

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63981; File No. SR-Phlx-2011-13)

February 25, 2011

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Amendments to NASDAQ OMX PHLX LLC's Limited Liability Company Agreement, By-Laws, Rules, Advices and Regulations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on February 16, 2011, 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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to: (1) amend the Limited Liability Company Agreement and By-Laws to substantially conform to NASDAQ Stock Market's [sic] Second Amended Limited Liability Company Agreement and By-Laws; (2) eliminate the Series A Preferred Shareholder and adopt NASDAQ Stock Market LLC's board structure and committees; (3) eliminate foreign currency option participations; (4) eliminate former

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

definitions, rules and references to XLE; and (5) amend other terms, names, cross-references and make technical and grammatical changes to clarify and simplify the By-Laws, Rules, Option Floor Procedure Advices, Equity Floor Procedure Advices (collectively “Advices”) and Regulations of the Exchange.

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 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 purpose of the proposed rule change is to amend the Exchange’s Limited Liability Company Agreement (“LLC Agreement”) By-Laws, Rules, Advices and Regulations to mirror that of the NASDAQ Stock Market LLC to create a more streamlined governance process, while also making other non-substantive conforming amendments, including technical amendments.

Limited Liability Company Agreement

The Exchange is proposing to amend the current LLC Agreement to a First Amended LLC Agreement. The Exchange has amended the recitals to state that the Board of Governors desires to eliminate the Series A Preferred Stock and amend and restate the LLC Agreement in its entirety.

In Section 1 titled Name; Conversion, the Exchange is proposing to delete paragraph 2 which references the recent conversion from a Delaware corporation to a Delaware limited liability company. This language was previously necessary to conform the old text to the limited liability company agreement Delaware Act requirements, but is no longer necessary in the amended and restated version of the LLC Agreement.

In Section 2, titled Principal Business Office, the Exchange is proposing to rename the Board of Governors the Board of Directors. The Exchange is proposing to utilize the same Board title as in the NASDAQ Stock Market LLC Agreement.⁵ The Exchange proposes this amendment throughout the LLC Agreement.

In Section 4 titled Members, the Exchange is proposing to amend the language to refer to a single Stockholder and to eliminate language related to the recent LLC conversion and add language indicating that one Stockholder remains the same, The NASDAQ OMX Group, Inc.

Series A Preferred Share Elimination

The Exchange is proposing to amend the Exchange's formation documents to eliminate the Series A Preferred Share. The NASDAQ OMX Group, Inc. would be the only Shareholder of NASDAQ OMX PHLX LLC. In 2003, the Philadelphia Stock Exchange, Inc. (now NASDAQ OMX PHLX LLC) filed with the Securities and

⁵ See Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

Exchange Commission to amend its formation documents to form a demutualized Delaware stock corporation.⁶ At that time, the Exchange amended its Certificate of Incorporation to designate one share of preferred stock as the "Series A Preferred Stock." The Series A Preferred Stock had the sole power to: (i) select the On-Floor Governors, and (ii) remove the On-Floor Governors in accordance with specified procedures in connection with the removal of Governors.⁷ Since that time, the Exchange's formation documents have been amended so that today, the Series A Preferred Stockholder is the sole preferred shareholder of the Exchange. The Series A Preferred Shareholder today elects the Member Governor and Designated Independent Governor pursuant to Section 16 of the LLC Agreement and Article IV of the By-Laws.

At the time of demutualization, a Trust Agreement was created and the Series A Preferred Stock was held by the Trust.⁸ Pursuant to the Amended Trust Agreement, the Trustee of the Trust has the power to vote the share of Series A Preferred Stock with respect to the designated nominees, which includes the Member Governor and the Designated Independent Governor, as directed by the vote of the Member Organization Representatives of Member Organizations entitled to vote pursuant to Article III of the By-Laws.

The single share of the Series A Preferred Stock, issued to the Trust governed by the Amended Trust Agreement, is designed to facilitate the exercise by Members and

⁶ See Securities Exchange Act Release No. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73).

⁷ See Securities Exchange Act Release No. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73).

⁸ Currently, the Series A Preferred Stock is still held by the PHLX Member Voting Trust pursuant to a Third Amended and Restated Trust Agreement dated February 22, 2007 ("Amended Trust Agreement").

Member Organizations of their rights to fair representation in the selection and removal of certain Governors of the Exchange and to facilitate the administration of the affairs of the Exchange in accordance with the Act. This voting arrangement, implemented through the Amended Trust Agreement and the Series A Preferred Stock, is designed to give "members" (as defined in Section 3(a)(3)(A) of the Act) a voice in the management of the Exchange. These arrangements were considered necessary at the time of demutualization for two reasons: (i) under Delaware law, only stockholders can elect the directors of a Delaware corporation; and (ii) after the demutualization, Members and Member Organizations that were not Owners at the time of the demutualization were not stockholders of the Exchange. This is no longer the case. Today, the Exchange is a wholly-owned subsidiary of The NASDAQ OMX Group, Inc. Since the acquisition of the former Philadelphia Stock Exchange, Inc. by The NASDAQ OMX Group, Inc. there are no longer any other common shareholders of what is now known as NASDAQ OMX PHLX LLC. Also, the Exchange is no longer a corporation subject to Delaware corporate law.

The Exchange believes that its proposed board structure and election process, identical to that of the NASDAQ Stock Market LLC, would provide Members and Member Organizations fair representation in the selection and removal of certain Governors of the Exchange in accordance with the Act. The Exchange is not proposing to amend its By-Laws with respect to the nomination of Governors, now proposed to be Directors, which process is currently the same as that of NASDAQ Stock Market LLC. Rather, the Exchange is proposing to eliminate the mechanism that the Series A Preferred Stock was designed to facilitate. The Exchange would continue to accept nominations

from Members and Member Organizations for certain Board positions which will be explained in greater detail below. The Exchange does not believe the Series A Preferred mechanism is necessary and therefore proposes to eliminate such mechanism in favor of the structure currently utilized by the NASDAQ Stock Market LLC.

