

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70101; File No. SR-Phlx-2013-78)

August 2, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading Halts or Suspension When an Exchange Trading System Experiences Technical Failure or Failures

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 July 25, 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, 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 amend Exchange Rules 1047 and 1047A to expressly state another factor that is considered in determining whether trading on the Exchange in any class of option contracts should be halted or suspended.

The text of the proposed rule change is available on the Exchange’s Website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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

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

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

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 amend Exchange Rule 1047, entitled “Trading Rotations, Halts and Suspensions” and Rule 1047A, entitled “Trading Rotations, Halts or Reopenings” to expressly state a factor which is considered today in determining whether to halt or suspend trading in any class of option on the Exchange. Today, Exchange Rule 1047 contains four factors that an Options Exchange Official<sup>3</sup> may consider appropriate in the interests of a fair and orderly market and to protect investors when determining whether to halt or suspend options trading. The current factors are as follows: (i) trading in the underlying stock or Exchange-Traded Fund Share has been halted or suspended in the primary market; (ii) the opening of such underlying stock or Exchange-Traded Fund Share in the primary market has been delayed because of unusual circumstances; (iii) the Exchange has been advised that the issuer of the underlying stock or Exchange-Traded Fund Share is about to make an important announcement affecting such issuer; or (iv) other unusual conditions or circumstances are present. This fourth factor is the basis on which Options Exchange Officials today halt or suspend options trading for technical issues on Phlx.

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<sup>3</sup> See Rule 1. An “Option Exchange Official” is an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. A list of individual Options Exchange Officials shall be displayed on the Exchange website. The Chief Regulatory Officer shall maintain the list of Options Exchange Officials and update the website each time a name is added to, or deleted from, the list of Options Exchange Officials. In the event no Options Exchange Official is available to rule on a particular matter, the Chief Regulatory Officer or his/her designee shall rule on such matter.

The Exchange is proposing to expressly state that technical failures may be considered when determining to halt or suspend options trading. Specifically, the Exchange proposes to expressly note that an Options Exchange Official may consider a Trading System technical failure or failures including, but not limited to, the failure of the central processing system, a number of member or member organization trading applications, or the electrical power supply to the system itself or any related system in determining when to halt or suspend options trading. The Exchange proposes to define Trading System for purposes of this Rule as Phlx XL II, or any other Exchange quotation, transaction reporting, execution, order routing or other systems for trading options.

The Exchange believes that a Trading System failure may be considered as an unusual condition or circumstance as noted in Rule 1047(iv) and Rule 1047A(iii), however the Exchange desires to include specific language regarding a technical failure within the list of considerations, similar to other options exchanges. Today, this factor is included in the list of factors for halting or suspending options trading on The NASDAQ Options Market LLC (“NOM”) and the NASDAQ OMX BX, Inc. (“BX Options”).<sup>4</sup> NOM and BX Options today halt or suspend options trading for technical failures utilizing the corresponding rules at Chapter V, Section 3. The Exchange believes that expressly stating this factor within Rules 1047 and 1047A will provide clearer guidance to Options Exchange Officials when they are determining whether to halt or suspend options trading on Phlx.

Similarly, the Exchange proposes to add identical language to Rule 1047A which relates to the trading of options on indices. Rule 1047A currently provides that “[t]rading on the Exchange in any option may be halted with the approval of an Options Exchange Official,

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<sup>4</sup> See NOM and BX Options Rules at Chapter V, Section 3.

whenever trading on the primary market in any underlying security is halted or suspended.

Trading shall be halted whenever an Options Exchange Official deems such action appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following: (i) trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks; (ii) the current calculation of the index derived from the current market prices of the stocks is not available; (iii) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.” The Exchange proposes to amend Rule 1047A by adding identical language to that proposed for Rule 1047. The Exchange also proposes to renumber Rules 1047 and 1047(A) to include the added factor.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</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 specifically noting that Options Exchange Officials may consider technical failures when halting or suspending options trading.

The Exchange believes that expressly noting that a system technical failure should be among the factors considered by an Options Exchange Official in halting or suspending options trading provides greater clarity to the factors which may cause such a market halt or suspension. Today, a technical failure of either the exchange’s Trading System or that of a number of Participants would be considered in halting or suspending options trading on NOM and BX

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

Options.<sup>7</sup> An Options Exchange Official must determine whether halting or suspending options trading is appropriate to ensure a fair and orderly market and also to protect investors. Options Exchange Officials must consider the factors enumerated within Rules 1047 and 1047A, depending on the options impacted, and make decisions as to whether to halt or suspend trading after an analysis of the facts. The Exchange believes that expressly noting Trading System failures as a consideration is appropriate because such failures could prevent a fair and orderly market and impact investors. The Exchange believes that the addition of the proposed text provides greater clarity to the factors to be considered by Options Exchange Officials.

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 believes this proposed rule change will benefit investors by specifically noting that technical issues are a consideration for an Options Exchange Official when determining whether to halt or suspend options trading. Today, the Exchange halts and suspends options trading for such technical failures when those failures impact investors as do other options exchanges. This proposal will provide greater clarity to Options Exchange Officials in making these determinations.

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;

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<sup>7</sup> See NOM and BX Options Rules at Chapter V, Section 3.

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 Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</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: (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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange has provided the Commission written notice of its 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.

#### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-78 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and

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

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

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

All submissions should refer to File Number SR-Phlx-2013-78. 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 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-2013-78 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.<sup>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).