

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. SR-Phlx-2013-113

In the Matter of:

Suspension of and Order Instituting
Proceedings to Determine Whether
to Approve or Disapprove a
Proposed Rule Change by NASDAQ
OMX PHLX LLC to Offer a
Customer Rebate



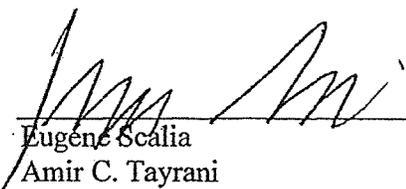
**NASDAQ OMX PHLX LLC'S
MOTION FOR ORAL ARGUMENT**

NASDAQ OMX PHLX LLC ("Phlx"), through undersigned counsel and pursuant to Rule 451 of the Securities and Exchange Commission Rules of Practice, respectfully moves for oral argument before the Commission in this matter. Rule 451 provides that oral argument is appropriate where "the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument." 17 C.F.R. § 201.451(a). As set out in the accompanying Memorandum of Points and Authorities in Support of NASDAQ OMX PHLX LLC's Motion for Oral Argument, oral argument would significantly aid the decisional process here by ensuring that Phlx has addressed any remaining concerns that the Commission might have regarding the proposed rule. This is particularly important in light of the cursory nature of the submissions criticizing Phlx's proposal.

Accordingly, Phlx respectfully requests that the Motion for Oral Argument be granted.

Respectfully submitted,

Dated: January 24, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2014, I caused a copy of the foregoing Motion for Oral Argument to be served on the parties listed below via an overnight commercial carrier. Service was accomplished on the commenters via an overnight commercial carrier because of the large service list.

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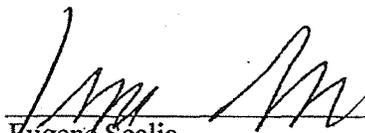
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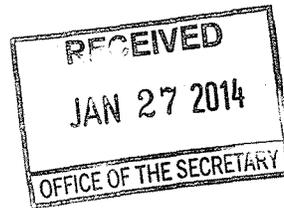
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
NASDAQ OMX PHLX LLC'S MOTION FOR ORAL ARGUMENT**

Pursuant to Rule 451 of the Securities and Exchange Commission's Rules of Practice, NASDAQ OMX PHLX LLC ("Phlx") respectfully submits this memorandum in support of its Motion for Oral Argument. Under Rule 451, oral argument is appropriate where "the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument." 17 C.F.R. § 201.451(a). Here, oral argument would significantly aid the decisional process by clarifying the factual and legal issues before the Commission.

Several of Phlx's competitors have encouraged the Commission to disapprove the proposed rule at issue. Their comments rely primarily on boilerplate recitations of the various statutory standards imposed by the Exchange Act without any legal or factual showing that the proposed rebate actually violates those standards. Phlx believes that its written submission has removed any doubt as to the proposed rule's consistency with the Exchange Act. Given the

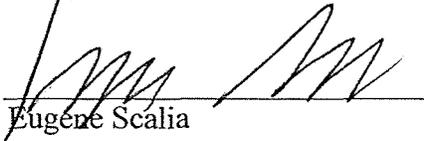
cursory nature of the competitors' submissions, however, oral argument would significantly aid the decisional process by ensuring that Phlx has addressed any and all questions the Commission may have about the proposed rule.

It is critically important for the Commission to be fully informed about the pro-competitive benefits of the proposed rule before deciding this matter. As set out in Phlx's rebuttal comment, the proposed rebate furthers the purposes of the Exchange Act in multiple respects, particularly the Commission's principal mandate of protecting investors. In fact, the proposed rebate will generate substantial benefits for both market participants who receive it and for the investing public as a whole. Oral argument would ensure that these facts are fully aired and that any lingering concerns the Commission might have about the proposal's effects are adequately addressed.

Because the decisional process would be significantly aided by oral argument, the Motion for Oral Argument should be granted.¹

¹ Phlx respectfully requests that the Commission schedule oral argument promptly, in order to provide sufficient time for the Commission itself—as opposed to the Commission's staff acting pursuant to delegated authority—to act on the proposed rule within the timeframe set out by the Exchange Act. Section 19(b)(2)(B)(ii) of the Exchange Act provides that “not later than 180 days after the date of publication [of a proposed SRO rule change in the *Federal Register*], the Commission shall issue an order approving or disapproving the rule change,” and that the “Commission may extend the period for issuance . . . by not more than 60 days.” 15 U.S.C. § 78s(b)(2)(B)(ii) (emphases added). To enforce compliance with this time limit, Congress further provided that a “proposed rule change shall be deemed to have been approved by the Commission, if the Commission does not issue an order approving or disapproving the proposed rule change . . . within the period described in” the statute. *Id.* § 78s(b)(2)(D)(ii) (emphasis added). Accordingly, if the Commission itself fails to act within 240 days of the proposed rule's publication in the *Federal Register*, this rule change will be deemed approved automatically. See Petition for Review of Order Disapproving NASDAQ's “Platform Pricing” Proposal at 7-11, Exchange Act Release No. 34-65362, File No. SR-NASDAQ-2011-10 (Oct. 11, 2011).

Respectfully submitted,



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Dated: January 24, 2014

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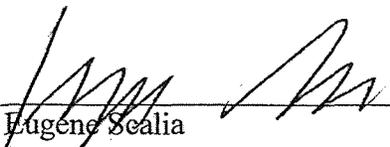
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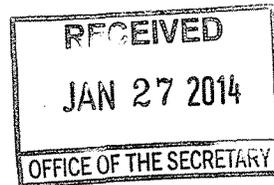
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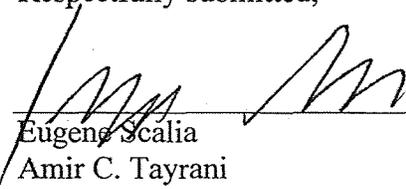


NOTICE OF APPEARANCE OF NASDAQ OMX PHLX LLC

Pursuant to Rule 102 of the SEC Rules of Practice and Procedure, 17 C.F.R. § 102, please enter the appearance of Eugene Scalia, Amir C. Tayrani, and Thomas M. Johnson, Jr. of Gibson, Dunn & Crutcher LLP, as counsel for NASDAQ OMX PHLX LLC in the above-captioned matter.

Respectfully submitted,

Dated: January 24, 2014



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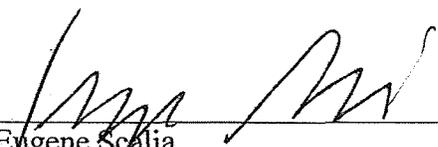
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