In Section 5, titled Certificates, the Exchange proposes to change the title Board of Governors to Board of Directors. In Section 6, titled Purpose, the Exchange proposes to adopt the language that is contained in the formation documents of the NASDAQ Stock Market LLC.⁹ In Section 7, titled Powers, the Exchange is proposing to change the title Board of Governors to Board of Directors.

In Section 8, titled Management, the Exchange is proposing to mirror the board structure of NASDAQ Stock Market LLC.¹⁰ As previously stated, the Exchange proposes to rename the Board of Governors, the Board of Directors. The Directors shall remain “managers” within the meaning of the LLC Act without change. The authorized number of Directors shall be at the discretion of the Stockholder as opposed to the Board.¹¹

The Exchange is proposing to add language to indicate that the Stockholder may determine at any time and in its sole and absolute discretion the number of Directors to constitute the Board. The authorized number of Directors may be increased or decreased by the Stockholder at any time in its sole and absolute discretion, upon notice to all

⁹ See Section 7 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

¹⁰ See Section 9 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

¹¹ See By-Law Article IV, Section 4-1.

Directors, but no decrease in the number of Directors shall shorten the term of any incumbent Member Representative Director. This language mirrors that of the NASDAQ Stock Market LLC.¹²

The Exchange proposes, similar to NASDAQ Stock Market LLC, that at least twenty percent of the Directors shall be Member Representative Directors. All Directors other than the Member Representative Directors shall be elected by the Stockholder as described in the By-Laws, which will be discussed below. Currently, a number of Designated Independent Governors, together with the Member Governors, shall equal at least twenty percent of the total number of Governors who are elected by the Series A Preferred Shareholder.¹³ The Exchange is not proposing to amend the process by which members may nominate candidates to the Board.¹⁴ The process by which board members are elected is the same process that exists today for the NASDAQ Stock Market LLC.

Each Director elected, designated or appointed by the Stockholder shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal.¹⁵ Similar to the NASDAQ Stock Market LLC provisions, each Director shall execute and deliver an instrument accepting such

¹² See Section 9 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

¹³ See LLC Agreement at Section 8.

¹⁴ Pursuant to newly renumbered proposed By-Law Article II, Section 2-1, an additional candidate may be added to the List of Candidates by a Member that submits a timely and duly executed written nomination to the Secretary of the Exchange. The Exchange provides Members procedures to nominate candidates at each annual meeting. See By-Law Article II, Section 2-1(a).

¹⁵ See By-Law Article IV, Section 4-3, currently Governors are elected for one year.

appointment and agreeing to be bound by all terms and conditions of the LLC Agreement and the By-Laws.¹⁶ Also, a Director need not be a member of the Exchange.¹⁷

The Exchange is also proposing to adopt the exact verbiage of Section 9 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC with respect to Powers of the Board, the By-Laws, Meeting of the Board of Directors, Quorum; LLC Acts of the Board and Electronic Communications.¹⁸ The section discussing Powers of the Board is similar to the current provisions in Article IV, Section 4-4 and Section 8(b) of the LLC Agreement in that the Board of Governors is currently vested with the ability to act for the management of the business and affairs of the Exchange. They also have the power to bind the Exchange and delegate powers.¹⁹ The Exchange previously adopted its By-Laws.²⁰

The Meetings of the Board are similar to the provision in By-Law Article IV, Sections 4-10, 4-11 and 4-14. The proposed quorum rules are similar to By-Law Article IV, Section 4-9 and 4-16. Electronic Communications are similar to By-Law Article IV, Section 4-22.

The Exchange proposes to amend its current Standing Committees at By-Law Article X and instead adopt Standing Committees similar to NASDAQ Stock Market

¹⁶ See Section 9 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

¹⁷ See Section 9 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

¹⁸ See proposed text at Section 8 of the Exchange's LLC Agreement at (b)-(f).

¹⁹ See By-Law Article IV, Section 4-4.

²⁰ See LLC Agreement at Section 8(d).

LLC. Currently, the Standing Committees of the Exchange are: an Executive Committee, a Regulatory Oversight Committee, a Business Conduct Committee, a Nominating Committee, a Member Nominating Committee, a Quality of Markets Committee, and an Options Trade Review Committee, and may also include a Finance Committee and such other committees as the Board of Governors shall by resolution establish.

Each of such Committees is currently composed of not more than nine (9) members, including ex-officio members, except for the Options Trade Review Committee which may be composed of 20 members. Currently, the Chair of each Standing Committee must be a member of the Board of Governors and at least one other person on each Committee must be a Governor, except for the Options Trade Review Committee. All committee members are appointed by the Board of Governors.

Currently, all committee appointments are made as promptly as possible after each annual meeting of Stockholders, and each appointee serves for one year or until his successor is duly appointed. The members of the Options Trade Review Committee are appointed for terms of no more than three years, subject to reappointment by the Board.

The Exchange proposes to replace these rules with “Committees Composed Solely of Directors” and “Committees Not Composed Solely of Directors” at newly proposed and named Article V. The details of those committees shall be discussed below in the By-Law section.

The Exchange is proposing that the Board may designate one or more Directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee. The Committee members shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a

committee may be removed from such committee only by the Board. Vacancies shall be filled by the Board. Similar to By-Law Article X, Section 10-2, each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall be required to keep regular minutes of its meetings and report the same to the Board when required.

Similar to By-Law Article X, Section 10-3, a majority of the committee shall constitute a quorum and the vote of a majority present shall be an act of the committee. A new provision proposes to the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Further, in the absence or disqualification of a member of a committee composed solely of Directors, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

Similar to By-Law Article IV, Section 4-5, the Compensation of Directors, Expenses shall be fixed by the Board. This language mirrors that of the NASDAQ Stock Market LLC.²¹ The Removal and Resignation of Directors language is also identical to the NASDAQ Stock Market LLC and By-Law Article IV, Sections 4-4, 4-6 and the LLC

²¹ See Section 9 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

Agreement at Section 8(f). The Directors as Agent language is currently contained in the Exchange's LLC Agreement at Section 8(e).

