a) and OFPA–2(b) the provision stating that when an order represented by a Floor Broker is executed against a limit order on the book, the Specialist must report or ensure that the portion of the transaction represented by such Specialist is reported to the tape (the Floor Broker now has the capability of electronically executing limit orders on the limit order book using the FBMS;<sup>5</sup> and (iv) delete from OFPA–2(d) the provision requiring specialists to keep matched tickets for a minimum of three years, and replace that provision with rule text requiring the respective parties to the manually executed trade to preserve the matched tickets for a three-year period. If the specialist is a party to such a trade, the specialist would be included as a party required to preserve the matched tickets. The specialist would not be required to keep matched trade tickets from a manually executed trade to which the specialist is not a party.

The vast majority of trades on the Exchange are now executed and reported electronically via PHLX XL. The advent of electronic trading has in most cases obviated the need for trade tickets, except in the few instances where trades are executed in open

<sup>4</sup> Manually executed trades are currently reported to DETs located on the Exchange floor; electronically executed trades are submitted to the Exchange through PHLX XL.

<sup>5</sup> The Options Floor Broker Management System is a component of the Exchange’s system designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. See Exchange Rule 1080, Commentary .06.

outcry.<sup>6</sup> As a result, Exchange DETs are no longer positioned behind the specialist’s post. Instead, Exchange DETs are located at a specific location on the Exchange’s Options Floor, and not behind any particular specialist’s trading post. The Exchange therefore proposes to amend Rule 1014(a)(vi) and OFPA F–2(a) by requiring the responsible person to submit the matched trade tickets to an Exchange DET located on the trading floor immediately upon execution. Additionally, because reporting of trades executed in open outcry to the Exchange is not currently done at the specialist’s post, the Exchange proposes to delete this requirement from Rule 1051(b).

The Exchange also proposes to delete the provision from Rule 1051(a) and OFPA F–2(b) stating that when an order represented by a Floor Broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported to the tape. Floor Brokers have the capability and the requirement to enter orders to trade against limit orders on the limit order book using the FBMS.<sup>7</sup>

At the time of the initial deployment of the FBMS, when a floor broker initiated a transaction and executed all or a portion of the transaction against a contra-side limit order on the limit order book, the specialist executed the booked limit order on the system by matching the booked limit order against the order represented by the floor broker. The rule requires that when an order represented by a floor broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported to the tape. The purpose of this provision was to address the situation in which an order represented by a floor broker executes a booked limit order was executed by the specialist. The floor broker in this situation was not required to report that portion of the transaction on the system, despite the fact that the floor broker involved may have in fact “initiated” the transaction.

Subsequently, the Exchange made changes to the PHLX XL system and created PHLX XL II, which was rolled out over a 12-week period (the “rollout”).<sup>8</sup> Upon completion of the

<sup>6</sup> For example, an Exchange market maker trading directly with another market maker in open outcry would still require paper tickets, and trade tickets would be used in the event of a system malfunction.

<sup>7</sup> See Exchange Rules 1063(e) and (f).

<sup>8</sup> See *supra* note 3.

rollout, specialists could no longer match orders in the trading crowd, including those submitted via FBMS, with orders on the book. The PHLX XL system now matches and reports all trades submitted electronically against limit orders on the book.<sup>9</sup> The instant proposed rule change is intended to reflect that the specialist no longer has the capability to match or report such trades. If the specialist is a party to such a trade, the portion of the transaction represented by such specialist is reported to the tape automatically. Therefore, the Exchange is proposing to delete this requirement from Rule 1051 and OFPA F–2 because it is obsolete.

