

investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2012-20321 Filed 8-17-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-9352; 34-67659; File No. 265-27]

### Advisory Committee on Small and Emerging Companies; Meeting

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice.

**SUMMARY:** The Securities and Exchange Commission Advisory Committee on Small and Emerging Companies is providing notice that it will hold a public meeting on Friday, September 7, 2012, in the Commission's San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, California. The meeting will begin at 9 a.m. (PDT) and will be open to the public. Pre-registration is required (see below for information on pre-registration). This meeting will not be webcast on the Commission's Web site. Members of the public may also listen to the meeting by telephone. The information for the conference call is set forth below.

- Dial: 877-732-6722 (U.S./Canada Toll-Free) or 202-551-5000
- Meeting ID: 1535

The agenda for the meeting includes discussions of market structure issues and their impact on initial public offerings and other matters relating to rules and regulations affecting small and emerging companies under the federal securities laws. The public is invited to

submit written statements to the Committee.

**DATES:** The public meeting will be held Friday, September 7, 2012. Written statements should be received on or before September 5, 2012.

**ADDRESSES:** The meeting will be held in the Commission's San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, California. Written statements may be submitted by any of the following methods:

#### *Electronic Statements*

- Use the Commission's Internet submission form (<http://www.sec.gov/info/smallbus/acsec.shtml>);
- or
- Send an email message to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 265-27 on the subject line; or

#### *Paper Statements*

- Send paper statements in triplicate to Elizabeth M. Murphy, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. 265-27. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Advisory Committee's Web site (<http://www.sec.gov/info/smallbus/acsec.shtml>).

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Johanna V. Losert, Special Counsel, at (202) 551-3460, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-3628.

**SUPPLEMENTARY INFORMATION:** All members of the public who wish to attend must register in advance of the meeting by September 5, 2012. To register by email, send an email to [SmallBusiness@sec.gov](mailto:SmallBusiness@sec.gov) with "Register for Advisory Committee Meeting" in the subject line. Please provide your name, organization, and telephone number.

To register by phone, leave a voice message at (202) 551-3460 indicating that you are interested in attending the meeting with your name, organization, and telephone number. All attendees will be required to sign in and be processed through security at the visitors desk. Please bring photo identification and allow extra time before the start of the meeting. The meeting site is accessible to individuals with disabilities. Individuals who require special accommodation in order to attend the meeting should notify Johanna V. Losert, using the contact information provided above, no later than September 5, 2012.

In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.—App. 1, and the regulations thereunder, Meredith B. Cross, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: August 15, 2012.

**Elizabeth M. Murphy,**

*Committee Management Officer.*

[FR Doc. 2012-20399 Filed 8-17-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67654; File No. SR-Phlx-2012-81]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving a Proposed Rule Change With Respect to the Authority of the Exchange or NASDAQ Execution Services To Cancel Orders When a Technical or Systems Issue Occurs on the Exchange's NASDAQ OMX PSX Facility and To Describe the Operation of an Error Account for NES

August 14, 2012.

#### I. Introduction

On June 27, 2012, NASDAQ OMX PHLX LLC ("Exchange" or "Phlx") 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 amend Phlx Rule 3315 by adding a new paragraph (d) that addresses the authority of the Exchange or Nasdaq Execution Services LLC ("NES") to cancel orders when a technical or systems issue occurs on the Exchange's NASDAQ OMX PSX facility ("PSX") and describes the operation of an error account for NES. The proposed

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

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

rule change was published for comment in the **Federal Register** on July 10, 2012.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposal

NES, a broker-dealer that is a facility and an affiliate of Phlx, provides outbound routing services from the Exchange to other market centers pursuant to Phlx rules.<sup>4</sup> In its proposal, Phlx states that a technical or systems issue may occur at Phlx, NES, or a routing destination that causes the Exchange or NES to cancel orders, if the Exchange or NES determines that such action is necessary to maintain a fair and orderly market.<sup>5</sup> Phlx also states that a technical or systems issue that occurs at the Exchange, NES, a routing destination, or a non-affiliate third-party Routing Broker<sup>6</sup> may result in NES acquiring an error position that it must resolve.<sup>7</sup>

New paragraph (d) to Phlx Rule 3315 provides Phlx or NES with general authority to cancel orders to maintain fair and orderly markets when a technical or systems issue occurs at the Exchange, NES, or a routing destination. It also provides authority for NES to maintain an error account for the purpose of addressing, and sets forth the procedures for resolving, error positions. Specifically, paragraph (d)(1) of Phlx Rule 3315 authorizes Phlx or NES to cancel orders as either deems necessary to maintain fair and orderly

markets if a technical or systems issue occurs at Phlx, NES, or a routing destination. Phlx or NES will be required to provide notice of the cancellation to all affected members as soon as practicable.<sup>8</sup>

Paragraph (d)(2) of Phlx Rule 3315 will allow NES to maintain an error account for the purpose of addressing error positions that result from a technical or systems issue at Phlx, NES, a routing destination, or a non-affiliate third-party Routing Broker.