Section 9, titled Officers, the Exchange proposes to adopt the Appointment provisions of NASDAQ Stock Market LLC,²² which provisions are similar in nature to the existing provisions of Section 9(a) of the LLC Agreement. The terms "Governor" would be replaced with "Director" in Section 9(c) and in Section 10, titled Limited Liability.

Section 11, titled Capital Contributions, the Exchange is reflecting the proposed elimination of the Series A Preferred Shareholder in the text. Section 12, titled Additional Contributions, the Exchange is revising the text to mirror that of the NASDAQ Stock Market LLC.²³ Section 13, titled Allocation of Profits and Losses, remains unchanged. Section 14, titled Distributions, the Exchange is once again mirroring the language of the NASDAQ Stock Market LLC.²⁴ The Distribution language is not altogether different from the existing language and will solely impact the Shareholder, The NASDAQ OMX Group, Inc. In Section 15, titled Books and Records, the Exchange substantially mirrors the language of NASDAQ Stock Market LLC except that the provision "within the United States" was added.²⁵

²² See Section 10 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

²³ See Section 13 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

²⁴ See Section 15 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

²⁵ See Section 16 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

Section 16, titled Reports, is new to the Exchange's LLC Act and is being added to mirror the language of the NASDAQ Stock Market LLC.²⁶ Section 17, titled Limited Liability Company Interests, the Exchange is removing the references to the Series A Preferred Shareholder as described herein. The Exchange is proposing language to cancel the existing Series A Preferred Stock. Section 18, titled Other Business, the Exchange is proposing to mirror the language of the NASDAQ Stock Market LLC.²⁷ The language is substantially similar to the language currently in Section 17.

Section 19, Exculpation and Indemnification, the Exchange is proposing to once again mirror the language of the NASDAQ Stock Market LLC.²⁸ The language is substantially similar to the language currently in Section 18. Section 19, titled Assignment, the Exchange proposes to allow assignments to affiliates of the member. The reference to Section 20 would be deleted. Section 21, titled Dissolution, is amended to mirror the language of the NASDAQ Stock Market LLC.²⁹ The language is substantially similar to the language currently in Section 21.

Section 22, titled Benefits of Agreement; No Third-Party Rights, seeks to eliminate references to the Series A Preferred Shareholder as described herein as does

²⁶ See Section 17 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

²⁷ See Section 18 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

²⁸ See Section 19 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

²⁹ See Section 21 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

Section 25, titled Binding Agreement.³⁰ The Exchange is not proposing amendments to Sections 23, titled Severability of Provisions, 24, titled Entire Agreement or 26, titled Governing Law.

Minor amendments are proposed to Section 25, titled Binding Agreement, to account for only one proposed Stockholder. Section 27, titled Amendments, would be amended to mirror the language of the NASDAQ Stock Market LLC.³¹ Section 28, titled Notices, would be amended to mirror the language of the NASDAQ Stock Market LLC.³²

The Exchange proposes to add a new Schedule A to the LLC Agreement to define certain new terms, namely: “LLC Act”, “Affiliate”, “Agreement”, “Bankruptcy”, “Board”, “By-Laws”, “Certificate of Formation”, “Covered Persons”, “Directors”, “Exchange”, “Exchange Act”, “Member Organization”, “Member Representative Director”, “Officer”, “Person”, “Regulatory Fund” and “Stockholder” for ease of reference. The Exchange also proposes a section on rules of construction which further explain the definitions. The definitions are only applicable to the LLC Agreement. Previous Schedule A is now Schedule B and is amended to eliminate the reference to the PHLX Member Voting Trust as discussed herein.

³⁰ Sections 22-28 of the LLC Agreement are renumbered in the proposal. All references are to the current section numbers.

³¹ See Section 27 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

³² See Section 28 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

By-Laws

The Exchange is proposing to amend the By-Laws of the Exchange to substantially mirror those of NASDAQ Stock Market LLC.

In Article I, the Exchange proposes to reflect the proposed board structure and add clarifying definitions. Specifically, the Exchange is adding the following new definitions: “Act”, “Associated Person or Person Associated with a Member Organization”, “Board or Board of Directors”, “Director”, “Election Date”, “Executive Representative”, “FINRA”, “Industry Director”, “Member Representative Director”, “Non-Industry Director”, “Public Director”, “Statutory Disqualification” and “Stockholder Director”. The specific board designations will be discussed below.

The Exchange is proposing to delete certain definitions that reference the current board structure, which the Exchange is proposing to change, and other obsolete terms. Specifically, the Exchange is proposing to delete the following definitions: “Approved Lessor”, “Designated Governor”, “Designated Independent Governors”, “Foreign Currency Options Participation”, “Foreign Currency Options Participant or Participant”, “Foreign Currency Options Participant Organization”, “Governor”, “Independent”, “Independent Governor”, “Lessee”, “Lessor”, “Material Relationship”, “Member Governor”, “Member Organization Representative”, “Owner”, “Trust Agreement”, “Series A Preferred Stock”, “Stockholder Governor”, “Preferred Stock”, and “Trust”. The Exchange is proposing to delete the Governor and Trust designations related to the Board in connection with the proposed board structure. The Exchange is also proposing to eliminate foreign currency option participations.

Foreign Currency Option Participations

In 1982, the Exchange filed a proposal concerning access to the Exchange's foreign currency options market.³³ The Exchange at that time indicated that such access to the Exchange's foreign currency options market would be available to those who have purchased a foreign currency options participation ("FCO Participation"). Non-members were admitted to the Exchange as foreign currency option participants ("FCO Participants") by the Admission Committee by completing an application process similar to that utilized when Exchange membership was sought.³⁴ The initial offering period began on January 25, 1982 and extended through the last business day preceding the first day of foreign currency options trading on the Exchange.³⁵

Currently, the holder of an FCO Participation is entitled to enter into foreign currency options transactions on the Exchange. FCO Participants and the organizations upon which they confer foreign currency options trading privileges are subject to all the provisions of the Exchange Rules that are applicable to Members and Member Organizations and to many provisions of Exchange's By-Laws.

