

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75773; File No. SR-Phlx-2015-73]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Manipulative Operations

August 27, 2015.

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 August 19, 2015, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rules 782, entitled “Manipulative Operations” to enumerate manipulative trading practices which are already prohibited, but not specified.

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 proposed rule change is to amend Rule 782, entitled “Manipulative Operations” to specify other manipulative trading practices which are currently prohibited. Today the manipulative trade practices specified in the amended rule text are prohibited from being transacted on the Exchange pursuant to both federal laws<sup>3</sup> and Exchange Rules.<sup>4</sup> The enumerated manipulative practices in Rule 782, including the amended rule text, is not an exhaustive list, rather, these activities serve as guidance to certain trading practices that are prohibited on Phlx.

The Exchange proposes to adopt the rule text currently in The NASDAQ Stock Market LLC (“Nasdaq”) Rule 3351, entitled “Trading Practices” to provide market participants with additional guidance related to prohibited trading practices.<sup>5</sup> The proposed rule text would enumerate certain manipulative trading practices, which are currently prohibited. Phlx Rule 782 applies to both equities and options transactions.

The new rule text would enumerate prohibitions such that no member or member organization shall be permitted to execute or cause to be executed or participate in an account for which there are executed purchases of any listed security, at successively higher prices, or sales of any such security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price which does not reflect the true state of the market in such security.

No member or member organization would be permitted to create or induce a false or misleading appearance of activity in a listed security or create or induce a false or misleading appearance with respect to the market in such security for these types of activities in

the amended rule text: (1) Execute any transaction in such security which involves no change in the beneficial ownership thereof; or (2) enter any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties; or (3) enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

The new rule text would specify that no member or member organization would be permitted to execute purchases or sales of a listed security for any account in which such member or member organization is directly or indirectly interested, which purchases or sales are excessive in view of the member’s or member organization’s financial resources or in view of the market for such security.

The rule text enumerates a prohibition for members and member organizations from participating directly or indirectly, in the profits of a manipulative operation or knowingly managing or financing a manipulative operation. This would include: (1) Any pool, syndicate or joint account organized or used intentionally for the purpose of unfairly influencing the market price of a listed security; (2) the solicitation of subscriptions to or the acceptance of discretionary orders from any such pool, syndicate or joint account; or (3) the carrying on margin of a position in such securities or the advancing of credit through loans to any such pool, syndicate or joint account.

The rule text specifies that no member or member organization shall make any statement or circulate and disseminate any information concerning a listed security which such member knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.

No member, member organization or person associated with a member or member organization shall, directly or indirectly, hold any interest or participation in any joint account for buying or selling a listed security, unless such joint account is promptly reported to Phlx. The report should contain the following information for each account: (1) Name of the account, with names of all participants and their respective interests in profits and losses; (2) a statement regarding the purpose of

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

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

<sup>3</sup> See 17 CFR 10b-5.

<sup>4</sup> Phlx Rule 782 currently states, “[n]o member, member organization, partner or stockholder therein shall directly or indirectly participate in or have any interest in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.” Also, Phlx Rule 707 prohibits conduct inconsistent with just and equitable principles of trade and Rule 708 prohibits acts detrimental to the welfare of the Exchange.

<sup>5</sup> Nasdaq Rule 3351 is an equities rule.

the account; (3) name of the member carrying and clearing the account; and (4) a copy of any written agreement or instrument relating to the account.

The rule text states that no member or member organization shall offer that a transaction or transactions to buy or sell a listed security will influence the closing transaction on the Consolidated Tape or The Options Price Reporting Authority (“OPRA”). A member or member organization may, but is not obligated to, accept a stop order in a listed security. A buy stop order is an order to buy which becomes a market order when a transaction takes place at or above the stop price. A sell stop order is an order to sell which becomes a market order when a transaction takes place at or below the stop price. A member or member organization may, but is not obligated to, accept stop limit orders in listed securities. When a transaction occurs at the stop price, the stop limit order to buy or sell becomes a limit order at the limit price.

No member, member organization or person associated with a member or member organization shall execute or cause to be executed, directly or indirectly, on a Phlx transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape or OPRA.

The Exchange believes that the addition of this rule text will bolster the current rule and provide members and member organizations with guidance on the type of manipulative practices that are specifically prohibited on Phlx. Also, the Exchange believes that the addition of the rule text will serve to also conform the Exchange’s rule to that of Nasdaq.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the

public interest. The Exchange believes that the proposed rule text will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and better protect investors and the public interest.

The Exchange believes the proposed rule change is consistent with principles of just and equitable principles of trade while also ensuring that members and member organizations may continue to engage in transactions that do not present the risk of abusive trading practices that the rule is intended to prevent. The Exchange believes that proposed rule text would enhance the protection of orders of market participants by specifically addressing various types of currently prohibited abusive trading that may be intended to take advantage of such orders. Specifically, the proposed rule change seeks to provide greater guidance by enumerating certain manipulative trading practices that are currently prohibited.

