

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76187; File No. SR-Phlx-2015-80)

October 19, 2015

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Floor Broker Management System

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 October 7, 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 the Substance of the Proposed Rule Change

The Exchange proposes to extend the implementation rollout of its enhanced Options Floor Broker Management System, described in more detail below.

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.

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

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

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently and until November 3, 2015, the Exchange operates two Floor Broker Management Systems concurrently on the options trading floor: the original Floor Broker Management System operating since 2005 ("FBMS 1"); and the enhanced Floor Broker Management System ("FBMS 2"). The purpose of the proposal is to continue the concurrent operation of FBMS 1 and FBMS 2 for a temporary period ending April 1, 2016 for the reasons stated below; otherwise the Exchange's concurrent operation of FBMS 1 and FBMS 2 would expire November 3, 2015.

FBMS 1 enables Floor Brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS 1 also establishes an electronic audit trail for options orders represented by Floor Brokers on the Exchange. Floor Brokers can also use FBMS 1 to submit orders to Phlx XL, rather than executing the orders in the trading crowd.

FBMS 2 was launched in March 2014. With FBMS 2, all options transactions on the Exchange involving at least one Floor Broker are required to be executed by FBMS 2. In connection with order execution, the Exchange allows FBMS 2 to execute two-sided orders entered by Floor Brokers, including multi-leg orders up to 15 legs, after the Floor Broker has represented the orders in the trading crowd. FBMS 2 also provides Floor Brokers with an enhanced functionality called the complex calculator that calculates and displays a suggested price of each individual component of a multi-leg order, up to 15 legs, submitted on a net debit or credit basis.

The Exchange received approval to implement FBMS 2 as of June 1, 2013,<sup>3</sup> and delayed its implementation until July 2013,<sup>4</sup> until September 2013,<sup>5</sup> until December 2013,<sup>6</sup> and until March 2014.<sup>7</sup> Implementation began on March 7, 2014, with FBMS 2 operating concurrently with FBMS 1. The Exchange intended to retire FBMS 1 after a specified implementation period for FBMS 2. FBMS 2 has been fully rolled out to all Floor Brokers and in all options. Nevertheless, the Exchange delayed the retirement of FBMS 1 until September 1, 2014,<sup>8</sup> November 3, 2014,<sup>9</sup> and, most recently, until November 3, 2015,<sup>10</sup> for reasons relating to the performance of FBMS 2.<sup>11</sup>

The purpose of the delay was originally to repair FBMS 2, and then ultimately the Exchange determined to replace it with a new system. The Exchange contracted with a third-party entity to provide an alternative system (“FBMS 3”) to ultimately replace both FBMS 1 and FBMS 2. The Exchange had intended to implement FBMS 3 by November 3, 2015, but, based

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<sup>3</sup> Securities Exchange Act Release No. 69471 (April 29, 2013), 78 FR 26096 (May 3, 2013) (SR-Phlx-2013-09).

<sup>4</sup> Securities Exchange Act Release No. 69811 (June 20, 2013), 78 FR 38422 (June 26, 2013) (SR-Phlx-2013-67).

<sup>5</sup> Securities Exchange Act Release No. 70141 (August 8, 2013), 78 FR 49565 (August 14, 2013) (SR-Phlx-2013-83).

<sup>6</sup> Securities Exchange Act Release No. 70629 (October 8, 2013), 78 FR 62852 (October 22, 2013) (SR-Phlx-2013-100).

<sup>7</sup> Securities Exchange Act Release No. 71212 (December 31, 2013), 79 FR 888 (January 7, 2014) (SR-Phlx-2013-129).

<sup>8</sup> Securities Exchange Act Release No. 72135 (May 9, 2014), 79 FR 27966 (May 15, 2014) (SR-Phlx-2014-33).

<sup>9</sup> Securities Exchange Act Release No. 73246 (September 29, 2014), 79 FR 59874 (October 3, 2014) (SR-Phlx-2014-59).

<sup>10</sup> Securities Exchange Act Release No. 73586 (November 13, 2014), 79 FR 68931 (November 19, 2014) (SR-Phlx-2014-71).

<sup>11</sup> The Exchange previously described those performance issues. Id.

on recent estimates from the third-party entity, it will not be ready until March 2016. There were inadvertent delays in the construction of the new system.

During this additional time period, the Exchange will continue to permit Floor Brokers to use both FBMS 1 and FBMS 2 based on their business needs and Floor Brokers can choose whether to use one or both. Both FBMS 1 and FBMS 2 will continue to be available in all options and to all Floor Brokers. For example, a Floor Broker will be able to use FBMS 1 for one order and FBMS 2 for the next order. Accordingly, the Exchange believes that the performance issues with FBMS 2 are less likely and should decrease because the Floor Broker also has the option to use FBMS 1.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup> in particular, in that it is designed to promote just and equitable principles of trade and protect investors and the public interest, by providing options Floor Brokers with two different FBMS offerings for order entry and processing. Despite its performance issues, FBMS 2 offers many beneficial features to the Floor Brokers that FBMS 1 does not, such as the complex calculator and increased automation described above, such that the Exchange has determined not to shut down FBMS 2. Having two options for order entry and processing should enable Floor Brokers to operate their businesses and comply with the relevant rules, which is consistent with the protection of investors and the public interest. Continuing to operate both FBMS 1 and FBMS 2 concurrently for a temporary period should also promote just and equitable principles of trade by providing Floor Brokers with

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

the tools to enter and process their orders efficiently. The proposal is not unfairly discriminatory because all Floor Brokers will be able to use both FBMS 1 and FBMS 2.

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 that permitting Floor Brokers to use both FBMS 1 and FBMS 2 for an additional period of time while the Exchange receives delivery of a new system should allow it to compete with other floor-based exchanges and help the Exchange's Floor Brokers compete with floor brokers on other options exchanges.

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

No comments were solicited. One comment letter was received by the Exchange when the Exchange communicated to the Floor Brokers that the old FBMS would be retired on September 1, 2014.<sup>14</sup> The Comment Letter requested the Commission and Phlx postpone the implementation rollout of the new FBMS from September 1, 2014 to a later date. The Comment Letter alleges that the Floor Brokers did not have proper notice of the end of the implementation period resulting in the termination of the old FBMS. This is not relevant to the proposal at hand. Also, the Comment Letter requests that the new FBMS be postponed to ensure the public outcry system is maintained. The Exchange notes that under FBMS 2, orders will continue to be represented in the trading crowd; order exposure has not been eliminated. The Exchange is merely modernizing how orders are executed and reported to support enhancements to the maintenance of an accurate audit trail.

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<sup>14</sup> See letter from various Phlx Floor Brokers to Mary Jo White, Chairwoman of the Securities and Exchange Commission, dated August 28, 2014 ("Comment Letter").

### 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)(iii) of the Act<sup>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup> A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing.<sup>17</sup> Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>18</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange has indicated that it has experienced performance issues with FBMS 2 and that it needs additional time to implement the new FBMS 3. Until FBMS 3 becomes available, the Exchange represents that it will continue to operate FBMS 1 and FBMS 2 concurrently and that all Floor Brokers may use either FBMS. Based on the foregoing, the Commission has determined to waive the 30-day operative date so that the proposal may take effect upon filing.<sup>19</sup>

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

<sup>16</sup> 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.

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

<sup>18</sup> Id.

<sup>19</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).

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.<sup>20</sup> If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.<sup>21</sup>

#### 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-2015-80 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-2015-80. 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

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>21</sup> Id.

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 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-2015-80, 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>22</sup>

Robert W. Errett  
Deputy Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).