In 2003, the Exchange filed to demutualize the Exchange. At the time of demutualization, the Exchange proposed that access to the Exchange facilities and the right to trade will be conferred by newly-issued permits rather than by ownership or

³³ See Securities Exchange Act Release No. 19134 (October 14, 1982), 47 FR 46949 (October 21, 1982) (SR-Phlx-82-5).

³⁴ See Securities Exchange Act Release No. 19134 (October 14, 1982), 47 FR 46949 (October 21, 1982) (SR-Phlx-82-5).

³⁵ See Securities Exchange Act Release No. 19134 (October 14, 1982), 47 FR 46949 (October 21, 1982) (SR-Phlx-82-5).

leasing of seats of the Exchange.³⁶ Trading of foreign currency options continued to be allowed through the FCO Participations, but, after demutualization, such trading of FCOs were permitted through permits.³⁷

The Exchange currently does not have any persons who are FCO Participants.³⁸ The Exchange does not believe such participations are necessary in light of the ability to gain access to the Exchange with a permit. The Exchange is proposing to eliminate FCO Participations at this time. Specifically, the Exchange proposes to delete all references to FCO Participations, participants, participant organizations, seat leases, owners and lessors.

In Article II, the Exchange proposes to delete By-Law Sections 2-1 titled Registered Office and Registered Agent and By-Law Section 2-2 titled Other Offices. The Exchange states its registered office in the Certificate of Formation and LLC Agreement at By-Law Section 3. The Exchange proposes to rename Article II “Annual Election of Member Representative Directors and Other Actions By Members.” The Exchange proposes to mirror the provisions of the NASDAQ Stock Market LLC’s Second Amended Limited Liability Company Agreement at Article II. The Exchange is proposing to add the following provisions to Article II: By-Law Section 2-1 titled Record and Election Date; By-Law Section 2-2 titled Voting, By-Law Section 2-3 titled Filling of Vacancies; and By-Law Section 2-4 titled Member Meetings.

³⁶ See Securities Exchange Act Release No. 48847 (November 26, 2003), 68 FR 67720 (December 3, 2003) (SR-Phlx-2003-73).

³⁷ See Exchange Rule 908. The Series A-1 permit allows members to trade FCOs.

³⁸ Today Members trade foreign currency utilizing a Series A-1 permit.

Proposed By-Law Section 2-1 concerning the Record and Election Date would replace the following current By-Law Sections, which are proposed to be deleted: By-Law Sections 3-2 and 3-15. The language contained in proposed By-Law Section 2-1 is substantially similar to the language in current By-Law Section 3-2. Proposed Section 2-2 concerning voting contains similar language to current By-Law Sections 3-7 and 3-12. Proposed By-Law Section 2-3 concerning vacancies, which allows for an Exchange Member to fill the vacancy, would replace current By-Law Section 4-7, which provides for a majority vote by the Board of Governors. Proposed By-Law Section 2-4 titled Member Meetings states that the Exchange shall not be required to hold member meetings. Proposed By-Law Section 2-4 would replace current By-Law Sections 3-1 and 3-11, which sections presuppose member meetings.³⁹

In Article III, the Exchange is proposing to delete various By-Laws and replace them with the By-Laws similar to those of NASDAQ Stock Market LLC's Second Amended Limited Liability Company Agreement at Article III. The title to Article III captioned Member and Member Organization Nominations-Member and Member Organization Annual Elections – Member and Member Organizations Meetings is being deleted. The Exchange is deleting By-Law Section 3-1 titled Place of Member and Member Organization Meetings, which By-Law is replaced by By-Law Section 2-4. The

³⁹ With respect to the election of the Member Representative Director, the process remains substantially unchanged. In the uncontested election, newly proposed By-Law Section 2-1(d) provides the Stockholder elects from the List of Candidates, specifically the Member Representative Directors shall be elected by the Stockholder from the List of Candidate; uncontested would be where there is only one candidate for each Member Representative Director position. In a contested election newly proposed By-Law Section 2-2 provides that the Stockholder shall elect the persons on the List of Candidates who receive the most votes, where the Members have the right to cast one vote for each Member Representative Director position to be filled.

Exchange is deleting By-Law Section 3-2 titled Annual Selection of Designated Governors which is replaced by proposed By-Law Section 2-1. The Exchange is deleting Section 3-3 titled Removal of Designated Governors. This language would be replaced by proposed By-Law Section 3-2. The Exchange is deleting current By-Law Sections 3-4 through 3-6, which are reserved. The Exchange is replacing current By-Law Section 3-7 titled Election of Nominees for Designate [sic] Governors In the Event of a Contested Vote, with proposed new By-Law Section 2-2. The Exchange is deleting current By-Law Section 3-8 titled Death, Withdrawal or Disqualification of Designated Nominees. A portion of this By-Law is contained in proposed By-Law Section 2-1(c). The Exchange is deleting By-Law Sections 3-9 and 3-10, which are reserved. The Exchange is deleting current By-Law Section 3-11 titled Notice of Member and Member Organization Meetings, as per proposed By-Law Section 2-4. The Exchange is deleting current By-Law Section 3-12 titled Vote of Member Organizations, which is replaced by proposed By-Law Section 2-1. The Exchange is deleting current By-Law Sections 3-13 titled Quorum of Members and Member Organizations—Proxies and By-Law Section 3-14 titled Lists of Members and Member Organizations Entitled to Vote, as per proposed By-Law Section 2-4. The process for voting is contained in proposed By-Law Section 2-1. The Exchange is proposing to delete By-Law Section 3-15 titled Determination of Record Dates, which is replaced by proposed By-Law Section 2-1. The Exchange is deleting current By-Law Section 3-16 titled Governance of Member and Member Organization Meetings as per proposed By-Law Section 2-4.

