and Floor brokers with the opportunity to prevent unintended self-trades from occurring. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. Many competing venues offer similar functionality to market participants. To this end, the Exchange is proposing a market enhancement to provide greater protections from inadvertent executions, and encourage market participants to trade on the Exchange. The Exchange believes the proposed rule change is pro-competitive because it would enable the Exchange to provide Floor brokers with functionality that is similar to that of other exchanges and available for interest entered electronically from off of the Floor.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder.

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.* Please include File Number SR–NYSEMKT–2013–36 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–NYSEMKT–2013–36. 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 the 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–NYSEMKT–2013–36 and should be submitted on or before May 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–10900 Filed 5–7–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). 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. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69494; File No. SR–DTC–2013–03]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change in Connection With the Implementation of the Foreign Account Tax Compliance Act (FATCA)

May 2, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2013 The Depository Trust Company (''DTC'') 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 substantially prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies DTC's Rules & Procedures (''Rules''), as described below, in connection with the implementation of sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended, which sections were enacted as part of the Foreign Account Tax Compliance Act, and the Treasury Regulations or other official interpretations thereunder (collectively ''FATCA'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.[3]

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Background

FATCA was enacted on March 18, 2010, as part of the Hiring Incentives to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by the clearing agency.

Restore Employment Act, and became effective, subject to transition rules, on January 1, 2013. The U.S. Treasury Department finalized and issued various implementing regulations (''FATCA Regulations'') on January 17, 2013. FATCA's intent is to curb tax evasion by U.S. citizens and residents through their use of offshore bank accounts. FATCA generally requires foreign financial institutions (''FFIs'')[4] to become ''participating FFIs'' by entering into agreements with the Internal Revenue Service (''IRS''). Under these agreements, FFIs are required to report to the IRS information on U.S. persons and entities that have (directly or indirectly) accounts with these FFIs. If an FFI does not enter into such an agreement with the IRS, FATCA will impose a 30% withholding tax on U.S.-source interest, dividends and other periodic amounts paid to such ''nonparticipating FFI'' (''Income Withholding''), as well as on the payment of gross proceeds arising from the sale, maturity or redemption of securities or any instrument yielding U.S.-source interest and dividends (''Gross Proceeds Withholding,'' and, together with Income Withholding, ''FATCA Withholding''). The 30% FATCA Withholding taxes will apply to payments made to a nonparticipating FFI acting in any capacity, including payments made to a nonparticipating FFI that is not the beneficial owner of the amount paid and acting only as a custodian or other intermediary with respect to such payment. To the extent that U.S.-source interest, dividend, and other periodic amount or gross proceeds payments are due to a nonparticipating FFI in any capacity, a U.S. payor, such as DTC, transmitting such payments to the nonparticipating FFI will be liable to the IRS for any amounts of FATCA Withholding that the U.S. payor should, but does not, withhold and remit to the IRS with respect to those payments.

As an alternative to FFIs entering into individual agreements with the IRS, the U.S. Treasury Department provided another means of complying with FATCA for FFIs which are resident in jurisdictions that enter into intergovernmental agreements (''IGA'') with the United States.[5] Generally, such a foreign jurisdiction (''FATCA Partner'') would pass laws to eliminate the conflicts of law issues that would otherwise make it difficult for FFIs in its jurisdiction to collect the information required under FATCA and transfer this information, directly or indirectly, to the United States. An FFI resident in a FATCA Partner jurisdiction would either transmit FATCA reporting to its local competent tax authority, which in turn would transmit the information to the IRS, or the FFI would be authorized/required by FATCA Partner law to enter into an FFI agreement and transmit FATCA reporting directly to the IRS. Under both IGA models, payments to such FFIs would not be subject to FATCA Withholding taxes so long as the FFI complies with the FATCA Partner's laws mandated in the IGA.

Under the FATCA Regulations, (A) beginning January 1, 2014, DTC will be required to do Income Withholding on any payments made to any nonparticipating FFI approved for membership by DTC as of such date or thereafter, (B) beginning July 1, 2014, DTC will be required to do Income Withholding on any payments made to any nonparticipating FFI approved for membership by DTC prior to January 1, 2014 and (C) beginning January 1, 2017, DTC will be required to do Gross Proceeds Withholding on all nonparticipating FFIs, regardless when any such FFI's membership was approved.

