

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69752; File No. SR-Phlx-2013-62)

June 13, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 thereto to Introduce a Market Maker Peg Order for Use on NASDAQ OMX PSX

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 June 3, 2013, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on June 6, 2013.³ The Commission is publishing this notice, as amended, 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 introduce a Market Maker Peg Order (“MMPO”) for use on NASDAQ OMX PSX (“PSX”). The Exchange proposes to implement the change on a date that is on, or shortly after, the expiration of the 30-day operative delay provided for under Rule 19b-4(f)(6)(iii).⁴

The text of the proposed rule change is below. Proposed deletions are in brackets; proposed additions are underlined.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange replaced two erroneous references to Nasdaq with references to Phlx.

⁴ 17 CFR 240.19b-4(f)(6)(iii).

3301. Definitions

The following definitions apply to the Rule 3200 and 3300 Series for the trading of securities on PSX.

(a) - (e) No change.

(f) The term “Order Type” shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1) - (11) No change.

(12) “Market Maker Peg Order” is a limit order that, upon entry, the bid or offer is automatically priced by the System at the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Rule 3213(a)(2). Upon reaching the Defined Limit, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. If a Market Maker Peg Order bid or offer moves away from the Designated Percentage towards the then current National Best Bid or National Best Offer, as appropriate, by 4 percentage points, the price of such bid or offer will be adjusted to the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. In the absence of a National Best Bid or

National Best Offer and if no last reported sale, the order will be cancelled or rejected.

During the period before 9:30 a.m. and after 4:00 p.m., the Designated Percentage and Defined Limit applicable to a Market Maker Peg Order will be the same as for the periods from 9:30 a.m. through 9:45 a.m.

If, after entry, the Market Maker Peg Order is priced based on the consolidated last sale and such Market Maker Peg Order is established as the National Best Bid or National Best Offer, the Market Maker Peg Order will not be subsequently adjusted in accordance with this rule until either there is a new consolidated last sale, or a new National Best Bid or new National Best Offer is established by either another national securities exchange or PSX. Market Maker Peg Orders are not eligible for routing pursuant to Rule 3315 and are always displayed on PSX. Notwithstanding the availability of Market Maker Peg Order functionality, a Market Maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of Rule 3213. A new timestamp is created for the order each time that it is automatically adjusted.

For purposes of this paragraph, PSX will apply the Designated Percentage and Defined Limit as set forth in Rule 3213, subject to the following exception. Nothing in this rule shall preclude a Market Maker from designating a more aggressive offset from the National Best Bid or National Best Offer than the given Designated Percentage for any individual Market Maker Peg Order. If a Market Maker designates a more aggressive offset from the National Best Bid or National Best Offer, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to maintain the Market Maker-designated offset from the National Best Bid or National Best Offer, or if no National Best Bid or National Best Offer, the order will be cancelled or rejected.

(g) - (i) No change.

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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 Exchange is proposing to introduce a Market Maker Peg Order (“MMPO”) for use on PSX by registered PSX Market Makers. The MMPO, which is currently available for use on The NASDAQ Stock Market (“NASDAQ”), is an order type that provides a means by which a market maker may comply with its market making obligations under applicable Exchange rules.⁵ The Exchange recently adopted rules to allowing [sic] market making on PSX, and is proposing to introduce the MMPO in order to facilitate compliance by PSX Market Makers with quoting obligations contained in these newly adopted rules.⁶ The MMPO is available for use only by PSX Market Makers because these obligations are not applicable to other market participants. The MMPO is

⁵ Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR-NASDAQ-2012-066).

⁶ Securities Exchange Act Release No. 69452 (April 25, 2013), 78 FR 25512 (May 1, 2013) (SR-Phlx-2013-24).

available only through the Exchange’s RASH and FIX connectivity protocols, because these are the only protocols that support continuous pegging functionality.