The Exchange is proposing to add similar By-Law Sections to newly named Article III captioned “Board of Directors”, which mirror those of NASDAQ Stock

Market LLC's Second Amended Limited Liability Company Agreement at Article III. The Exchange is proposing to add a new By-Law Section 3-1 titled "Selection; Term", which replaces current By-Law Section 4-4 as described above and adds language to clarify that the Directors shall serve for a one year term.⁴⁰ The Exchange proposes a new By-Law Section 3-2 titled "Qualifications" to replace current By-Law Sections 4-1 and 4-4(c).⁴¹ The Exchange also proposes a new By-Law Section 3-3 titled "Regulation", a proposed new By-Law Section 3-4 "Conflicts of Interest, Contracts and Transactions Involving Directors" and proposed new By-Law Section 3-5 "Compensation of Board, Council, and Committee Members."

Board of Directors

The Exchange is proposing to amend the qualifications for its Board, which it proposes to rename "Board of Directors."⁴² Currently, the Board of Governors is composed of the number of Governors determined from time to time by the Board of Governors and includes: one (1) Governor, who is the Chief Executive Officer; one (1) Governor who is a Member Governor who meets the qualifications set forth in By-Law Article I with respect to the Member Governor; one (1) Governor who is a Stockholder Governor who meets the qualifications set forth in By-Law Article I with respect to the Stockholder Governor; and such additional Governors who are Independent Governors and meet the qualifications set forth in By-Law Article I, fill the remaining seats on the

⁴⁰ See proposed By-Law Article III, Section 3-1(b).

⁴¹ By-Law Article III, Section 3-2(b) contains newly proposed language that would allow for removal of a director with cause (the Director no longer satisfies the classification for which the Director was elected or the Director's continued service as such would violate the compositional requirements of the Board set forth in Article III, Section 3-2(a)).

⁴² The Board is currently named the Board of Governors.

Board of Governors, including a number of Designated Independent Governors, which, together with the Member Governor equal at least 20 percent of the total number of Governors.

The Exchange is proposing to replace this aforementioned Board composition with the following: a Board comprised of a number of Non-Industry Directors, including at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives), which would equal or exceed the sum of the number of Industry Directors and Member Representative Directors to be elected under the terms of the LLC Agreement. The Stockholder may determine at any time in its sole and absolute discretion the number of Directors to constitute the Board. The authorized number of Directors may be increased or decreased by the Stockholder at any time in its sole and absolute discretion, upon notice to all Directors, but no decrease in the number of Directors would shorten the term of any incumbent Member Representative Director. At least twenty percent (20%) of the Directors would be Member Representative Directors. Each Director elected, designated or appointed by the Stockholder would hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. A Director need not be a member of the Exchange.⁴³

The Exchange proposes the following definitions below for the various Director positions in Article I of the By-Laws. The term "Industry Director" shall mean a Director (excluding any two officers of the Exchange, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i)

⁴³ See Exchange's LLC Agreement Section 8(a).

is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

The term “Member Representative Director” shall mean a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by a Member pursuant to these By-Laws. A Member Representative Director may, but

is not required to be, an officer, director, employee, or agent of a Member. The term “Non-Industry Director” shall mean a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange; or (iii) any other individual who would not be an Industry Director. The term “Public Director” shall mean a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. The term "Stockholder Director" shall mean a Director who is an officer, director (or a person in a similar position in business entities that are not corporations), designee or an employee of a holder of Common Stock or any affiliate or subsidiary of such holder of Common Stock and is duly elected to fill the one (1) vacancy on the Board of Directors allocated to the Stockholder Director.

The Exchange is proposing to replace the Independent Director with a Public Director. The Exchange is proposing to replace the Designated Industry Governor /Member Governor designation with a Member Representative Director. The Exchange is proposing to replace the Stockholder Governor with a Stockholder Director. The Exchange is also proposing to add an Industry Director. The Exchange is retaining the same 20 percent requirement with respect to Member representation. The composition of this Board would be identical to that of the NASDAQ Stock Market LLC.

The Exchange is proposing to add a By-Law Section 3-3 titled “Regulation”. This By-Law Section mirrors that of the NASDAQ Stock Market LLC.⁴⁴ Currently, By-Law Section 4-24 concerns Interested Transactions. This proposed new By-Law would replace current By-Law Section 4-24. The Exchange is proposing to add a By-Law

⁴⁴ See NASDAQ Stock Market LLC By-Law Article III at Section 7.

Section 3-5 titled “Compensation of Board, Council, and Committee Members.” This By-Law would replace current By-Law Section 4-5, which concerns the Compensation of Governors. By-Law Section 3-5 mirrors that of NASDAQ Stock Market LLC.⁴⁵

The amendments discussed herein to Article III and the proposed Board structure and proposed By-Laws would replace By-Law Article IV. Specifically, By-Law Section 4-1, titled Number and Composition, would be deleted and replaced by newly proposed By-Law Section 3-2. By-Law Section 4-2, which is reserved, would be deleted. By-Law Section 4-3, titled Term, would be deleted and replaced by Section 8 of the LLC Agreement and By-Law Section 2-1. Section 4-4, titled Duties and Powers, would be deleted and replaced by the newly proposed By-Law Sections in Article III.

As mentioned above, By-Law Section 4-5 titled Compensation of Governors would be deleted and replaced by new By-Law Section 3-5. By-Law Section 4-6 titled Resignations would be deleted and replaced by new By-Law Section 3-1. By-Law Section 4-7 titled Vacancies would be deleted and replaced by new By-Law Section 3-1. By-Law Section 4-8 titled Disqualification of Governors would be deleted and replaced by new By-Law Section 3-1. By-Law Section 4-9 titled Quorum and By-Law Section 4-10 titled Place of Meeting are being deleted and replaced by Section 8 of the LLC Agreement. The following By-Law Sections are also being deleted and replaced by Section 8 of the LLC Agreement: By-Law Section 4-11 titled Regular and Annual Meetings; By-Law Section 4-12 titled Action at Meetings By-Law Section 4-13 titled Adjourned Meetings; By-Law Section 4-14 titled Special Meetings; By-Law Section 4-15 titled Notices of Meetings of Board of Governors; By-Law Section 4-16 titled Informal

⁴⁵ See NASDAQ Stock Market LLC By-Law Article III at Section 8.

