

a reasonable relationship to the inside market and is less likely to execute at a price that would trigger a limit-up, limit-down restriction or a trading pause. Moreover, because the repricing of an MMPO results in a new timestamp being attached to the order, the MMPO does not provide a means by which an MMPO may achieve an execution priority superior to an order entered at that price earlier in time. In addition, the use of the MMPO would not be inconsistent with Market Makers fulfilling their obligations under the Market Access Rule and Regulation SHO.

The Exchange also believes that although the order may be used only by Market Makers, this restriction is not unfairly discriminatory because only Market Makers are subject to the requirements of Rule 3312; accordingly, the order is not needed to assist other market participants in fulfilling regulatory obligations. To the extent that a market participant wishes to maintain an order at a price that deviates from the inside market by a particular amount, however, it may use the Primary Peg Order to achieve this purpose. Accordingly, an alternative to the MMPO is already available to market participants.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposal will enhance PSX's competitiveness by providing Market Makers on PSX with a means to offer liquidity at prices reasonably related to the inside market. The Exchange believes that this functionality will be appealing to potential Market Makers, and therefore will make it more likely that market participants will choose to become active on PSX. This may, in turn, increase the extent of liquidity available on PSX and increase its ability to compete with other execution venues to attract orders that are seeking liquidity. The Exchange further believes that the introduction of the MMPO will not impair in any manner the ability of market participants or other execution venues to compete.

#### *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**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>21</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>22</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: (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.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2013-62 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-2013-62. 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

<sup>21</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>22</sup> 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.

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-Phlx-2013-62 and should be submitted on or before June 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

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

[FR Doc. 2013-14503 Filed 6-18-13; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67956; File No. SR-Phlx-2013-42]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving a Proposed Rule Change for the Permanent Approval of a Pilot Program to Permit the Exchange to Accept Inbound Options Orders Routed by Nasdaq Options Services LLC from NASDAQ OMX BX, Inc.**

June 13, 2013.

#### **I. Introduction**

On April 23, 2013, 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 requesting permanent approval of the Exchange's pilot program that permits the Exchange to accept inbound orders routed by NASDAQ Options

<sup>23</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.

Services LLC (“NOS”) from NASDAQ OMX BX, Inc. (“BX”). The proposed rule change was published for comment in the **Federal Register** on May 8, 2013.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

## II. Background

PHLX Rule 985(b) prohibits the Exchange or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act.<sup>4</sup> NOS is a registered broker-dealer that is a member of the Exchange, and currently provides to members of BX optional routing services to other markets.<sup>5</sup> NOS is owned by NASDAQ OMX Group, Inc. (“NASDAQ OMX”), which also owns three registered securities exchanges—the Exchange, BX, and the NASDAQ Stock Market LLC (“NASDAQ”).<sup>6</sup> Thus, NOS is an affiliate of these exchanges.<sup>7</sup> Absent an effective filing, PHLX Rule 985(b) would prohibit NOS from being a member of the Exchange. The Commission initially approved NOS’s affiliation with PHLX in connection with NASDAQ OMX’s acquisition of PHLX,<sup>8</sup> and NOS currently performs certain limited activities for the Exchange.<sup>9</sup>

On May 15, 2012, PHLX filed a proposed rule change for the Exchange to accept inbound orders routed from BX on a pilot basis subject to certain

limitations and conditions.<sup>10</sup> On April 23, 2013, the Exchange filed the instant proposal to allow the Exchange to accept such orders routed inbound by NOS from BX on a permanent basis subject to certain limitations and conditions.<sup>11</sup>

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>13</sup> which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>14</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, and 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to NOS’s affiliation with the

Exchange to permit the Exchange to accept inbound orders that NOS routes in its capacity as a facility of BX on a pilot basis.<sup>15</sup> The Exchange has proposed to permit PHLX to accept inbound orders that NOS routes in its capacity as a facility of BX on a permanent basis, subject to the same limitations and conditions of this pilot:<sup>16</sup>

- First, the Exchange and the Financial Industry Regulatory Authority (“FINRA”) will maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d-2 under the Act (“17d-2 Agreement”).<sup>17</sup> Pursuant to the Regulatory Contract and the 17d-2 Agreement, FINRA will be allocated regulatory responsibilities to review NOS’s compliance with certain PHLX rules.<sup>18</sup> Pursuant to the Regulatory Contract, however, the Exchange retains ultimate responsibility for enforcing its rules with respect to NOS.

- Second, FINRA will monitor NOS for compliance with PHLX’s trading rules, and will collect and maintain certain related information.<sup>19</sup>

- Third, FINRA will provide a report to the Exchange’s chief regulatory officer (“CRO”), on a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange or FINRA is aware) that identify NOS as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NOS as a participant that has potentially violated Commission or PHLX rules.