As previously noted, the proposed rule text is similar to Nasdaq Rule 3351. While Nasdaq Rule 3351 applies to equity transactions, Phlx proposes to apply the amended rule text to both equity and options transactions, as is the case today with Rule 782 today. The Exchange believes that specifying the type of manipulative conduct that is already prohibited and described in Rule 782, including the amended rule text, on both the equities and options market will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and better protect investors and the public interest. The Exchange proposes to prohibit this type of behavior on the Exchange as a whole. The Exchange believes specifying the practices that are currently prohibited on both the equities and options markets promotes just and equitable principles of trade.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, rather it is designed to enable the Exchange to protect orders of market participants from abusive and manipulative conduct on both the equities and options markets, by offering additional guidance, while also harmonizing the rule to that of Nasdaq. The Exchange’s proposed amendments seek to harmonize the Rulebook with that of Nasdaq.

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

No written comments were either solicited or received.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> 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 Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately.

The Exchange believes that the proposal would benefit investors and market participants by specifically enumerating certain abusive and manipulative trading practices, which the Exchange notes are currently prohibited. The Exchange further states that amending Phlx Rule 782 to provide market participants with additional guidance regarding such activity would “benefit the protection of investors and the public interest.” Based on the foregoing, the Commission finds that waiving the 30-day operative delay is consistent with the protection of

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

investors and the public interest and hereby designates the proposal operative upon filing.<sup>14</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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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 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-2015-73 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2015-73. 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.,

<sup>14</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).

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 offices 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-2015-73, and should be submitted on or before September 23, 2015.

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

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75766; File No. SR-BOX-2015-22]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Order Granting Approval of a Proposed Rule Change To Implement the Governance Provisions of an Equity Rights Program

August 27, 2015.

#### I. Introduction

On June 25, 2015, BOX Options Exchange LLC (the "Exchange") 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 to implement the governance provisions of a volume performance rights program (the "VPR Program"). The proposed rule change was published for comment in the **Federal Register** on July 13, 2015.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

<sup>15</sup> 17 CFR 200.30-3(a)(12), (59).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 75374 (July 7, 2015), 80 FR 40100 (SR-BOX-2015-22) ("Notice").

#### II. Description

Under the VPR Program, BOX<sup>4</sup> Options Participants<sup>5</sup> ("Participants") that take part in the Program will have the right to acquire equity in, and receive distributions from, BOX Holdings Group LLC ("Holdings"), an affiliate of the Exchange and direct parent entity of BOX, in exchange for a nominal cash payment and the achievement of certain order flow volume commitments over a period of five years.<sup>6</sup> Pursuant to the VPR Program, Volume Performance Rights ("VPRs") were issued to Participants that elected to participate, met the eligibility criteria and made the initial cash payment ("Subscribers").<sup>7</sup>

Each VPR is comprised of the right to receive 8.5 unvested new Class C Membership Units of Holdings ("Class C Units"), upon effectiveness of this proposed rule change. One VPR per Tranche will be eligible to vest each quarter of the five (5) year Program period, subject to the Subscriber meeting its volume commitment for that quarter. In addition, VPRs may be reallocated among Subscribers based upon exceeding or failing to meet Subscribers' volume commitments during the VPR Program period.<sup>8</sup>

##### *A. Ownership Units*

As described in more detail in the Notice,<sup>9</sup> in order to implement certain aspects of the VPR Program, Holdings would amend its existing Limited Liability Company Agreement (the "Holdings LLC Agreement") by adopting an Amended and Restated Limited Liability Company Agreement of Holdings (the "Restated Holdings LLC Agreement"), to create Class C

<sup>4</sup> "BOX" means BOX Market LLC, an options trading facility of the Exchange. See BOX Rule 100(a)(7).

<sup>5</sup> "Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in options trading on BOX as an "Order Flow Provider" or "Market Maker." See BOX Rule 100(a)(40).

<sup>6</sup> See Securities Exchange Act Release No. 74114 (January 22, 2015), 80 FR 4611 (January 28, 2015) (SR-BOX-2015-03) (the "VPR Filing"). See also Securities Exchange Act Release No. 74171 (January 29, 2015), 80 FR 6153 (February 4, 2015) (SR-BOX-2015-05) (extending the deadline to participate in the VPR program until January 14, 2015) (the "Second VPR Filing").

<sup>7</sup> See Notice, *supra* note 3, at 40101. The VPRs were issued in tranches of twenty (20) VPRs (each, a "Tranche") with a minimum subscription of two (2) Tranches per Subscriber. According to the Exchange, twenty-seven (27) Tranches have been issued in connection with the VPR Program. See *id.*

<sup>8</sup> See Notice, *supra* note 3, at 40101.

<sup>9</sup> See *id.*