PSX Rule 3213 requires a member organization registered as a Market Maker in a particular security to be willing to buy and sell such security for its own account on a continuous basis during regular market hours and to enter and maintain a two-sided trading interest (“Two-Sided Obligation”) that is identified to the Exchange as the interest meeting the obligation and is displayed in PSX’s quotation montage at all times. Interest eligible to be considered as part of a Market Maker’s Two-Sided Obligation must have a displayed quotation size of at least one normal unit of trading⁷ (or a larger multiple thereof). After an execution against its Two-Sided Obligation, a Market Maker must ensure that additional trading interest exists in PSX to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the PSX book that will satisfy this obligation.

PSX Market Makers must also adhere to certain pricing obligations established by Rule 3213, which are premised on entering quotation prices that are not more than a “Designated Percentage”⁸ away from the National Best Bid or Best Offer⁹ (as

⁷ Unless otherwise designated, 100 shares.

⁸ The “Designated Percentage” is: (i) 8% for securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products (“Tier 1 Securities”); (ii) 28% for all NMS stocks that are not Tier 1 Securities with a price equal to or greater than \$1 (“Tier 2 Securities”); (iii) 30% for all NMS stocks that are not Tier 1 Securities with a price less than \$1 (“Tier 3 Securities”), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, the Designated Percentage is 20% for Tier 1 Securities, 28% for Tier 2 Securities, and 30% for Tier 3 Securities. The Designated Percentage for rights and warrants is 30%. For the pilot list of Exchange Traded Products that are Tier 1 Securities, see Exhibit 3 to SR-Phlx-2013-24, Amendment No. 1 (March 18, 2013) (available

applicable), and that must be refreshed if a change in the National Best Bid or Best Offer causes the quotation price to be more than a “Defined Limit”¹⁰ away from the National Best Bid or Best Offer.¹¹ The pricing obligations established by the Rule apply during regular trading hours (i.e., 9:30 a.m. to 4:00 p.m.), but do not commence during any trading day until after the first regular way transaction on the primary listing market in the security. Moreover, the obligations are suspended during a trading halt, suspension, or pause, and do not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

For bid quotations, at the time of entry of bid interest satisfying the Two-Sided Obligation, the price of the bid interest may not be more than the applicable Designated Percentage away from the then current National Best Bid, or if no National Best Bid, not more than the Designated Percentage away from the last reported sale from the responsible single plan securities information processor. In the event that the National Best Bid (or if no National Best Bid, the last reported sale) increases to a level that would cause the bid interest of the Two-Sided Obligation to be more than the Defined Limit

at http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/pdf/phlx-filings/2013/SR-Phlx-2013-24_Amendment_1.pdf).

⁹ Determined by the Exchange in accordance with its procedures for determining Protected Quotations under SEC Rule 600 under Regulation NMS.

¹⁰ The “Defined Limit” is 9.5% for Tier 1 Securities, 29.5% for Tier 2 Securities, and 31.5% for Tier 3 Securities, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, the Defined Limit is 21.5% for Tier 1 Securities, 29.5% for Tier 2 Securities, and 31.5% for Tier 3 Securities.

¹¹ Nothing in Rule 3213 precludes a PSX Market Maker from quoting at price levels that are closer to the National Best Bid and Offer than the levels required by the rule.

away from the National Best Bid (or if no National Best Bid, the last reported sale), or if the bid is executed or cancelled, the Market Maker must enter new bid interest at a price not more than the Designated Percentage away from the then current National Best Bid (or if no National Best Bid, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation. Similarly, for offer quotations, at the time of entry of offer interest satisfying the Two-Sided Obligation, the price of the offer interest may not be more than the Designated Percentage away from the then current National Best Offer, or if no National Best Offer, not more than the Designated Percentage away from the last reported sale received from the responsible single plan securities information processor. In the event that the National Best Offer (or if no National Best Offer, the last reported sale) decreases to a level that would cause the offer interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Offer (or if no National Best Offer, the last reported sale), or if the offer is executed or cancelled, the Market Maker must enter new offer interest at a price not more than the Designated Percentage away from the then current National Best Offer (or if no National Best Offer, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