For purposes of Phlx Rule 3315(d), an error position will not include any position that results from an order submitted by a member to Phlx that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis.<sup>9</sup> NES will not be permitted to (i) accept any positions in its error account from a member's account or (ii) permit any member to transfer any positions from the member's account to NES's error account.<sup>10</sup> In other words, NES may not accept from a member positions that are delivered to the member through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at Phlx, NES, a routing destination, or a non-affiliate third-party Routing Broker.<sup>11</sup> If a member receives locked-in positions in connection with a technical or systems issue and experiences a loss in unwinding those positions, that member may seek to rely on Phlx Rule 3226, which provides members with the ability to file claims against Phlx "for losses directly resulting from the [PSX] system's actual failure to correctly process an order, message, or other data, provided PSX has acknowledged receipt of the order, message, or data."<sup>12</sup> If, however, a technical or systems issue results in the Exchange not having valid

clearing instructions for a member to a trade, NES may assume that member's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.<sup>13</sup>

Paragraph (d)(3) of Phlx Rule 3315 permits the Exchange or NES, in connection with a particular technical or systems issue, to either (i) assign all resulting error positions to members or (ii) have all resulting error positions liquidated. Any determination to assign or liquidate error positions, as well as any resulting assignments, will be made in a nondiscriminatory fashion.<sup>14</sup>

Phlx and NES will be required to assign all error positions resulting from a particular technical or systems issue to the members affected by that technical or systems issue if Phlx or NES:

(i) Determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the members affected by that technical or systems issue;

(ii) Determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the members affected by that technical or systems issue; and

(iii) Has not determined to cancel all orders affected by that technical or systems issue in accordance with Phlx Rule 3315(d)(1).<sup>15</sup>

If Phlx or NES is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members, or if Phlx or NES determines to cancel all orders affected by the technical or systems issue, then NES will be required to liquidate the error positions as soon as practicable.<sup>16</sup> NES will be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer, and would be prohibited from attempting to exercise any influence or control over the timing or methods of such trading.<sup>17</sup> Further, NES will be required to establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer, on one hand, and the Exchange and NES, on the other, associated with the liquidation of the error positions.<sup>18</sup>

Finally, paragraph (d)(4) of Phlx Rule 3315 requires the Exchange and NES to

<sup>3</sup> Securities Exchange Act Release No. 67343 (July 3, 2012), 77 FR 40684 (July 10, 2012) (SR-Phlx-2012-81) ("Notice").

<sup>4</sup> See Notice, 77 FR at 40685 n.3 and accompanying text, and text accompanying n.4. See also Phlx Rule 3315.

The Exchange also has authority to receive equities orders routed inbound to PSX by NES from The NASDAQ Stock Market LLC ("NASDAQ") and, on a pilot basis, NASDAQ OMX BX, Inc. ("BX"). See Notice, 77 FR at 40685 n.4. See also Securities Exchange Act Release No. 66178 (January 18, 2012), 77 FR 3539 (January 24, 2012) (SR-Phlx-2011-170); and 65553 (October 13, 2011) 76 FR 64987 (October 19, 2011) (SR-Phlx-2011-138).

<sup>5</sup> See Notice, 77 FR at 40685. For examples of some of the circumstances in which the Exchange or NES may decide to cancel orders, see Notice, 77 FR at 40685-86.

<sup>6</sup> The Exchange states that, from time to time, it also uses non-affiliate third-party broker-dealers to provide outbound routing services. In its proposal, the Exchange refers to these broker-dealers as "third-party Routing Brokers." See Notice, 77 FR at 40685 n.3.

<sup>7</sup> See Notice, 77 FR at 40685. Specifically, Phlx Rule 3315(d)(2) defines "error positions" as "positions that result from a technical or systems issue at Nasdaq Execution Services, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders."

For examples of some of the circumstances that may lead to error positions, see Notice, 77 FR at 40685-86.

<sup>8</sup> See Phlx Rule 3315(d)(1).

<sup>9</sup> See Phlx Rule 3315(d)(2)(A).

<sup>10</sup> See Phlx Rule 3315(d)(2)(B).

<sup>11</sup> See Notice, 77 FR at 40686 n.11. This provision would not apply if NES incurred a short position to settle a member's purchase, as the member would not have had a position in its account as a result of the purchase at the time of NES's action. Similarly, if a systems issue occurs that causes one member to receive an execution for which there is not an available counterparty, action by NES would be required for the positions to settle into that member's account. See *id.*

If error positions result in connection with the Exchange's use of a third-party Routing Broker for outbound routing and those positions are delivered to NES through the clearance and settlement process, NES would be permitted to resolve those positions. If, however, such positions were not delivered to NES through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself, and NES would not be permitted to accept the positions. See Notice, 77 FR at 40685 n.3.

<sup>12</sup> See Notice, 77 FR at 40686 n.11.

