

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-NASDAQ-2013-125 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-NASDAQ-2013-125. 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-NASDAQ-2013-125, and should be submitted on or before October 24, 2013.

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

Kevin M. O'Neill,
Deputy Secretary.

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**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-70541; File No. SR-Phlx-2013-97]

**Self-Regulatory Organizations;
NASDAQ OMX PHLX LLC; Notice of
Filing and Immediate Effectiveness of
Proposed Rule Change to the Clearly
Erroneous Rule**

September 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 26, 2013, 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 extend the pilot period of recent amendments to Rule 3312, concerning clearly erroneous transactions, so that the pilot will now expire on April 8, 2014. The Exchange also proposes to remove certain references to individual stock trading pauses contained in Rule 3312(a)(2)(C)(iv).

The text of the proposed rule change is available from Phlx's Web site at <http://nasdaqomxphlx.cchwallstreet.com>, at Phlx'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

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by The NASDAQ Stock Market LLC, BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, New York Stock Exchange LLC, NYSE MKT LLC (formerly, NYSE Amex LLC), NYSE Arca, Inc., and National Stock Exchange, Inc., to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.³ The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. In connection with its resumption of trading of NMS Stocks through PSX, the Exchange amended Rule 3312 to conform it to the newly-adopted changes to the other exchanges' clearly erroneous rules, so that it could participate in the pilot program.⁴ The pilot program was extended several times since its adoption and is currently set to expire on September 30, 2013.⁵ In its rule change that extended the pilot program to September 30, 2013,⁶ the Exchange also adopted a provision designed to address the operation of the National Market System Plan to Address Extraordinary Market Volatility⁷ (the "Limit Up-Limit Down Plan"). The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following commencement of operations of the Limit Up-Limit Down Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange

³ Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

⁴ Securities Exchange Act Release No. 63023 (September 30, 2010), 75 FR 61802 (October 6, 2010) (SR-Phlx-2010-125).

⁵ Securities Exchange Act Release No. 68820 (February 1, 2013), 78 FR 9436 (February 8, 2013) (SR-Phlx-2013-12).

⁶ *Id.*

⁷ Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012); *see also* Rule 3312(g).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ 17 CFR 200.30-3(a)(12).

believes that the protections of the Clearly Erroneous Rule should continue while the industry gains further experience operating the Limit Up-Limit Down Plan.

The Exchange also proposes to eliminate all references in Rule 3312 to individual stock trading pauses issued by a primary listing market. Specifically, Rule 3312(a)(2)(C)(iv) provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there was an individual stock trading pause issued for that security and the security is included in the S&P 500 Index, the Russell 1000 Index, or a pilot list of Exchange Traded Products (“Subject Securities”). The stock trading pauses described in Rule 3312(a)(2)(C)(iv) are being phased out as securities become subject to the Limit Up-Limit Down Plan pursuant to a phased implementation schedule. The Limit Up-Limit Down Plan is already operational with respect to all Subject Securities, and thus, the Exchange believes that all references to individual stock trading pauses should be removed, including all cross-references to Rule 3312(a)(2)(C)(iv) contained in other portions of Rule 3312.⁸

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the “Act”),⁹ which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the pilot program promotes just and equitable principals of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred

⁸ The Exchange notes that certain Exchange Traded Products (“ETPs”) are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 3312(a)(2)(C)(iv). Securities Exchange Act Release No. 65106 (August 11, 2011), 76 FR 51079 (August 17, 2011) (SR-Phlx-2011-114) (notice of filing and immediate effectiveness to amend the clearly erroneous rule to specify that Rule 3312(a)(2)(C)(iv) applies only to the current securities of the Individual Stock Trading Pause pilot). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 3312(a)(2)(C)(i)-(iii).

⁹ 15 U.S.C. 78f(b)(5).

will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 3312 is necessary once the Limit Up-Limit Down Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual stock trading pauses will help to avoid confusion amongst market participants, which is consistent with the Act. As described above, individual stock trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to all Subject Securities.

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, as amended. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

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

Written comments were neither solicited nor received.

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

Because the 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

of the Act¹⁰ and Rule 19b-4(f)(6)(iii) thereunder.¹¹

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.¹²

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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-Phlx-2013-97 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-2013-97. This file number should be included on the subject line if email is used. To help the Commission process and review your

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

¹² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-Phlx-2013-97 and should be submitted on or before October 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70565; File No. SR-NYSEARCA-2013-98]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposes To Amend the Definition of Retail Order in the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services and the Attestation Requirements for ETP Holders That Submit Retail Orders

September 30, 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 September 20, 2013, NYSE Arca, Inc.

(the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend (1) the definition of "Retail Order" in the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services ("Fee Schedule") and (2) the attestation requirements for ETP Holders that submit Retail Orders. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend (1) the definition of "Retail Order" in the Fee Schedule and (2) the attestation requirements for ETP Holders that submit Retail Orders. The Exchange proposes to implement the changes effective October 1, 2013.

Background

The Fee Schedule provides certain transaction credits for Retail Orders under two tiers, the Retail Order Tier⁴

⁴ Under this tier, an ETP Holder, including a Market Maker, that executes an average daily volume ("ADV") of Retail Orders during the month that is 0.20% or more of the U.S. consolidated ADV ("CADV") receives a credit of \$0.0033 per share for its Retail Orders that provide liquidity on the Exchange in Tape A, B and C securities. For all

and the Retail Cross-Asset Tier.⁵ The term "Retail Order" is defined in the Fee Schedule as an agency order that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

As part of qualifying for the Retail Order Tier, an ETP Holder is required to designate certain of its order entry ports at the Exchange as "Retail Order Ports" or designate orders as Retail Orders within the order entry message. The ETP Holder is required to attest, in a form and/or manner prescribed by the Exchange, that all orders submitted to the Exchange via such Retail Order Ports are Retail Orders. Additionally, an ETP Holder is required to have written policies and procedures reasonably designed to ensure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met.⁶ The Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange, reviews an ETP Holder's compliance with these requirements through an exam-based review of the ETP Holder's internal controls.

The Exchange notes that the Retail Order Tier and Retail Cross-Asset Tier are optional for ETP Holders. Accordingly, an ETP Holder that does

other fees and credits, Tiered or Basic Rates would apply based on the ETP Holder's qualifying levels.

⁵ Under this tier, an ETP Holder, including a Market Maker, that (1) executes a CADV of Retail Orders during the month that is 0.30% or more of the U.S. CADV and (2) is affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer executions in Penny Pilot issues on NYSE Arca Options (excluding mini options) of at least 0.50% of total Customer equity and ETF option ADV as reported by OCC receives a credit of \$0.0034 per share for its Retail Orders that provide liquidity on the Exchange in Tape A, B and C securities. For all other fees and credits, Tiered or Basic Rates would apply based on the ETP Holder's qualifying levels.

⁶ Such written policies and procedures must require the ETP Holder to (1) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements specified by the Exchange and (2) monitor whether orders entered as Retail Orders meet the applicable requirements. If the ETP Holder represents Retail Orders from another broker-dealer customer, the ETP Holder's supervisory procedures must be reasonably designed to ensure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The ETP Holder must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that the entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.