DTC already has established tax services that are currently available to its Participants in which DTC, in accordance with sections 1441 through 1446 of the Code, withholds on certain payments of income made to certain of its Participants. Thus, DTC can and intends to support certain FATCA Income Withholding as part of such established tax services. However, for the reasons described below, DTC is not in a position to accept any liability that would result from Gross Proceeds Withholding and, by making the proposed rule changes set forth herein, is implementing preventive measures to protect itself against the obligation for any such Gross Proceeds Withholding and any resulting liability.

Preparing for Implementation of FATCA

In preparation for FATCA's implementation, FFIs are being asked to identify their expected FATCA status as a condition of continuing to do business. Customary legal agreements in the financial services industry already contain provisions allocating the risk of any FATCA Withholding tax that will need to be collected, and requiring that, upon FATCA's effectiveness, foreign counterparties must certify (and periodically recertify) their FATCA status using the relevant tax forms that the IRS has announced it will provide.[3] Advance disclosure by an FFI client or counterparty would permit a withholding agent to readily determine whether it must, under FATCA, withhold on payments it makes to the FFI. If an FFI fails to provide appropriate compliance documentation to a withholding agent, such FFI would be presumed to be a nonparticipating FFI and the withholding agent will be obligated to withhold on certain payments.

As it applies to DTC specifically, FATCA will require DTC to deduct FATCA Withholding on payments to certain of its Participants arising from certain transactions processed by DTC on behalf of such Participants.[6] Because FATCA treats any entity holding financial assets for the account of others as a ''financial institution,'' and almost all Participants hold financial assets for the account of others, new and existing Participants which are treated as non-U.S. entities for federal income tax purposes, including those members and limited members that are U.S. branches of non-U.S. entities (collectively, ''FFI Participants'')[7] will likely be FFIs under FATCA. As such, DTC will be liable to the IRS for the amounts associated with any failures to withhold correctly under FATCA on payments made to its FFI Participants.

In light of this, DTC has evaluated its existing systems and services to determine whether and how it may comply with its FATCA obligations. As a result of this evaluation, DTC has determined that its existing systems are incapable of processing and accounting for Gross Proceeds Withholding with regard to the securities transactions processed by it, as no similar withholding obligation of this magnitude has ever been imposed on it to date and DTC has therefore not built systems to support such an obligation.

Additionally, DTC nets credits and debits per Participant for end of day net funds settlement. There is further netting with DTC's affiliated central counterparty, National Securities Clearing Corporation (''NSCC'') and further netting on a settling bank basis; the effect of this netting is to significantly reduce the number and magnitude of payments made via the NSS System of the Federal Reserve. Gross Proceeds Withholding would

[4] Non-U.S. financial institutions are referred to as ''foreign financial institutions'' or ''FFIs'' in the FATCA Regulations.

[5] As of the date of this proposed rule change filing, the United Kingdom, Mexico, Ireland, Switzerland, Spain, Norway, Denmark, Italy and Germany have signed or initialed an IGA with the United States. The U.S. Treasury Department has announced that it is engaged in negotiations with more than 50 countries and jurisdictions regarding entering into an IGA.

[6] FFI participants resident in IGA countries, that are compliant with the terms of applicable IGAs, should not be subject to FATCA Withholding.

[7] Currently, only a small percentage of the Corporation's Participants are treated as non-U.S. entities for federal income tax purposes.