Action by the Board of Governors; and By-Law Section 4-17 titled Interpretation of By-Laws.

The Exchange is simply renumbering By-Law Section 4-18 titled Indemnification, to By-Law Section 3-6 and changing references from Governor to Director and correcting By-Law references. By-Law Section 4-19 titled Term of Office would be deleted and replaced by Section 8 of the LLC Agreement.

The Exchange is simply renumbering By-Law Section 4-20 titled Exercise Rights with Respect to Stock Clearing Corporation Stock to By-Law Section 3-7 and amending the reference from Governor to Director. By-Law Section 4-21 titled Annual Financial Report would be deleted. By-Law Section 4-22 titled Attendance of Meetings by Electronic Means would be simply renumbered as By-Law Section 3-8 and references to Governor are being changed to Director. By-Law Section 4-23 titled Authority to Take Action Under Emergency or Extraordinary Market Conditions would be simply renumbered as By-Law Section 7-5. By-Law Section 4-24 titled Interested Transaction would be deleted and replaced by proposed new By-Law Section 3-4.

The Exchange is renaming Article IV, which is currently captioned Chair and Officers of the Exchange to “OFFICERS, AGENTS AND EMPLOYEES.” The NASDAQ Stock Market LLC has a similar caption in its By-Laws.⁴⁶ The Exchange is proposing to mirror the NASDAQ Stock Market By-Laws Sections 1 though 11. The Exchange has adopted propose new By-Law Sections 4-1 titled “Delegation of Duties of Officers” and By-Law Section 4-2 titled “Resignation and Removal of Officers” text from the NASDAQ Stock Market LLC By-Laws and amended the remaining By-Laws in

⁴⁶ See NASDAQ Stock Market LLC By-Laws Article IV.

proposed Article III to mirror those of NASDAQ Stock Market LLC. The Exchange proposes to rename the remainder of the Article IV as follows: By-Law Sections 4-3 titled Chair of the Board of Directors; By-Law Section 4-4 titled Chief Executive Officer; By-Law Section 4-5 titled President; By-Law Section 4-6 titled Vice President; By-Law Section 4-7 titled Chief Regulatory Officer; By-Law Section 4-8 titled Secretary; By-Law Section 4-9 titled Assistant Secretary; By-Law Section 4-10 titled Treasurer; and By-Law Section 4-11 titled Assistant Treasurer. These sections all mirror those of NASDAQ Stock Market LLC.⁴⁷

The Remaining Sections of current Article V are being deleted. Specifically, By-Law Section 5-1 titled Board's Appointive Power would be replaced by proposed new By-Law Section 4-1. By-Law Section 5-3, which is reserved, would be deleted. By-Law Section 5-7 titled Other Officers would be replaced by proposed new By-Law Section 4-1. By-Law Section 5-8 titled Powers and Duties of the Secretary would be replaced by proposed new By-Law Section 4-8. By-Law Section 5-9 titled Powers and Duties of the Treasurer would be replaced by proposed new By-Law Section 4-10. By-Law Sections 5-10 titled Powers and Duties of Vice Presidents and Assistant Officers, By-Law Section 5-11 titled Delegation of Office and By-Law Section 5-12, titled Resignations, are being deleted.

The Exchange is deleting current By-Law Articles VI and VII, which are reserved. By-Law Article VIII, currently captioned Presiding Officials of the Exchange, will be renumbered as By-Law Article V and will be captioned as "STANDING COMMITTEES." The Exchange is proposing to delete By-Law Section 8-1 titled

⁴⁷ See NASDAQ Stock Market LLC By-Laws Article IV.

Presiding Exchange Officials, and relocate this By-Law into Rule 1000(e). This will be discussed in further detail below. By-Law Article IX, which is currently reserved, is proposed to be deleted

The Exchange is proposing to mirror the NASDAQ Stock Market LLC in adopting By-Law Sections 5-1, 5-2 and 5-3.⁴⁸ The Exchange is proposing to adopt similar committees which exist today under the NASDAQ Stock Market LLC By-Laws. Proposed new By-Law Section 5-1, titled “Committees,” would require committee members, who are not Directors, to provide the Secretary of the Exchange certain information to classify a committee member. This Section will also govern the term of office.

Proposed new By-Law Section 5-2, would be titled “Committees Composed Solely of Directors.” These committees would include an Executive Committee, Finance Committee and a Regulatory Oversight Committee. The Exchange currently has these committees.

Proposed new By-Law Section 5-3 would be titled “Committees Not Composed Solely of Directors.” The Nominating Committee and the Member Nominating Committee would remain the same as currently exists today. The Business Conduct Committee would also remain unchanged.

The Exchange proposes to amend the composition of the Business Conduct Committee. Currently, the Business Conduct Committee is required to be comprised of not less than five (5) nor more than nine (9) members, as established by the Board of Governors. The majority of committee members are required to be Non-Industry

⁴⁸ See NASDAQ Stock Market LLC By-Law Article III, Sections 4-6.

members; and the remaining committee members are Industry members. The Exchange proposes to amend the composition as follows: the Business Conduct Committee shall consist of not less than eight (8) nor more than twelve (12) members, as established by the Board of Directors. The Business Conduct Committee shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Business Conduct Committee. The number of Non-Industry members, including at least three Public members, shall equal or exceed the sum of the number of Industry members and Member Representative members. This proposed composition mirrors that of the NASDAQ Stock Market’s NASDAQ Review Council composition.⁴⁹

The Quality of Markets Committee would continue to exist with different functions. Similar to the NASDAQ Stock Market LLC By-Laws, the Exchange proposes that the Quality of Markets Committee would have the following functions: (A) to provide advice and guidance to the Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the national securities exchange operated by the Exchange from the perspective of investors, both individual and institutional, retail firms, market making firms, Nasdaq-listed companies, and other market participants; and (B) to advise the Board with respect to national market system plans and linkages between the facilities of the Exchange and other markets. The Quality of Markets Committee would include broad representation of participants in the national securities exchange operated by the Exchange, including investors, market makers, integrated retail firms, and order entry firms. The Quality of Markets Committee would be comprised of a number of Member

⁴⁹ See NASDAQ Stock Market LLC By-Law Article VI, Section 2.

