

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72968; File No. SR-Phlx-2014-57)

September 3, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Common Ownership

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 20, 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 proposal to harmonize the treatment of the aggregation of activity of affiliated member organizations for the purposes of assessing charges or credits.

The Exchange requests that this filing become operative on December 1, 2014.

The text of the proposed rule change is set forth below. Proposed new language is underlined; deleted text is in brackets.

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

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

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**NASDAQ OMX PHLX LLC<sup>1</sup> PRICING SCHEDULE**

**ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. AS OF JANUARY 3, 2011, THE EXCHANGE WILL CALCULATE FEES ON A TRADE DATE BASIS.**

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<sup>1</sup>PHLX<sup>®</sup> is a registered trademark of The NASDAQ OMX Group, Inc.

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**VIII. NASDAQ OMX PSX FEES**

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**Aggregation of Activity of Affiliated Member Organizations**

- (a) No Change
- (b) No Change
- (c) For purposes of this provision, the term[s set forth below shall have the following meanings:]

[(1) An] “affiliate” of a member organization shall mean any [wholly owned subsidiary, parent, or sister of the ]member organization under 75% common ownership or control of that [is also a ]member organization.

[(2) A “wholly owned subsidiary” shall mean a subsidiary of a member organization, 100% of whose voting stock or comparable ownership interest is owned by the member organization, either directly or indirectly through other wholly owned subsidiaries.]

[(3) A “parent” shall mean an entity that directly or indirectly owns 100% of the voting stock or comparable ownership interest of a member organization.]

[(4) A “sister” shall mean an entity, 100% of whose voting stock or comparable ownership interest is owned by a parent that also owns 100% of the voting stock or comparable ownership interest of a member organization.]

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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 amend Chapter VIII of the Pricing Schedule to harmonize the treatment of the aggregation of activity of affiliated member organizations for the purposes of assessing charges or credits by making it consistent with the definition of “Common Ownership” in the Preface of the Pricing Schedule which relates to options

pricing. For purposes of applying any PSX charge or credit where the charge assessed, or credit provided, by Phlx depends upon the volume of a member organization's activity. A member organization may request that the Exchange aggregate its activity with the activity of its affiliates.<sup>3</sup> Therefore, for purposes of applying any PSX charge or credit where the charge assessed, or credit provided, by Phlx depends upon the volume of a member organization's activity, references to an entity (including references to a “member organization”, or a “participant”) shall be deemed to include the entity and its affiliates that have been approved for aggregation.<sup>4</sup>

Currently, PSX Rules state that for purposes of applying any PSX charge or credit where the charge assessed, or credit provided, by Phlx depends upon the volume of a member organization's activity, a member organization may request that the Exchange aggregate its activity with the activity of its affiliates.<sup>5</sup> The Exchange proposes to amend Chapter VIII of the Pricing Schedule to conform that rule to that of Phlx Options Pricing Rules so that equities and options members/member organizations are treated consistently with respect to affiliations of member organizations for purposes of pricing. Phlx’s

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<sup>3</sup> See Chapter VIII of the Pricing Schedule.

<sup>4</sup> Id.

<sup>5</sup> An “affiliate” of a member organization shall mean any wholly owned subsidiary, parent, or sister of the member organization that is also a member organization. A “wholly owned subsidiary” shall mean a subsidiary of a member organization, 100 percent of whose voting stock or comparable ownership interest is owned by the member organization, either directly or indirectly through other wholly owned subsidiaries. A “parent” shall mean an entity that directly or indirectly owns 100 percent of the voting stock or comparable ownership interest of a member organization. A “sister” shall mean an entity, 100 percent of whose voting stock or comparable ownership interest is owned by a parent that also owns 100 percent of the voting stock or comparable ownership interest of a member organization. See Chapter VIII of the Pricing Schedule.

