

### III. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act<sup>10</sup> and Rule 17d-2(c) thereunder<sup>11</sup> in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by CBOE, C2, and FINRA. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because CBOE, C2, and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, CBOE, C2, and FINRA have allocated regulatory responsibility for those CBOE and C2 rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, CBOE and C2 will review the Certification, at least annually, or more frequently if required by changes in either the rules of CBOE, C2, or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add CBOE and C2 rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete CBOE and C2 rules included in the then-current list of Common Rules

that are no longer substantially similar to FINRA rules; and confirm that the remaining rules on the list of Common Rules continue to be CBOE and C2 rules that are substantially similar to FINRA rules.<sup>12</sup> FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. Under the Amended Plan, CBOE and C2 will also provide FINRA with a current list of Common Members and shall update the list no less frequently than once every six months.<sup>13</sup> The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all CBOE and C2 rules that are substantially similar to the rules of FINRA for Common Members of CBOE and FINRA, and C2 and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to CBOE or C2 rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add a CBOE or C2 rule to the Certification that is not substantially similar to a FINRA rule; delete a CBOE or C2 rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a CBOE or C2 rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.<sup>14</sup>

### IV. Conclusion

This Order gives effect to the Amended Plan filed with the Commission in File No. 4-536. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

<sup>12</sup> See paragraph 2 of the Amended Plan.

<sup>13</sup> See paragraph 3 of the Amended Plan.

<sup>14</sup> The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Amended Plan.

*It is therefore ordered*, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4-536, between FINRA, CBOE, and C2, filed pursuant to Rule 17d-2 under the Act, is approved and declared effective.

*It is further ordered* that CBOE and C2 are relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4-536.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72135; File No. SR-Phlx-2014-33]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Rollout of the New Options Floor Broker Management System Until September 1, 2014

May 9, 2014.

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 May 7, 2014, 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 implementation rollout of its new Options Floor Broker Management System.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>15</sup> 17 CFR 200.30-3(a)(34).

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

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

<sup>10</sup> 15 U.S.C. 78q(d).

<sup>11</sup> 17 CFR 240.17d-2(c).

## 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 proposal is to extend the rollout of the Exchange's enhancements to the Options Floor Broker Management System ("FBMS"). Today, FBMS enables Floor Brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also establishes an electronic audit trail for options orders represented by Floor Brokers on the Exchange. Floor Brokers can use FBMS to submit orders to Phlx XL, rather than executing the orders in the trading crowd.

With the new FBMS, all options transactions on the Exchange involving at least one Floor Broker would be required to be executed through FBMS. In connection with order execution, the Exchange will allow FBMS to execute two-sided orders entered by Floor Brokers, including multi-leg orders up to 15 legs, after the Floor Broker has represented the orders in the trading crowd. FBMS will also provide Floor Brokers with an enhanced functionality called the complex calculator that will calculate and display a suggested price of each individual component of a multi-leg order, up to 15 legs, submitted on a net debit or credit basis.

The Exchange received approval to implement the FBMS enhancements as of June 1, 2013,<sup>3</sup> and delayed implementation until July 2013,<sup>4</sup> until

<sup>3</sup> Securities Exchange Act Release No. 69471 (April 29, 2013), 78 FR 26096 (May 3, 2013) (SR-Phlx-2013-09).

<sup>4</sup> Securities Exchange Act Release No. 69811 (June 20, 2013), 78 FR 38422 (June 26, 2013) (SR-Phlx-2013-67).

September 2013,<sup>5</sup> until December 2013,<sup>6</sup> and again until March 2014.<sup>7</sup> The Exchange made a number of improvements intended to improve the performance of the new system.

Implementation began on March 7, 2014. In its most recent filing delaying implementation,<sup>8</sup> the Exchange stated that the implementation period would be up to eight weeks, which would be May 2, 2014, during which the new FBMS enhancements and related rules would operate along with the existing FBMS and rules.<sup>9</sup> At this time, the Exchange needs additional time to complete the implementation because of technology issues with the new system. The new FBMS is available to all users (Floor Brokers) and in all options. Nevertheless, the Exchange believes that the Floor Brokers need additional time to familiarize themselves with the new features of FBMS, based on that ongoing experience, offer input regarding system performance, and provide the Exchange with the opportunity to address performance improvements. Given some technology issues that the Exchange has encountered during the implementation period, the delay is needed to allow Floor Brokers additional time to adapt to the new system as the Exchange works to improve the performance of the new system. As the performance issues are resolved, the delay will allow the Floor Brokers to migrate their business in a prudent manner. The delay is not as a result of major technology changes from the original proposal and no rule changes are being made; rather, the Exchange continues to work to, generally, make the system more user-friendly and provide more useful interfaces for the ultimate user, the Floor Broker.

Accordingly, the Exchange seeks an additional four month period (until September 1, 2014) to be able to continue the implementation rollout; the Exchange will announce the specific date on which the trial period will end and the old FBMS will no longer be available in advance through an Options Trader Alert. During the additional time period, the Exchange will continue to encourage Floor Brokers to use the new FBMS in order to help them become

<sup>5</sup> Securities Exchange Act Release No. 70141 (August 8, 2013), 78 FR 49565 (August 14, 2013) (SR-Phlx-2013-83).

<sup>6</sup> Securities Exchange Act Release No. 70629 (October 8, 2013), 78 FR 62852 (October 22, 2013) (SR-Phlx-2013-100).

<sup>7</sup> Securities Exchange Act Release No. 71212 (December 31, 2013), 79 FR 888 (January 7, 2014) (SR-Phlx-2013-129).

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

<sup>9</sup> In the original filing, the Exchange stated its intent to implement these enhancements with a trial period of two to four weeks. *Id.*

more familiar with the new features of FBMS.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> in particular, in that it is designed 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, by enhancing FBMS to make the Exchange's markets more efficient, to the benefit of the investing public. Although the Exchange needs additional time to finalize the implementation rollout, this time period is expected to be limited, depending on user input, and will involve advance notice to the Exchange membership.

### 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. The Exchange continues to believe, as it stated when proposing these enhancements, that these enhancements to FBMS should result in the Exchange's trading floor operating in a more efficient way, which should help it compete with other floor-based exchanges and help the Exchange's Floor Brokers compete with floor brokers on other options exchanges.

### 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) of the Act<sup>12</sup> and

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>14</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>15</sup> The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can implement the enhancements once they are ready from a technology perspective. The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal only extends the implementation date of the FBMS and does not make any additional changes to the FBMS itself. Therefore, the Commission designates the proposal operative upon filing.<sup>16</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>17</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. 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-2014-33 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange

<sup>13</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.

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> *Id.*

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(C).

Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2014-33. 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-2014-33 and should be submitted on or before June 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72136; File No. SR-Phlx-2014-31]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Qualified Contingent Cross Rebates

May 9, 2014.

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>

<sup>18</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.

notice is hereby given that on April 30, 2014, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 to offer an additional rebate applicable to Qualified Contingent Cross ("QCC") orders.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on May 1, 2014.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.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 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 this filing is to offer an additional rebate applicable to both electronic QCC Orders ("eQCC")<sup>3</sup> and

<sup>3</sup> A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades ("QCTs") that satisfy