Representative members that is equal to at least 20 percent of the total number of members of the Quality of Markets Committee. The number of Non-Industry members of the Quality of Markets Committee would equal or exceed the sum of the number of Industry members and Member Representative members.

Finally, the Exchange proposes to rename its Options Trade Review Committee as the Market Operations Review Committee. The functions of this committee are specified in Rules 124, 1092, 3312 and Option Floor Procedure Advice F-27. The Market Operation Review Committee shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Market Operations Review Committee. No more than 50 percent of the members of the Market Operations Review Committee would be engaged in market making activity or employed by a Member firm whose revenues from market making activity exceed 10 percent of its total revenues.

The Exchange is replacing current By-Law Sections 10-1 titled Standing Committees, By-Law Section 10-2 titled General Duties and Powers of Committees, By-Law Section 10-3 titled Proceedings of Special and Standing Committees, By-Law Section 10-4 titled Vacancies in Standing Committees – Ad Interim Appointments, By-Law Section 10-5 titled Continuation of Committees, By-Law Section 10-9 titled Regulatory Oversight Committee, By-Law Section 10-10 titled Options Trade Review Committee, By-Law Section 10-11 titled Business Conduct Committee, By-Law Section 10-14 titled Executive Committee, By-Law Section 10-15 titled Finance Committee, By-Law Section 10-19 titled Nominating Committees and By-Law Section 10-21 titled Quality of Markets Committee with these proposed new By-Law Sections: By-Law

Section 5-1 titled Committees, By-Law Section 5-2 titled Committees Composed Solely of Directors and By-Law Section 5-3 titled Committees Not Composed Solely of Directors. The following By-Law Sections, which are currently reserved, are being deleted: By-Law Sections 10-6, 10-7, 10-8, 10-12, 10-13, 10-16, 10-17, 10-18 and 10-20.

The Exchange is proposing to delete the title of By-Law Article XI concerning Appeals. The Exchange is also deleting By-Law Sections 11-1 titled When Allowed, 11-2 titled Advisory Committees on Appeals and 11-3 Appeal from Decisions of Hearing Panel or Business Conduct Committee. Exchange Rules 124, 507⁵⁰, 511⁵¹, 900.2⁵², 960.9⁵³, 1092 and 3312 currently contain review procedures where applicable. Additional language was added to Rules 511, 900.2 and 960.9 concerning review procedures.

The Exchange is proposing to delete the title of By-Law Section XII captioned “Permits-Eligibility-Election-Initiation Fee.” By-Law Section 12-1 titled Rights to Issue Permits and Non-Transferability would be deleted and renumbered new By-Law Section 7-4. By-Law Section 12-2 titled Eligibility and By-Law Section 12-3 titled Number Held is deleted and proposed to be moved into Rule 908. By-Law Section 12-4 titled Admission of Corporation would be deleted, renumbered and proposed as new Rule 798. By-Law Section 12-5, which is reserved, would be deleted. By Law Section 12-6 titled

⁵⁰ Additional language was added to Rule 507 which is proposed to be deleted from By-Law Article XI, Section 11-1.

⁵¹ Additional language was added to Rule 511 which is proposed to be deleted from By-Law Article XI, Section 11-1.

⁵² Additional language was added to Rule 900.2 which is proposed to be deleted from By-Law Article XI, Section 11-1.

⁵³ Additional language was added to Rule 960.9 which is proposed to be deleted from By-Law Article XI, Section 11-2.

Rights and Privileges would be deleted and renumbered as proposed new By-Law Section 6-1. By-Law Section 12-7 titled Rights and Privileges of Corporate Member would be and renumbered as part of proposed new By-Law Section 6-1(c). By-Law Section 12-8 titled Maintenance of Qualifying Permit Holder and Member Organization Representative would be deleted and added to Rule 921. By-Law Section 12-9 titled Acceptance of LLC Agreement, By-Laws and Rules, would be deleted and renumbered as proposed new By-Law Section 6-2. By-Law Section 12-10 titled Inactive Nominees would be deleted, renumbered and proposed as new Rule 925. By-Law Section 12-11 titled Use of Facilities of Exchange, would be deleted and renumbered as new By-Law Section 6-3. By-Law Section 12-12 titled, Certain Transitional Rules would be deleted and renumbered as new By-Law Section 6-4.

The title to By-Law Article XIII captioned Member Organizations - Trading-Specialist and Floor Brokerage Operations would be deleted. By-Law Section 13-1, titled Qualification would be deleted and renumbered as proposed new Rule 910 along with the following By-Law Sections: 13-2 titled Qualifications, 13-3 titled Exclusion of Banks and Investment Trusts, 13-6 titled Conditions to Member Organization Status, 13-7 titled Violation of Terms of Registration, 13-8 titled Termination of Registration; and 13-9 titled Absence or Disability of an Officer, Member of the Exchange. By-Law Section 13-4 titled Provisions of By-Laws and Rules Applicable to Member and Participant Organizations was renumbered as proposed new By-Law Section 6-5 and retitled as Provisions of By-Laws and Rules Applicable to Member Organizations. By-

Law Section 13-5 titled Liability of Officers, Directors and Substantial Stockholders⁵⁴ was renumbered as proposed new By-Law Section 6-6. By-Law Section 13-10 titled Application to Member Organizations would be renumbered as proposed new By-Law Section 6-7. In relocating these Rules, all references to foreign currency options participants or participations were removed from the text of new rules.