Rule 1014(g)(vi) and OFPA F–2(a) currently require persons identified in the Rule and OFPA to allocate, match and time stamp manually executed trades as well as to submit the matched trade tickets to the appropriate person at the respective specialist post immediately upon execution.<sup>10</sup> At the time of the adoption of this requirement, most trades on the Exchange were executed in open outcry and reported by the “appropriate person at the respective specialist post,” an Exchange DET, who was located behind the specialist post. The responsible person would submit the matched trade tickets to the DET through a chute that would dispense the tickets at the DET’s terminal. The DET would then enter the trade ticket and clearing information onto the Exchange’s system and report the trade to the consolidated tape. The matched trade tickets were kept by the

<sup>9</sup> The Exchange is a member of OPRA under the Limited Liability Company Agreement of Options Price Reporting Authority, LLC (“the OPRA Plan”). Section 5.2 of the OPRA Plan, entitled “Collection and Dissemination of Options Last Sale Reports and Quotation Information,” requires each of the Members to collect and promptly transmit to the OPRA System by means of its own facilities all Last Sale Reports relating to its respective market. For this purpose, each of the Members is required to use its best efforts to transmit such reports to the OPRA System, properly sequenced, within two minutes of the time of execution. Such reports shall be sequenced and transmitted in the appropriate format conforming to the specifications prescribed by OPRA (which may be reflected in contractual agreements between OPRA and persons providing data processing services to OPRA). Except as otherwise provided by OPRA, such reports shall identify: (i) The options series; (ii) The number of contracts in each transaction; (iii) The price at which the contracts were sold; (iv) The market of execution; and (v) Through appropriate codes and messages, late or out of sequence trades, cancels, spread transactions, opening ranges, trading halts and suspensions, and similar matters.

PHLX XL performs these functions for automatically executed transactions. PHLX XL also provides Exchange members who participate in electronic trades with immediate electronic reports. Manually executed trades are transmitted by DETs.

<sup>10</sup> See Securities Exchange Act Release No. 33512 (January 24, 1994), 59 FR 4739 (February 1, 1994) (SR–Phlx–93–08).

DET and given to the specialist at the end of the trading session. The Exchange proposes to delete this requirement because the DET is no longer located at the specialist's post.

Currently, OFPA F-2(d) currently requires specialists to keep all matched trade tickets in their possession for a period of three years, whether or not the specialist participated or acted as agent in any such trade. At the time this requirement was adopted, the Exchange relied primarily on matched trade tickets in carrying out its important surveillance and operations functions and stated, at the time,

[O]nce a trade has been processed for trade dissemination and clearing, it is then left in the possession of the attendant specialist. Accordingly, the Phlx is proposing to not only limit access to these tickets, but also to require specialists to keep all matched trade tickets in their possession for a period of three years, whether or not the specialist participated or acted as agent in any such trade.<sup>11</sup>

Because the matched trade tickets are no longer left in the possession of the attendant specialist, the Exchange proposes to delete the requirement that specialists keep matched tickets for a minimum of three years, and replace that provision with text requiring the respective parties to the trade to preserve the matched tickets, or copies thereof, for that period.

The Exchange represents that the instant proposed rule change will not require any changes in, or modifications to, its current system of surveillance for the submission of trade tickets, or for trade reporting in general.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup> in particular, in that it is 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.

Specifically, the proposal modernizes the Exchange's rules to reflect current practices and systems on the Exchange and in the marketplace as a whole. The requirement that specialists retain trade tickets for trades that are executed manually in the specialist's crowd in situations where the specialist is not a participant in the trade is obviated due to the fact that the specialist does not

match tickets for, or report, such trades. The Exchange believes the deletion of this requirement serves to remove impediments to and perfect the mechanism of a free and open market and a national market system, updating on-floor practices to reflect new technologies and procedures on the Exchange's options trading floor.

Additionally, the proposed rule change takes into account the fact that there are no DETs located at the specialist's post; the mechanism by which manually executed trades are reported is more perfected by requiring in the rules that participants in manually executed trades submit matched tickets to a DET located on the options trading floor immediately upon execution. The proposed rule change clarifies and streamlines the current procedures in the rules respecting the submission of matched trade tickets, which the Exchange believes results in more efficient reporting of manually executed trades, to the benefit of investors and the public interest.

### 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

No written comments were either solicited or received.

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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>14</sup> of the Act and Rule 19b-4(f)(6)(iii) thereunder<sup>15</sup> 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.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 Number SR-Phlx-2012-92 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-2012-92. 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

<sup>11</sup> *Id.*

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

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii). 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.

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2012-92 and should be submitted on or before August 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Kevin M. O'Neill,  
Deputy Secretary.

