

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65779; File No. SR-Phlx-2011-152)

November 17, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Perform a Test of Routing Functionality

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 November 10, 2011, NASDAQ OMX PHLX LLC (the “Exchange” or “PHLX”) filed with the Securities and Exchange Commission (“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 Substance of the Proposed Rule Change

PHLX is filing this proposed rule change to allow a limited use of its broker-dealer affiliate, Nasdaq Execution Services LLC (“NES”), to perform a test of routing functionality to be introduced by NASDAQ OMX PSX (“PSX”). PHLX proposes to implement the rule change prior to November 14, 2011. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx>, at PHLX’s principal office, 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 proposed rule change. The text of these statements may be examined at the places specified in

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

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

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

As provided in Rule 3315, PSX recently adopted rules that will allow it to route orders to other trading venues for execution.<sup>3</sup> Routing will be performed by NES, a registered broker-dealer that is an affiliate of the Exchange. In order to ensure that the routing functionality is operating properly prior to making it available to members, the Exchange proposes to use NES to perform test trades in an actual security, so as to track the performance of the systems to be used by the Exchange from order entry to clearance and settlement.

The test will be performed through two buy orders for 100 shares in a highly liquid security, such as the Power Shares QQQ Trust. Upon the execution of each buy order, NES will enter an offsetting sell order in the same security for the same quantity, in order to close out the test position and minimize financial impact on the Exchange. For the buy orders, NES will submit a routable marketable limit order with a time-in-force of Immediate or Cancel to the Exchange, with instructions to route to a directed away market. The Exchange will then deliver the order to NES, as the routing broker, which will route to the designated away market and receive an execution back. The first offsetting sell order will be handled in a similar manner. The second offsetting sell order will be executed at the Exchange itself, to ensure that the Exchange's systems are correctly distinguishing between routed and non-routed trades. To the extent that the offsetting trades require the Exchange to pay out funds, the funds will be provided

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<sup>3</sup> Securities Exchange Act Release No. 65469 (October 3, 2011), 76 FR 62486 (October 7, 2011) (SR-Phlx-2011-108).

out of the cash accounts of the Exchange; to the extent that the trades result in a profit, the funds will be deposited in the cash accounts of the Exchange.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(5) of the Act,<sup>5</sup> 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. Specifically, PHLX believes that the change will allow it to perform adequate testing of its systems for routing member orders before such systems become operational. The Exchange believes that adequate testing of market functionality is an important component of the operation of the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHLX 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, 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.

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<sup>4</sup> 15 U.S.C. 78f.

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

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to conduct a limited test to assess the performance of its routing functionality and related systems prior to implementation and use by its members. The Exchange believes that a limited test prior to the launch of its routing functionality will assist the Exchange in uncovering and fixing any potential “bugs” so as to increase the likelihood of a successful implementation. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to conduct a limited test without undue delay to ensure that its routing functionality and related systems are operating properly prior to implementation. Therefore, the Commission designates the proposal operative upon filing.<sup>8</sup>

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s 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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>8</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 necessary or appropriate in the public interest, for the protection of investors, or 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-2011-152 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-2011-152. 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-2011-152 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>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).