

amendments, all written statements with respect to the rule change that are filed with the Commission, and all written communications relating to the 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 OCC and on OCC's Web site at [http://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_12\\_25.PDF](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_12_25.PDF).

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-OCC-2012-25 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2012-31259 Filed 12-28-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68517; File No. SR-Phlx-2012-136]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to the Distribution of Auction Messages

December 21, 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 December 11, 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 and II 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 amend Rule 1080(m) to provide for the distribution of auction messages for certain orders.

The Exchange proposes this amendment become operative on January 2, 2013.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 amend Rule 1080 titled "Phlx XL and Phlx XL II," which describes the Exchange's fully automated options trading system.<sup>3</sup> Specifically, the Exchange seeks to amend an aspect of the order handling rules related to routing orders to away markets in Rule 1080(m).

Currently, when the Exchange's disseminated bid or offer ("PBBO") is inferior to the away best bid or offer ("ABBO") the Phlx XL II system will

<sup>3</sup> This proposal refers to "PHLX XL<sup>®</sup>" as the Exchange's automated options trading 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 "Phlx XL II" to "PHLX XL" for branding purposes.

route FIND<sup>4</sup> and SRCH<sup>5</sup> Orders with no other contingencies as specified in Rule 1080(m) and will place contracts designated as not available for routing ("DNR")<sup>6</sup> on the Phlx book.

With respect to routable FIND and SRCH orders, today the Phlx XL II system has a Route Timer which provides for a system pause for a period not to exceed one second.<sup>7</sup> When the Route Timer is initiated, Phlx XL II participants and other market participants are provided an opportunity to interact with the FIND or SRCH order. During the Route Timer, the FIND or SRCH order is included in the PBBO at a price one MPV away from the ABBO. If, during the Route Timer, any new interest arrives opposite the FIND or SRCH order that is equal to or better than the ABBO price, the FIND or SRCH order will trade against such new interest at the ABBO price.<sup>8</sup>

At this time, the Exchange is proposing to expose orders by broadcasting a notification to all Phlx XL II participants and other market participants who have elected to receive such notifications<sup>9</sup> at the time that a FIND or SRCH order is received by Phlx

<sup>4</sup> A FIND order is an order that is routable upon receipt during open trading. Only a customer FIND order on the Phlx XL II book, whether it is received prior to the opening or it is a GTC FIND order from a prior day, may be routed as part of the Opening Process. Non-customer FIND orders are not eligible for routing during the Opening Process. Once the Opening Process is complete, any FIND order is either eligible to trade at the Phlx price or placed on the Phlx book either at its limit price or at a price that is one Minimum Price Variation ("MPV") from the ABBO price if it would otherwise lock or cross the ABBO. Such FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process. See Rule 1080(m)(iv)(B).

<sup>5</sup> A SRCH order is a customer order that is routable at any time. A SRCH order on the Phlx XL II book during the Opening Process (including a re-opening following a trading halt), whether it is received prior to the opening or it is a GTC SRCH order from a prior day, may be routed as part of the Opening Process. Once the Opening Process is complete, a SRCH order is eligible either to: (1) Trade at the Phlx price if that price is equal to or better than the ABBO or, if the ABBO is better than the Phlx price, orders have been routed to better priced markets for their full size; or (2) be routed to better priced markets if the ABBO price is the best price, and/or (3) be placed on the Phlx XL II book at its limit price if not participating in the Phlx opening at the opening price and not locking or crossing the ABBO. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market. See Rule 1080(m)(C).

<sup>6</sup> A DNR order will never be routed outside of Phlx regardless of the prices displayed by away markets. See Rule 1080(m)(iv)(A). In addition, responses may not trade through the away market. See Rule 1084.

<sup>7</sup> See Rule 1080(m)(iv)(B) and (C).

<sup>8</sup> *Id.*

<sup>9</sup> The Exchange will broadcast the notifications as specified below in the filing. Only subscribers to certain data feeds will receive the notifications. The notification will identify the size and the side of the market in addition to the exposed price.

<sup>9</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.