The MMPO is designed to assist Market Makers in complying with these requirements by having its price adjusted in accordance with the parameters required by Rule 3213. Thus, use of the order will allow market makers to make liquidity available at prices reasonably related to the National Best Bid and National Best Offer, even in circumstances where they are not themselves quoting at the best price or have more limited liquidity available at the best price. The Exchange believes that use of the order

may therefore serve to dampen volatility and minimize the extent to which transactions on PSX result in the imposition of limit-up, limit-down restrictions or trading pauses under Rule 3100 and related rules of other exchanges.

Specifically, the MMPO is a limit order that, upon entry, is automatically priced by the PSX System at the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order. For example, if the National Best Bid was \$10 in a Tier 1 Security, the Designated Percentage would be 8%, an MMPO to buy entered between 9:45 a.m. and 3:45 p.m. would be priced at \$9.20.¹² Because the order is designed to post to the book at the Designated Percentage, it would not be marketable upon entry and therefore may not be entered with a time-in-force of Immediate-or-Cancel. As a result, an MMPO would provide, rather than access, liquidity. The order may not be assigned any special conditions governing its terms of execution, other than time-in-force, limit price, and the pegging functionality described herein.

Upon reaching the Defined Limit, the price of an MMPO will be adjusted by the System to the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. Thus, if the National Best Bid in the above example increased to \$10.17, the MMPO priced at \$9.20 would now be more than 9.5%, the Defined Limit, away from the

¹² As noted above, the MMPO is a limit order and therefore must be assigned a limit priced beyond which it will not execute. If the repricing mechanism of the order would result in the order being priced at a level inconsistent with its limit price, the order will be rejected or cancelled.

National Best Bid, and would be repriced to \$9.35, the Designated Percentage away from \$10.17.

If the market moves such that the price of an MMPO is within 4 percentage points of the National Best Bid or National Best Offer, as appropriate, the price of the order will be adjusted to the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. Thus, if the National Best Bid was initially \$10 in a Tier 1 Security, and an MMPO to buy was initially entered at \$9.20, if the National Best Bid decreased to \$9.58 (such that the MMPO was less than 4% away from the National Best Bid), the MMPO would be repriced to \$8.81 (8% away from the National Best Bid).

For a given MMPO, a Market Maker may designate a more aggressive offset from the National Best Bid or National Best Offer than the given Designated Percentage.¹³ Thus, for example, the Market Maker could designate an offset of \$0.25, in which case the order would be continually repriced to maintain the \$0.25 offset as the National Best Bid or National Best Offer moved. Thus, if the National Best Bid was \$10, an MMPO to buy with a \$0.25 offset would initially be priced at \$9.75, with the price rising or falling continually as the National Best Bid moved.¹⁴ If there is no National Best Bid or

¹³ Such an offset will be expressed in dollars and cents rather than as a percentage.

¹⁴ An MMPO with an offset operates in a manner similar to a Primary Pegged Order with an offset amount (see Rule 3301(f)(4)), but an MMPO is always displayed. Note also that if the repricing of an order with an offset amount would result in the order being priced at a level inconsistent with its limit price, the order will be rejected or cancelled.

National Best Offer (as applicable), an MMPO with a designated offset amount will be cancelled or rejected.