<sup>13</sup> See Phlx Rule 3315(d)(2)(C).

<sup>14</sup> See Phlx Rule 3315(d)(3).

<sup>15</sup> See Phlx Rule 3315(d)(3)(A)(i)-(iii).

<sup>16</sup> See Phlx Rule 3315(d)(3)(B).

<sup>17</sup> See Phlx Rule 3315(d)(3)(B)(i).

<sup>18</sup> See Phlx Rule 3315(d)(3)(B)(ii).

make and keep records to document all determinations to treat positions as error positions; all determinations to assign error positions to members or to liquidate error positions; and the liquidation of error positions through the third-party broker-dealer.

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act<sup>19</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>20</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>21</sup> which requires, among other things, that the rules of a national securities exchange be 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission believes the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act<sup>22</sup> in that it seeks to assure economically efficient execution of securities transactions.

The Commission recognizes that technical or systems issues may occur, and believes that Phlx Rule 3315, in allowing Phlx or NES to cancel orders affected by technical or systems issues, should provide a reasonably efficient means for Phlx to handle such orders, and appears reasonably designed to permit Phlx to maintain fair and orderly markets.<sup>23</sup>

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</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>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>23</sup> The Commission notes that Phlx states that the proposed amendments to Phlx Rule 3315 are designed to maintain fair and orderly markets, ensure full trade certainty for market participants, and avoid disrupting the clearance and settlement process. See Notice, 77 FR at 40687. The Commission also notes that Phlx states that a decision to cancel orders due to a technical or systems issue is not equivalent to the Exchange declaring self-help against a routing destination pursuant to Rule 611 of Regulation NMS. See 17

The Commission also believes that allowing the Exchange to resolve error positions through the use of an error account maintained by NES pursuant to the procedures set forth in the rule, and as described above, is consistent with the Act. The Commission notes that the rule establishes criteria for determining which positions are error positions,<sup>24</sup> and that Phlx or NES, in connection with a particular technical or systems issue, will be required to either (i) assign all resulting error positions to members or (ii) have all resulting error positions liquidated.<sup>25</sup> Also, Phlx or NES will assign error positions that result from a particular technical or systems issue to members only if all such error positions can be assigned to all of the members affected by that technical or systems issue.<sup>26</sup> If Phlx or NES cannot assign all error positions to all members, NES will liquidate all of those error positions.<sup>27</sup> In this regard, the Commission believes that the new rule appears reasonably designed to further just and equitable principles of trade and the protection of investors and the public interest, and to help prevent unfair discrimination, in that it should help assure the handling of error positions will be based on clear and objective criteria, and that the resolution of those positions will occur promptly through a transparent process.

Additionally, the Commission notes that it has previously expressed concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members.<sup>28</sup> The Commission is also concerned about the potential for misuse of confidential and proprietary information. The Commission believes that the requirement that NES provide complete time and price discretion for the liquidation of error positions to a third-party broker-dealer, including that NES not attempt to exercise any influence or control over the timing or methods of such trading, combined with the requirement that Phlx establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information to the third-party broker-dealer liquidating such positions,

CFR 242.611(b). See also Notice, 77 FR at 40686 n.10.

<sup>24</sup> See Phlx Rule 3315(d)(2).

<sup>25</sup> See Phlx Rule 3315(d)(3).

<sup>26</sup> See Phlx Rule 3315(d)(3)(A).

<sup>27</sup> See Phlx Rule 3315(d)(3)(B).

<sup>28</sup> See, e.g., Securities Exchange Act Release No. 65455 (September 30, 2011), 76 FR 62119 (October 6, 2011) (SR-NYSEArca-2011-61) at 62120 n.16 and accompanying text.

should help mitigate the Commission's concerns. In particular, the Commission believes that these requirements should help assure that none of Phlx, NES, or the third-party broker-dealer is able to misuse confidential or proprietary information obtained in connection with the liquidation of error positions for its own benefit. The Commission also notes that Phlx and NES would be required to make and keep records to document all determinations to treat positions as error positions; all determinations to assign error positions to members or liquidate error positions; and the liquidation of error positions through the third-party broker-dealer.<sup>29</sup>

Finally, the Commission notes that the proposed procedures for canceling orders and the handling of error positions are consistent with procedures the Commission has approved for other exchanges.<sup>30</sup>

### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change (SR-Phlx-2012-81) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2012-20317 Filed 8-17-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67652; File No. SR-NYSEArca-2012-83]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31 To Specify How MPL Orders With ALO Order Instructions May Interact

August 14, 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>

<sup>29</sup> See Phlx Rule 3315(d)(4).

<sup>30</sup> See, e.g., Securities Exchange Act Release Nos. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR-NASDAQ-2012-057); 69963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR-NYSEArca-2012-22); 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR-EDGX-2012-08); and 67011 (May 17, 2012), 77 FR 30562 (May 23, 2012) (SR-EDGA-2012-09).

<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</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.