XL II for a time period not to exceed the Route Timer.<sup>10</sup> In the instance that the ABBO changes during the Route Timer, the Exchange would broadcast an updated notification with the new price. Once the Route Timer commences, as is the case today, Phlx XL II market participants and other market participants would be able to submit new interest opposite the FIND or SRCH order that is equal to or better than the ABBO price, the FIND or SRCH order will trade against such new interest at the ABBO price. Today, if, at the end of the Route Timer, the ABBO is still the best price, the FIND or SRCH order, will route to the away market(s) whose disseminated price is better than the PBBO, up to a size equal to the lesser of either: (a) the away markets' size, or (b) the remaining size of the SRCH order, as is the case today.<sup>11</sup> This would not change with this proposal.

The Exchange's proposal to expose the order by way of a broadcasting a notification to Phlx XL II participants and other market participants is an amendment to the Exchange's current rules. The Exchange is not proposing to amend any other functionality in Rule 1080(m) related to FIND or SRCH orders. Today, the Exchange executes any responses at a price at or better than the ABBO on a first come, first served basis prior to routing the order to an away market in accordance with the rules currently in effect in Rule 1080(m). If a response trades against new interest, the Route Timer would terminate early if the order is fully executed. This amendment is similar to rules at other options exchanges.<sup>12</sup>

By way of an example, today assuming that Phlx's best offer is 1.22 for 200 contracts and the NBO is 1.19 for 10 contracts with one other market disseminating a 1.20 offer for 20 contracts. An order to buy 100 contracts at 1.22 is received. The order would be broadcast through a notification message at 1.19. A market participant submits a response to trade 10 contracts at 1.19. As a result 10 contracts trade against market participant A at 1.19

<sup>10</sup> Pursuant to Rule 1080(m)(iv), the Route Timer will not exceed one second.

<sup>11</sup> If the FIND or SRCH order still has remaining size after such routing, it may (1) trade at the next PBBO price (or prices) if the order price is locking or crossing that price (or prices) up to the ABBO price, and/or (2) be entered into the Phlx XL II book at its limit price if not locking or crossing the Phlx price or the ABBO. The Phlx XL II system will route and execute contracts contemporaneously at the end of the Route Timer. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market.

<sup>12</sup> Currently the Chicago Board Options Exchange, Incorporated ("CBOE") and the International Securities Exchange LLC ("ISE") expose orders during an auction period not to exceed one second.

(leaving 90 contracts on the order). During the remaining time on the Route Timer market participant B submits a response to trade 20 contracts at 1.21. As soon as the Route Timer concludes (assuming away market prices have not changed), the Exchange will simultaneously: route an ISO to buy 10 contracts at 1.19 to the NBBO market, route an ISO to buy 20 contracts at 1.20 to the market displaying the 1.20 offer, execute 20 contracts at 1.21 market participant B, and execute the remaining 40 contracts against the Exchange's 1.22 offer.

With respect to non-routable DNR orders, today a DNR order may execute at a price equal to or better than, but not inferior to, the best away market price but, if that best away market remains, the DNR order will remain in the Phlx book and be displayed at a price one minimum price variation inferior to that away best bid/offer.<sup>13</sup> An incoming order interacting with such a resting DNR order receives the best away market price.<sup>14</sup> The Exchange is not proposing to change this functionality.

Similar to routable orders, the Exchange is proposing to expose the DNR order, upon receipt, to Phlx XL II participants and other market participants in a manner similar to FIND and SRCH orders. The Exchange proposes to expose the order by broadcasting a notification to Phlx XL II participants and other market participants. In the instance that the best away market changes to an inferior price, the DNR order automatically re-prices again. If, and only if, after repricing, the DNR order is still not displayed at its original limit price the Exchange will expose the order again to Phlx XL II participants and other market participants. The DNR order would remain on the book until executed or cancelled, and not route to an away market, pursuant to current Exchange rules. Any responses received to the exposed order would be executed in accordance with the current text of Rule 1080(m)(iv)(A).<sup>15</sup>

By way of an example, today assuming that the PBBO is 1.00 bid/2.00 offer and the NBBO is 1.00 bid/1.20 offer and a DNR order to buy 100 contracts for 1.50 is received. The order would be broadcast through a

<sup>13</sup> See Rule 1080(m)(iv)(A).

<sup>14</sup> Should the best away market change its price, or move to an inferior price level, the DNR order will automatically re-price from its one minimum price variation inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price. Also, once priced at its original limit price, it will remain at that price until executed or cancelled.