Options Rule provides, “Common Ownership” shall mean Participants under 75 percent common ownership or control.<sup>6</sup> The Exchange desires to take the current standard of 100 percent for equities member organizations and align that standard to the 75 percent standard for options members and member organizations.

Pursuant to Chapter VIII of the Pricing Schedule, a member organization requesting aggregation of affiliate activity shall be required to certify to the Exchange the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate. In addition, the Exchange reserves the right to request information to verify the affiliate status of an entity.<sup>7</sup>

The Exchange intends to amend the Phlx options rules to similarly require the certifications and approvals as noted herein. The Exchange intends that this rule change and the options rule changes noted herein harmonize the process by which the Exchange gathers information related to affiliated member organizations and then in turn, for purposes of pricing, treat both equities and options members alike with respect to the application of aggregated pricing.

The Exchange proposes to apply this pricing as of December 1, 2014 and issue an Options Trader Alert to its members.

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<sup>6</sup> See the Preface of the Pricing Schedule.

<sup>7</sup> See Chapter VIII of the Pricing Schedule.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</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, in that the proposal will harmonize the treatment of the aggregation of activity of affiliated member organizations for the purposes of assessing charges or credits with the treatment of the aggregation of activity of affiliated member organizations in relation to options pricing so that more member organizations will be able to benefit from lower charges and/or increased credits. The proposal will further serve to reduce disparity of treatment between member organizations with regards to the pricing of different services and reduce any potential for confusion in how activity can be aggregated. The Exchange believes the rule change avoids disparate treatment of members that have divided their various business activities between separate corporate entities as compared to members that operate those business activities within a single corporate entity. By way of example, subject to appropriate information barriers, many firms that are members of the Exchange operate both a market making desk and a public customer business within the same corporate entity. In contrast, other members may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons, and those affiliates are not also considered wholly owned affiliates. Those

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

corporate affiliates, in turn, are required to maintain separate memberships with the Exchange. Absent the proposed change, such corporate affiliates that cannot be considered wholly owned but are under common control would not receive the same treatment as members who are considered wholly owned affiliates. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory in permitting both wholly owned and common control. In addition to ensuring fair and equal treatment of its members, the Exchange does not want to create incentives for its members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure.

The Exchange believes that this proposed rule change may enable additional equity member organizations to aggregate pricing because the standard will be reduced from 100 percent to 75 percent for these member organizations. There are no current equity member organizations that would no longer be entitled to the aggregation as a result of this rule change. Further, the Exchange seeks to harmonize the manner in which aggregated pricing is treated on its three markets, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc. and Phlx and as between equities and options, by developing one standard for aggregated pricing and one method for collecting such information on aggregated pricing to ensure proper validation of that pricing in the manner in which it is occurring on Phlx for equity member organizations today.

Today, BATS Exchange, Inc. ("BATS") equity members are permitted to aggregate share volume calculations for wholly owned affiliates. The Exchange [sic] allows a member to aggregate volume with other members that control, are controlled by,

or are under common control with such member.<sup>10</sup> To the extent two or more affiliated companies maintain separate Exchange memberships and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange will permit such members to count overall volume of the affiliates in calculating volume. BATS does not specify a specific percentage for such aggregation. The Exchange is specifying 75 percent, similar to the percentage applied to Options Participants.

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 is merely seeking to harmonize the treatment of the aggregation of activity of affiliated member organizations for the purposes of assessing charges or credits with those rules contained in Chapter XV which relate to options pricing. The Exchange also believes that certain market participants may be able to aggregate because the standard is decreasing from 100 percent to 75 percent.

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,

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<sup>10</sup> See Securities Exchange Act Release No. 64211 (April 6, 2011), 76 FR 20414 (April 12, 2014) [sic] (SR-BATS-2011-012).



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>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</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.

#### 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-2014-57 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-2014-57. This file number should be included on the subject line if e-mail is used. To help the Commission process and

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

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

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-2014-57 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>13</sup>

Kevin M. O' Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).