foreclose such netting, greatly reducing liquidity available to the system and Participants, increasing systemic risk. Furthermore, given DTC's netting, undertaking Gross Proceeds Withholding could require DTC in certain circumstances to apply its Participants Fund in order to fund FATCA Withholding taxes with regard to nonparticipating FFI Participants in non-FATCA Partner jurisdictions whenever the net credit owed to such FFI Participant is less than the 30% FATCA tax. In the view of DTC, this would not be the best application of such funds which are required to support liquidity and satisfy losses attributable to the settlement activities of DTC, *inter alia.* For example, if a nonparticipating FFI is owed a $100M gross payment from the sale or maturity of U.S. securities, but such nonparticipating FFI is in a net debit settlement position at the end of that day because of DTC's end of day net crediting and debiting, and the other netting described above, there would be no payment to this FFI Participant from which DTC could withhold. In this example, DTC would likely need to fund the $30M FATCA Withholding tax until such time as the FFI Participant can reimburse DTC.[6] In that case, DTC would need to consider an increase in the amount of cash required to be deposited into the Participants Fund, either by FFI Participants or all Participants, which would reduce liquidity resources of Participants and could have significant systemic effects. The amount of the FATCA Gross Proceeds Withholding taxes would be removed from market liquidity, which could lead to increased risk of Participant failure and increased financial instability.

For the reasons explained above and the following additional reasons, DTC is proposing amendments to its Rules (detailed below) to implement preventive measures that would generally require all of DTC's FFI Participants not to cause a Gross Proceeds Withholding obligation on DTC:

• Undertaking Gross Proceeds Withholding by DTC (even if possible) would make it economically discouraging for affected FFI Participants to engage in transactions involving U.S. securities. It would likely also quickly cause a significant negative impact on liquidity because such withholding taxes would be imposed on the very large gross amounts due to such FFI Participants. Furthermore, Participants would be burdened with extra costs and the negative impact on liquidity caused by the likely need to substantially increase the amount of cash required to be deposited into the Participants Fund.

• The cost of implementing a Gross Proceeds Withholding system for a small number of nonparticipating FFI Participants would be substantial and disproportionate to the related benefit. Under the Model I IGA form and its executed versions with various FATCA Partners, DTC would not be required to withhold with regard to FFI residents in such FATCA Partner jurisdictions. Accordingly, DTC's withholding obligations under FATCA would effectively be limited to nonparticipating FFI Participants in non-FATCA Partner jurisdictions. Since the cost of developing and maintaining a complex Gross Proceeds Withholding system would be passed on to DTC's Participants at large, it may burden Participants that otherwise comply with, or are not subject to, FATCA Withholding.

• As briefly noted above, if the proposed rule changes were not to take effect, in order to avoid counterparty credit risk, DTC would likely require each of the nonparticipating FFI Participants in non-FATCA Partner jurisdictions to make initial or additional cash deposits to the Participants Fund as liquidity for the approximate potential FATCA tax liability of such nonparticipating FFI Participant or otherwise adjust required deposits to the Participants Fund. The amount of such deposits, which could amount to billions of dollars, would be removed from market liquidity.

• From the nonparticipating FFI Participant's perspective, having 30% of its payments withheld and sent to the IRS would have a severe negative impact on such nonparticipating FFI Participants' financial stability. In most cases, the gross receipts are for client accounts, and the nonparticipating FFI Participant would need to make such accounts whole. Without receipt of full payment for its dispositions, the nonparticipating FFI Participant would not have sufficient assets to fund its client accounts.

• The proposed rule changes set forth herein will not create an undue burden for Participants because requiring FFIs to certify (and to periodically recertify) their FATCA status, and imposing the costs of non-compliance on them, are becoming standard market practice in the United States, separate and apart from being a Participant of DTC.

Proposed Rule Changes

In line with its risk management focus, DTC has determined that compliance with FATCA, such that DTC shall not be responsible for Gross Proceeds Withholding, should be a general membership requirement (A) for all applicants that are treated as non-U.S. entities for U.S. federal income tax purposes, and (B) for all existing FFI Participants.[8] In connection therewith, DTC proposes to amend its Rules as follows:

• Amending Rule 1: adding ''FATCA,'' ''FATCA Certification,'' ''FATCA Compliance Date,''[9] ''FATCA Compliant,'' and ''FFI Participant'' to Section 2 as terms cross-referenced from Rule 2, Section 9;

• Amending Section 1 of Rule 2: adding the requirements that, (i) with regard to any applicant that shall be an FFI Participant, such applicant must be FATCA Compliant, and (ii) as a qualification for activation of its membership that each applicant approved by DTC complete and deliver to DTC a FATCA Certification; and