<sup>15</sup> See also Rule 1080(c)(ii).

notification message at 1.20 and the PBBO would be updated to 1.19 bid/2.00 offer. If the NBBO moved to 1.00 bid/1.50 offer, and the DNR order was not completely filled, the Exchange would reprice the DNR order and update the PBBO to 1.49 bid/2.00 offer and broadcast another notification message at 1.50. The Exchange would expose the order in this instance because the re-priced DNR order locked the market. The Exchange would also expose the repriced DNR order in the instance that the order crossed the market. For example, assuming that the PBBO is 1.00 bid/2.00 offer and the NBBO is 1.00 bid/1.20 offer and a DNR order to buy 100 contracts for 1.50 is received. The order would be broadcast through a notification message at 1.20. If the NBBO moved to 1.00 bid/1.40 offer, and the order was not completely filled, the Exchange would reprice the DNR order and update the PBBO to 1.39 bid/2.00 offer and rebroadcast the message at 1.40. If the NBBO moved to 1.00 bid/1.53 offer, and the order was not completely filled, the Exchange would reprice the DNR order to its limit of 1.50 and update the PBBO to 1.50 bid/2.00 offer. The DNR order, since posted at its limit, will not be rebroadcast and will remain on the book until it is either executed or cancelled. As previously stated, the Exchange is not proposing to add any additional functionality to the Phlx XL II system.

This proposal only seeks to expose certain orders by broadcasting a notification message to all Phlx XL II participants and market participants that subscribe to certain data feeds. The Exchange would send the notification message which exposes the order through both the TOPO Plus Order feed<sup>16</sup> and the Phlx Depth Data feed.<sup>17</sup> In addition, Market Makers would also receive the notification through the specialized quote feed ("SQF") which is an interface that allows Specialists,<sup>18</sup>

<sup>16</sup> TOPO Plus Orders provides disseminated Exchange simple and complex PHLX order as well as top of file quotation information and PHLX last sale data. See Securities Exchange Act Release No. 60877 (October 26, 2009), 74 FR 56255 (October 30, 2009) (SR-Phlx-2009-92).

<sup>17</sup> PHLX Depth of Market is a data product that provides: (i) order and quotation information for individual quotes and orders on the PHLX book; (ii) last sale information for trades executed on PHLX; and (iii) an Imbalance Message. See Securities Exchange Act Release No. 66967 (May 11, 2012), 77 FR 29440 (May 17, 2012) (SR-Phlx-2012-60). Both of these feeds require subscribers to pay certain fees in order to obtain these feeds. The pricing associated with these data feeds are located in the Exchange's Pricing Schedule at Section IX, titled "Proprietary Date Feed Fees."

<sup>18</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

Streaming Quote Traders<sup>19</sup> and Remote Streaming Quote Traders<sup>20</sup> to connect and send quotes into Phlx XL II.<sup>21</sup>

The Exchange also proposes to rename Rule 1080(m) from “Order Routing” to “Away Markets and Order Routing” to better reflect the various order types in that section.

The Exchange proposes this amendment become operative on January 2, 2013.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>23</sup> in particular, in that it 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 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 that exposing certain orders has the potential to result in more efficient executions for customers as responses to exposed orders could result in quicker executions. The Exchange’s proposal to expose the orders to all Phlx XL II market participants as well as other market participants is consistent with the protection of investors and the public interest. Broadcasting the message to all market participants should promote broader awareness of, and provide increased opportunities for greater participation in, these executions and consequentially, facilitate the ability of the Exchange to bring together participants and encourage more robust competition for these orders. In addition, the proposal would continue to guarantee that orders will receive an execution that is at a

price at least as good as the price disseminated by the best away market at the time the order was received.

In addition, the Exchange believes that because all Phlx XL II participants and other market participants have the ability to subscribe to a data feed to provide them with the notifications exposing the orders, that all market participants may avail themselves of the same information. While Market Makers may receive the SQF data at no cost, Market Makers have burdensome quoting obligations<sup>24</sup> which do not apply to other market participants. In addition, Market Makers incur other costs at the Exchange which are specific to their market making obligations, as compared to other market participants.<sup>25</sup> The Exchange believes that because the notification message would be broadcast to all Phlx XL II and other market participants that subscribe to a data feed that it is a fair and equitable way to notify the marketplace of the opportunity to trade with these orders. Also, it is important to note that the exposure of the orders will not impact the manner in which the orders will be executed or routed today, rather the notification message is an addition to the current functionality that is in place today at the Exchange.