If an MMPO is entered or on the book at a time when there is no National Best Bid or National Best Offer (as applicable) and no last reported sale, the order will be cancelled or rejected. If an MMPO is priced based on the consolidated last sale because there is no National Best Bid or National Best Offer, and the MMPO itself establishes the National Best Bid or National Best Offer, the order will not be subsequently adjusted until either there is a new consolidated last sale, or a new National Best Bid or new National Best Offer is established. Thus, if the last sale price on the consolidated tape was \$10 and an MMPO to buy is priced at \$9.20 and establishes the National Best Bid, the order will not then be repriced to maintain an offset from itself. Rather, the order will be repriced only once there is an independent basis pricing the order. In the event of an execution against an MMPO that reduces the size of the order below one round lot, the Market Maker would need to enter a new order (after performing required regulatory checks, as discussed below) to satisfy its obligations under Rule 3213.¹⁵

MMPOs are not eligible for routing pursuant to Rule 3315 and are always displayed on PSX. Notwithstanding the availability of MMPO functionality, a Market Maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of Rule 3213. A new timestamp is created for an MMPO each time that its price is automatically adjusted. At a particular price, the order would be processed in regular price/time priority, with better priced interest being

¹⁵ Rule 3213 generally sets forth PSX Market Maker requirements, which include quotation and pricing obligations, and the firm quote obligation.

executed prior to the MMPO and with the MMPO being executed behind similarly priced orders entered before the MMPO had its price adjusted.

Although Rule 3213 does not govern the pre-market trading session before 9:30 a.m. and the post-market trading session after 4:00 p.m., a Market Maker may enter an MMPO during such periods. In that case, the Designated Percentage and Defined Limit applicable to the MMPO will be the same as for the periods from 9:30 a.m. through 9:45 a.m., as described in Rule 3213.¹⁶ As PSX does not have a special market opening or closing process, an MMPO does not behave differently at 9:30 a.m. or 4:00 p.m. than it does immediately before or after such times.

Because use of the MMPO would not be inconsistent with Market Makers having the capacity to control order origination, as required by SEC Rule 15c3-5 (the “Market Access Rule”),¹⁷ and because Market Makers using the MMPO will be able to make marking and locate determinations prior to order entry, as required by Regulation SHO,¹⁸ use of the order is not inconsistent with Market Makers fulfilling their obligations under these rules, while also meeting their Exchange market making obligations. It should be noted, however, that use of the order does not ensure that the Market Maker is in

¹⁶ See *supra* notes 7 and 9 [sic]. This aspect of the operation of the MMPO is identical to the operation of NASDAQ’s MMPO. Phlx is, however, adding additional language to its rule to promote its clarity.

¹⁷ 17 CFR 240.15c3-5. The Market Access Rule requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier (“MPID”) or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks of this business activity.

¹⁸ 17 CFR 242.200-.204. Regulation SHO obligations generally include properly marking sell orders, obtaining a “locate” for short sale orders, closing out fail to deliver positions, and, where applicable, complying with the short sale price test.

compliance with its regulatory obligations under the Market Access Rule or Regulation SHO.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁹ in general, and with Section 6(b)(5) of the Act,²⁰ in particular, in that the proposal 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 regulating, clearing, settling, 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; and also in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the MMPO will aid Market Makers in complying with the requirements of Rule 3312. The Exchange further believes that compliance with this rule will remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because it will provide a means by which Market Makers may offer liquidity at prices that are reasonably related to the National Best Bid and National Best Offer, even in circumstances where they are not willing to quote at the inside market. As a result, in circumstances where liquidity available at prices closer to the inside than the price of an MMPO is exhausted, the MMPO will nevertheless be available to support executions at prices that are not widely

¹⁹ 15 U.S.C. 78f.

²⁰ 15 U.S.C. 78f(b)(4) and (5).

at variance with the prior inside market. Thus, use of the order will serve to lessen volatility and diminish the likelihood that a limit-up, limit-down restriction or a trading pause will be triggered in a particular stock that is subject to buying or selling pressure.

The methodology for repricing an MMPO is consistent with the requirements of the Act because it will ensure that the price of the order bears 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 Act²¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.²²

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

²¹ 15 U.S.C. 78s(b)(3)(a)(ii).

²² 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.

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 e-mail to 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 e-mail 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 website

(<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 website 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 [insert date 21 days from publication in the Federal Register].

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

Kevin M O'Neill
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).