

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65135; File No. SR-Phlx-2011-111)

August 15, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Requesting Permanent Approval of Pilot Program to Permit NASDAQ OMX PHLX to Receive Inbound Routes by Nasdaq Options Services

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 August 8, 2011, NASDAQ OMX PHLX LLC (“Phlx” or the “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 request permanent approval of the Exchange’s pilot program allowing Phlx to accept inbound routes by NASDAQ Options Services, LLC (“NOS”) of 1) NASDAQ Options Market (“NOM”) Exchange Direct Orders without checking the NOM book and 2) NOM non-system securities, including Exchange Direct Orders.³

The text of the proposed rule change is available from the principle office of the Exchange, at the Exchange’s website at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Pursuant to Chapter VI, Section 1(b) of the NOM Rules, “System Securities” are all options that are currently trading on NOM pursuant to Chapter IV of the NOM rules. All other options are “Non-System Securities.” Pursuant to Chapter VI, Section (1)(e)(7) of the NOM Rules, Exchange Direct Orders are orders that are directed to an exchange other than NOM as directed by the entering party on an immediate-or-cancel basis without first checking the NOM book for liquidity.

<http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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, Phlx 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. Phlx 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

Currently, NOS is the approved outbound routing facility of The NASDAQ Stock Market (the "NASDAQ Exchange") for NOM, providing outbound routing from NOM to other market centers.⁴ Phlx and the NASDAQ Exchange have previously adopted rules to permit Phlx to

⁴ NOM Rule Chapter VI, Section 11(e). Under NOM Rule Chapter VI, Section 11(e): 1) NOM routes orders in options via NOS, which serves as the sole "routing facility" of NOM; 2) the sole function of the routing facility is to route orders in options to away markets pursuant to NOM rules, solely on behalf of NOM; 3) NOS is a member of an unaffiliated self-regulatory organization, which is the designated examining authority for the broker-dealer; 4) the routing facility is subject to regulation as a facility of the NASDAQ Exchange, including the requirement to file proposed rule changes under Section 19 of the Act; 5) when routing orders in options that are not listed and open for trading on NOM, NOS is not a facility of NASDAQ and is not regulated as a facility of NASDAQ but as a broker-dealer regulated by its designated examining authority; 6) use of NOS to route order to other market centers is optional; 7) NOM must establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Exchange and its facilities (including the routing facility), and any other entity; and 8) the books, records, premises, officers, directors, agents, and employees of the routing facility, as a facility of the NASDAQ Exchange, shall be subject at all times to inspection and copying by the NASDAQ Exchange and the Commission.

receive inbound routes of certain option orders, specifically 1) Exchange Direct Orders without checking the NOM book prior to routing, and 2) NOM non-system securities, from NOS on a pilot basis.⁵ Phlx specifically has adopted a rule to prevent potential information advantages resulting from the affiliation between Phlx and NOS, as related to NOS's authority to route orders from NOM to Phlx.⁶ NOS's authority to route these orders to Phlx is subject to a pilot period ending on August 25, 2011.⁷ The Exchange hereby seeks permanent approval to permit Phlx to accept inbound routes of 1) Exchange Direct Orders without checking the NOM book prior to routing, and 2) NOM non-system securities orders, including Exchange Direct Orders that NOS routes from NOM.⁸

Pursuant to prior rule filings with the Commission, the Phlx and NOS inbound routing relationship has operated on a pilot basis. In connection with this pilot program Phlx committed to the following:

1. The Exchange and FINRA would enter into a regulatory services agreement ("Regulatory Contract") pursuant to which FINRA has been allocated regulatory responsibilities

⁵ See Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008)(SR-Phlx-2008-31); 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010) (SR-Phlx-2010-36); 61668 (March 5, 2010), 75 FR 12323 (March 15, 2010)(SR-NASDAQ-2010-028). See also Securities Exchange Act Release No. 63873 (February 9, 2011), 76 FR 8798 (February 15, 2011)(SR-Phlx-2011-16).

⁶ See NASDAQ OMX PHLX Rule 985(c)(1).

⁷ See Securities Exchange Act Release No. 63873 (February 9, 2011), 76 FR 8798 (February 15, 2011)(SR-Phlx-2011-16). The Exchange intends to seek an extension of the pilot period while the proposed rule change seeking permanent approval of the pilot program is pending.

⁸ NASDAQ OMX BX, Inc. also recently filed a similar proposed rule change to request permanent approval of BX's pilot program permitting Boston Options Exchange to accept inbound routes by NOS of 1) NOM Exchange Direct Orders without checking the NOM book prior to routing, and 2) NOM non-system securities orders, including Exchange Direct Orders that NOS routes from NOM. See Securities Exchange Act Release No. 64896 (July 15, 2011), 76 FR 43740 (July 21, 2011)(SR-BX-2011-045).

to review NOS's compliance with the Exchange's rules through FINRA's examination program.⁹ The Exchange, however, retained ultimate responsibility for enforcing its rules with respect to NOS except to the extent that they are covered by an agreement with FINRA pursuant to Rule 17d-2,¹⁰ in which case regulatory responsibility is allocated to FINRA as provided in Rule 17d-2(d).

2. FINRA and the Exchange would monitor NOS for compliance with Phlx's trading rules, and collect and maintain certain related information;¹¹

3. FINRA has agreed to provide a report to the Exchange's Chief Regulatory Officer, on at least a quarterly basis, that: (i) quantifies all alerts (of which the Exchange and FINRA become aware) that identify NOS as a participant that has potentially violated Commission or Exchange rules and (ii) quantifies the number of investigations that identify NOS as a participant that has potentially violated Exchange or Commission Rules;¹²

4. The Exchange adopted Rule 985(c), which requires The NASDAQ OMX Group, Inc., as the holding company owning NOS and the Exchange, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or

⁹ The Exchange also states that NOS is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements. See Securities Exchange Act Release No. 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010) (SR-Phlx-2010-36).

¹⁰ 17 CFR 240.17d-2.

¹¹ Pursuant to the Regulatory Contract, both the Exchange and FINRA will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. See Securities Exchange Act Release No. 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010) (SR-Phlx-2010-36).

¹² The Exchange, FINRA, and SEC staff may agree going forward to reduce the number of applicable or relevant surveillances that form the scope of the agreed upon report. Id.

implement changes to its system on the basis of non-public information regarding planned changes to the Exchange's systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members in connection with the provision of inbound routing to the Exchange;¹³ and

5. The Exchange proposed that NOS be authorized to route 1) Exchange Direct Orders without checking the NOM book and 2) orders in NOM non-system securities inbound to the Exchange from NOM for a pilot period of twelve months, as further extended to August 25, 2011.¹⁴

The Exchange has met all the above-listed conditions. By meeting the above-conditions, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NOS, as well as demonstrated that NOS cannot use any information advantage it may have because of its affiliation with the Exchange. Since the Exchange has met all the above-listed conditions, it now seeks permanent approval of the Phlx and NOS inbound routing relationship. The Exchange will continue to comply with the conditions 1-4 stated above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁵ in general, and with Section 6(b)(5) of the Act,¹⁶ 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

¹³ See NASDAQ OMX PHLX Rule 985(c)(1).

¹⁴ See supra note 7.

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(5).

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.

Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of certain orders from NOS in a manner consistent with prior approvals and established protections. The Exchange believes that having met the commitments established during the pilot program demonstrates that the Exchange has mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NOS, as well as demonstrate that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.

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, as amended.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-Phlx-2011-111 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-2011-111. 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 publicly available. All submissions should refer to File Number SR-Phlx-2011-111 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.¹⁷

Elizabeth M. Murphy
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).