### *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, but rather this proposal should facilitate the ability of the Exchange to bring together participants and encourage more robust competition.

### *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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the

Act<sup>26</sup> and Rule 19b-4(f)(6)<sup>27</sup> thereunder because the proposal does

<sup>24</sup> See Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

<sup>25</sup> Market Makers incur costs related to assignments and costs related to subscribing to various data feeds. See Phlx’s Pricing Schedule at Section VI, B and C.

<sup>26</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>27</sup> 17 CFR 240.19b-4(f)(6).

not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 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.<sup>28</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>29</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would allow the Exchange to broadcast these orders to market participants who subscribe to the Exchange data feed, which may provide more opportunities for market participants to interact with such orders. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative as of January 2, 2013.<sup>30</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.<sup>31</sup>

## **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.

<sup>28</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s 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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>29</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>30</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>31</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>19</sup> An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

<sup>20</sup> A Remote Streaming Quote Trader (“RSQT”) is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

<sup>21</sup> See Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR-Phlx-2010-124).

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

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-2012-136 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-2012-136. 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 submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2012-136 and should be submitted on or before January 22, 2013.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-31246 Filed 12-28-12; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68514; File No. SR-BX-2012-075]

**Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change with Respect to the Amendment of the By-Laws of its Parent Corporation, The NASDAQ OMX Group, Inc.**

December 21, 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 December 19, 2012, NASDAQ OMX BX, Inc. ("BX" 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 a rule change with respect to the amendment of the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX" or the "Corporation"). The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com/>, at BX's principal office, 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**

NASDAQ OMX is proposing amendments to provisions of its By-Laws pertaining to the compositional

requirements of the NASDAQ OMX Board. The changes are primarily focused on amending the definition of "Industry Director" (and "Industry committee member")<sup>3</sup> to make the definition less restrictive, but in a manner that BX believes will continue to serve the purpose of ensuring that members and member organizations of Self-Regulatory Subsidiaries<sup>4</sup>—the self-regulatory organizations owned by NASDAQ OMX—do not have disproportionate influence on its governance. In making the change, NASDAQ OMX is adapting concepts already approved by the Commission in its review of the Independence Policy of the NYSE Euronext Board of Directors (the "Independence Policy").<sup>5</sup> The proposed rule change also makes several other changes to provisions pertaining to the Board's compositional requirements and categorization of Directors.

**Definitions**

The By-Laws require Directors to be assigned to certain defined categories, based on their current and past affiliations.<sup>6</sup> Specifically, Directors may be categorized as "Industry Directors," "Non-Industry Directors," "Public Directors," and/or "Staff Directors." Currently, an Industry Director is defined as a Director who:

- (1) Is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer;
- (2) Is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity

<sup>3</sup> The term "committee member" in the By-Laws refers to membership in the committees authorized under Section 4.13 of the By-Laws, such as the Executive Committee and the Audit Committee. Under the By-Laws and the Delaware General Corporation Law, all members of committees with the power and authority to act on behalf of the Board in the management of the business and affairs of NASDAQ OMX must themselves be Directors. Accordingly, the definitions of "Industry Director" and "Industry committee member" are coterminous as applied to any member of these committees. The By-Laws do not presently contemplate any committees with non-Director members.

<sup>4</sup> The By-Laws define each of The NASDAQ Stock Market LLC ("NASDAQ"), BX, NASDAQ OMX PHLX LLC ("Phlx"), the Boston Stock Exchange Clearing Corporation ("BSECC"), and the Stock Clearing Corporation of Philadelphia ("SCCP") as a "Self-Regulatory Subsidiary".

<sup>5</sup> Securities Exchange Act Release No. 51217 (February 16, 2005), 70 FR 9688 (February 28, 2005) (SR-NYSE-2004-54); Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120); Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161 (SR-NYSE-2012-17; SR-NYSEArca-2012-59; SR-NYSEMKT-2012-07).

<sup>6</sup> As discussed above, the categories also govern the classification of members of committees of NASDAQ OMX, as provided for in the By-Laws.

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

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

<sup>32</sup> 17 CFR 200.30-3(a)(12).