• Adding new Section 9 of Rule 2: (i) Requiring all FFI Participants (both new and existing) to agree not to conduct any transaction or activity through DTC if such Participant is not FATCA Compliant, (ii) requiring all FFI Participants to certify and, as required under the timelines set forth under FATCA, periodically recertify, to DTC, in accordance with the timelines set out under FATCA, that they are FATCA Compliant, (iii) specifying that failure to be FATCA Compliant creates a duty upon an FFI Member (both new and existing) to inform DTC, (iv) providing that Participants that violate the provisions of Section 9 are subject to disciplinary sanction or other applicable actions by DTC in accordance with the Rules, including, but not limited to, a fine, as well as restrictions of services to the Participant and/or ceasing to act for the Participant in accordance with Rule 10, and (v) requiring all FFI Participants to indemnify DTC for any losses sustained by DTC resulting from such FFI Participants' failure to be FATCA Compliant. In addition, Rule 2, Section 9 will include the definitions for ''FATCA,'' ''FATCA Certification,'' ''FATCA Compliance Date,'' ''FATCA Compliant,'' and ''FFI Participant''.

[8] DTC may grant a waiver under certain circumstances, provided, however, that DTC will not grant a waiver if it causes DTC to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property.

[9] Although FATCA Withholding with regard to FFI Participants approved for membership by the Corporation prior to January 1, 2014 is first required under FATCA beginning July 1, 2014, the proposed amendments to the Rules would require such existing FFI Participants to be FATCA compliant approximately 60 days prior to July 1, 2014 in order for the Corporation to comply with its disciplinary and notice processes as set forth in its Rules.

• In addition, DTC will modify its *Policy Statement on the Admission of Non-U.S. Entities as Direct Depository Participants* to reference the Rules requirements of foreign entities which are treated as non-U.S. entities for tax purposes.

• Sections 17A(b)(3)(F) [10] and 17A(b)(3)(D) [11] of the Exchange Act require that registered clearing agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions, and the safeguarding of funds related thereto, and that the rules of such clearing agencies provide for the equitable allocation of reasonable dues, fees, and other charges among their participants. DTC believes the proposed rule changes are designed to promote the prompt and accurate clearance and settlement of securities transactions by eliminating any uncertainty in funds settlement that would arise if DTC were subject to Gross Proceeds Withholding obligations under FATCA. The proposed rule changes are also designed to maintain fairness in the allocation of costs among Participants of DTC because these proposed rule changes allow DTC to comply with FATCA Regulations without developing and maintaining a complex Gross Proceeds Withholding system, the cost of which, as discussed above, would be passed on to DTC's Participants at large for the benefit of a small number of nonparticipating FFI Members.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

DTC has not solicited, and does not intend to solicit, comments regarding the proposed rule changes. DTC has not received any unsolicited written comments from interested parties. To the extent DTC receives written comments on the proposed rule changes, DTC will forward such comments to the Commission.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 Exchange 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*. Please include File Number SR–DTC–2013–03 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–DTC–2013–03. 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 the filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site: *http://www.dtcc.com/legal/rule_filings/dtc/2013.php.* 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–DTC–2013–03 and should be submitted on or before May 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–10871 Filed 5–7–13; 8:45 am]

BILLING CODE 8011–01–P

[10] 12 U.S.C. 78q-1(b)(3)(F).

[11] 12 U.S.C. 78q-1(b)(3)(D).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69498; File No. SR–Phlx–2013–42]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change for the Permanent Approval of the Exchange's Pilot Program To Permit the Exchange To Accept Inbound Options Orders Routed by Nasdaq Options Services LLC From NASDAQ OMX BX, Inc.

May 2, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 23, 2013, NASDAQ OMX PHLX LLC (the ''Exchange'' or ''Phlx'') 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 a rule change for the permanent approval of the Exchange's pilot program to permit the Exchange to accept inbound options orders routed by Nasdaq Options Services LLC (''NOS'') from NASDAQ OMX BX, Inc. (''BX'').

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

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.