[FR Doc. 2012-18165 Filed 7-24-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67467; File No. SR-NYSE-2012-28]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing a Fee for Television Distribution of the NYSE Trades Data Product

July 19, 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 July 13, 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, 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 establish a fee for television distribution of the NYSE Trades data product. 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to establish a fee for television distribution of the NYSE Trades data product.

In 2009, the Commission approved the NYSE Trades data product and its fees.<sup>4</sup> NYSE Trades is a NYSE-only market data service that allows a vendor to redistribute on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association ("CTA") Plan for including in the Plan's consolidated data streams and certain other related data elements ("NYSE Last Sale Information"). The Exchange currently charges the datafeed recipients (a) an access fee of \$1,500 per month (the "Access Fee"), and (b) at the election of the vendor, either (i) a device fee for professional subscribers of \$15.00 per month or (ii) a fee based on the number of "Subscriber Entitlements"<sup>5</sup> (the latter two fees together, "User Fees").

The Exchange proposes to add a new fee category for NYSE Trades to provide television broadcasters<sup>6</sup> with an alternative enterprise fee (the "Broadcast Fee"). For the receipt of access to and the ability to display the datafeeds of the NYSE Trades service by a television broadcaster, the Exchange proposes to charge a flat fee of \$40,000 per month.<sup>7</sup> Broadcasters will not be required to track the number of viewers.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the

"Act")<sup>8</sup> in general and with Section 6(b)(4) and 6(b)(5) of the Act<sup>9</sup> in particular in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers. The proposed Broadcast Fee is reasonable, equitable, and not unfairly discriminatory because it will provide a convenient and easy-to-administer way for a television broadcaster to display real-time NYSE-only data on television, thereby providing public investors and other market participants who watch the broadcaster's channel with another means to obtain current market data. The Exchange believes that the Broadcast Fee will be attractive to television broadcasters because it will enable them to provide market data to their viewers that will complement the broadcasters' news reporting services without the added administrative burden and cost of keeping track of the number of viewers of the datafeed. The proposed distribution method differs, however, from other distribution methods in that the data will be available in temporary, view-only mode on television screens.<sup>10</sup> Other available distribution methods for NYSE Trades and alternative data products may allow the end-user to download and analyze last sale data in order to make trading decisions. For these reasons, the Exchange believes that establishing a different pricing scheme for television broadcasters is justified. The Exchange also believes that its pricing is reasonable in light of other similar products. By way of comparison, for example, the television ticker display fee for CTA Network A market data (i.e., consolidated last sale data for securities listed on the New York Stock Exchange) is based on the number of viewers of the ticker, and is capped at \$125,000 month, and the television ticker display fee for NASDAQ securities, similarly based on the number of households reached by the broadcaster, is capped at \$50,000. Both of these products require the broadcaster to track the number of viewers of the ticker.<sup>11</sup>

The existence of alternatives to the NYSE Trades data product, including real-time consolidated data, free delayed consolidated data, and proprietary last

<sup>8</sup> 15 U.S.C. 78f(b) (sic).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> A television broadcaster could elect to combine for broadcast the NYSE Trades data with other data available to it for broadcast.

<sup>11</sup> The Network A Rate Schedule is available at <http://www.nyxdata.com/CTA>. See also NASDAQ Rule 7039, which sets forth fees for the distribution of NASDAQ Last Sale Data Products via Television.

<sup>16</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> See Securities Exchange Act Release No. 59606 (Mar. 19, 2009); 74 FR 13293 (Mar. 26, 2009) (SR-NYSE-2009-04) (the "2009 Release").

<sup>5</sup> See the 2009 Release at n. 5 and Securities Exchange Act Release No. 62038 (May 5, 2010), 75 FR 26825 (May 12, 2010) (SR-NYSE-2010-22).

<sup>6</sup> Television broadcast can be through cable, satellite, or traditional means.

<sup>7</sup> Although the Broadcast Fee will not vary based on the amount of time that the datafeed is displayed during the day or the number of channels the broadcaster utilizes, it will be prorated if a television broadcaster initiates the service during the middle of a month.