- Fourth, the Exchange has in place PHLX Rule 985, which requires NASDAQ OMX, as the holding company owning both the Exchange and NOS, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange’s systems as a

<sup>3</sup> See Securities Exchange Act Release No. 69498 (May 2, 2013), 78 FR 26826 (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b). PHLX Rule 985 also prohibits a PHLX member from being or becoming an affiliate of PHLX, or an affiliate of an entity affiliated with PHLX, in the absence of an effective filing under Section 19(b). See PHLX Rule 985(b)(1)(B).

<sup>5</sup> NOS operates as a facility of BX that provides outbound routing from BX to other market centers, subject to certain conditions. See BX Options Rules, Chapter VI, Sec. 11 (Order Routing). See also Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030).

<sup>6</sup> See Securities Exchange Act Release Nos. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) (order approving NASDAQ OMX’s acquisition of BX); and 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (order approving NASDAQ OMX’s acquisition of PHLX) (“PHLX Acquisition Order”).

<sup>7</sup> See *id.* See also Notice, *supra* 78 FR at 26827.

<sup>8</sup> See PHLX Acquisition Order, 73 FR at 42887.

<sup>9</sup> See, e.g., Phlx Rule 1080(m) (Away Markets and Order Routing). See also Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

<sup>10</sup> See Securities Exchange Act Release No. 67026 (May 18, 2012), 77 FR 31053 (May 24, 2012) (SR–Phlx–2012–68) (notice of proposed rule change to allow the Exchange to accept inbound orders from BX on a one-year pilot basis).

<sup>11</sup> See Notice, 78 FR at 26826.

<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(1).

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

<sup>15</sup> See Securities Exchange Act Release No. 67294 (June 28, 2012), 77 FR 39771 (July 5, 2012) (SR–Phlx–2012–68).

<sup>16</sup> See Notice, 78 FR at 26827.

<sup>17</sup> 17 CFR 240.17d-2.

<sup>18</sup> NOS is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

<sup>19</sup> Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in its capacity as a facility of BX routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission’s Office of Compliance Inspections and Examinations. See Notice, 78 FR at 26827 n.12.

result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

The Exchange stated that it has met all the above-listed conditions. By meeting such conditions, the Exchange believes that it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NOS, and has demonstrated that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.<sup>20</sup>

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.<sup>21</sup> Although the Commission continues to be concerned about potential 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, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NOS, in its capacity as a facility of BX, to route orders inbound to the Exchange on a permanent basis instead of a pilot basis, subject to the limitations and conditions described above.<sup>22</sup>

<sup>20</sup> See Notice, 78 FR at 26827.

<sup>21</sup> See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving NASDAQ's proposal to adopt NASDAQ Rule 2140, restricting affiliations between NASDAQ and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62 and SR-NYSE-2008-60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in Direct Edge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10-182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10-194 and 10-196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10-198) (order granting the exchange registration of BATS-Y Exchange, Inc.).

<sup>22</sup> The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. See, e.g., Securities Exchange Act Release Nos. 69233 (March 25, 2013), 78 FR 19352 (March 29, 2013) (SR-NASDAQ-2013-028); 69232 (March 25, 2013), 78 FR 19342 (March 29, 2013) (SR-BX-2013-013); 69229 (March 25, 2013), 78 FR 19337

The Exchange has proposed four ongoing conditions applicable to NOS's routing activities, which are enumerated above. The Commission believes that these conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of NOS,<sup>23</sup> combined with FINRA's monitoring of NOS's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NOS. The Commission also believes that the Exchange's Rule 985(b) is designed to ensure that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-Phlx-2013-42) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69757; File No. SR-ISE-2013-36]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

June 13, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 3, 2013, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and

(March 29, 2013) (SR-Phlx-2013-15); 67256 (June 26, 2012) 77 FR 39277 (July 2, 2012) (SR-BX-2012-030); and 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR-BX-2011-007).

<sup>23</sup> This oversight will be accomplished through the 17d-2 Agreement between FINRA and the Exchange and the Regulatory Contract. See Notice, 78 FR at 26827 n.10 and accompanying text.

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</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.

Exchange 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 the Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 this proposed rule change is to amend certain fees for regular orders in Non-Select Symbols<sup>3</sup> and in FX Options traded on the Exchange. The fee changes discussed below apply to both standard options and mini options traded on ISE. The Exchange's Schedule of Fees has separate tables for fees applicable to standard options and mini options. The Exchange notes that while the discussion below relates to fees for standard options, the fees for mini options, which are not discussed below, are and shall continue to be 1/10th of the fees for standard options.<sup>4</sup>

For regular orders in Non-Select Symbols, the Exchange currently charges an execution fee of: i) \$0.18 per

<sup>3</sup> Non-Select Symbols are options overlying all symbols that are not in the Penny Pilot Program.

<sup>4</sup> See Securities Exchange Act Release No. 69270 (April 2, 2013), 78 FR 20988 (April 8, 2013) (SR-ISE-2013-28).