The title to By-Law Article XIV captioned Dues, Fines, Net Commissions and Other Charges—Penalties for Non-Payment would be deleted. By-Law Section 14-1 titled Fees, Dues and Other Charges would be deleted. This By-Law Section language is currently contained in Rule 55. By-Law Article 14-5 is titled Penalty for Non-Payment is being deleted and renumbered as Rule 55. By-Law Article 14-2, which is reserved, would be deleted. By-Law Section 14-3 titled Corporate Member Exempt would be deleted and renumbered as Rule 798. By-Law Section 14-4 titled May Be Waived for Members in Military Service would be deleted and renumbered as proposed new Rule 53 along with By-Law Section 14-6 titled Liability for Dues Until Transfer. By-Law Section 14-7 titled Dues on Transfer of Participation is being deleted and renumbered as proposed new Rule 53. By-Law Sections 14-8 and 14-9, which are reserved, would be deleted. By-Law Section 14-10 titled Service Fee would be deleted and renumbered as proposed new Rule 54. By-Law Section 14-11 titled Claims by Former or Deceased Members would be deleted and renumbered as proposed new Rule 55. By-Law Section 14-12 titled Effect of Suspension or Termination on Payment of Fees would be deleted and renumbered as proposed new Rule 56. In relocating these Rules, all references to

⁵⁴ For purposes of By-Law Section 6-6, a substantial stockholder is a stockholder with a controlling interest in the entity.

foreign currency options participants or participations were removed from the text of new rules.

The title to By-Law Article XV captioned Transfer of Foreign Currency Options Participations would be deleted along with Sections 15-1 through 15-11 because the Exchange is proposing to eliminate foreign currency option participations.

The title of By-Law Article XVI captioned Members' Contracts and Exchange Contracts would be deleted. By-Law Section 16-1 titled Members' Contracts would be deleted and renumbered as proposed new Rule 57. By-Law Article 16-2 titled Exchange Contracts would be deleted and renumbered proposed new Rule 58. By-Law Article 16-3 titled By-Laws and Rules Incorporated into Exchange Contracts would be renumbered as proposed new By-Law Section 6-8. By-Law Section 16-4 titled Deliveries through Registered Clearing Agencies would be deleted and renumbered as proposed new Rule 59.

The titled to By-Law Article XVII captioned Insolvency—Suspension—Reinstatement would be deleted. By-Law Section 17-1 titled Suspension for Insolvency on Declaration would be deleted and renumbered as proposed new Rule 70. By-Law Section 17-2 titled Suspension for Insolvency on Advice to Committee on Business Conduct would be deleted and renumbered as proposed new Rule 71. By-Law Section 17-3 titled Investigation of Insolvency would be deleted and renumbered as proposed new Rule 72. By-Law Article 17-4 titled Time for Settlement of Insolvent Member or Participant would be deleted and renumbered as proposed new Rule 73. By-Law Section 17-5 titled Reinstatement of Insolvent Member or Participant would be deleted and renumbered as proposed new Rule 74. By-Law Section 17-6 titled Disciplinary

Measures During Suspension for Insolvency would be deleted and renumbered as proposed new Rule 75. By-Law Section 17-7 titled Rights of Member Suspended for Insolvency would be deleted and renumbered as proposed new Rule 76. In relocating these Rules, all references to foreign currency options participants or participations were removed from the text of new rules.

The title to Article XVIII captioned Offenses, Discipline, Penalties and Business Connections would be deleted. The language in By-Law Section 18-1 titled Offenses, Discipline, Penalties is being deleted as the language is currently contained in Rule 960.1. By-Law Section 18-2 titled Announcement of Penalties is being deleted and the text is being relocated into current Rule 960.8. By-Law Section 18-3 titled Responsibility of Member or Participant for Acts of His Organization would be deleted and relocated as proposed new Rule 910. By-Law Section 18-4 titled Disapproval of Business is being deleted and relocated as proposed new Rule 63. By-Law Section 18-5 titled Effect of Suspension or Termination would be deleted and renumbered as proposed new Rule 63. In relocating these Rules, all references to foreign currency options participants or participations were removed from the text of new rules.

The title to By-Law Article XIX, which is reserved, would be deleted. The title to By-Law Article XX captioned Vacancies Created By Expulsion, Suspension, or Termination would be deleted. By-Law Section 20-1 titled Office Vacated by Suspension or Termination would be deleted and renumbered as proposed new Rule 64. By-Law Sections 20-2, which is reserved, and By-Law Section 20-3 titled Change in Status of Partner of Officer, would be deleted as they are being replaced by proposed new Board definitions as discussed herein.

The title to By-Law Article XXI, which is reserved, would be deleted. The title to By-Law Article XXII captioned Amending the By-Laws, would be deleted. By-Law Section 22-1 titled Amendments to By-Laws would be renumbered as By-Law Section 6-9. The title to By-Law Article XXIII, which is reserved, would be deleted. The title to By-Law Article XXIV captioned Seal of the Exchange would be deleted. By-Law Section 24-1 titled Seal would be renumbered as By-Law Section 6-10.

The title to By-Law Article XXV captioned Fiscal Year of the Exchange would be deleted. By-Law Section 25-1 titled Fiscal Year would be renumbered as By-Law Section 6-11. The title to By-Law Article XXVI captioned Exchange Options Trading would be deleted. By-Law Sections 26-1 and 26-2, which are reserved, are being deleted. By-Law Section 26-3 titled Dealings would be renumbered as By-Law Section 6-12.

The title to By-Law Article XXVII captioned Foreign Currency Options Trading would be deleted. By-Law Sections 27-1 through 27-4 would be deleted as well because the Exchange is eliminating foreign currency option participations.

The title to By-Law Article XXVIII captioned Stockholder Nominations—Stockholder Annual Elections—Stockholder Meetings would be deleted. By-Law Sections 28-1 through 28-12 are being deleted because they are superseded by the proposed amendments to the LLC Agreement and By-Law Article II. By-Law Article 28-13 titled Action Without Meeting would be renumbered as proposed new By-Law Section 6-13.

The title to By-Law Article XXIX captioned Shares would be deleted. By-Law Sections 29-1 titled Certificates, 29-2 titled Signatures, 29-3 titled Share Ledger, 29-4 titled Transfers of Shares, 29-5 titled Cancellation, 29-6 titled Lost, Stolen, Destroyed

and Mutilated Certificates are superseded by amendments to the LLC Agreement and therefore deleted. By-Law Section 29-7 titled Fixing of Record Date would be renumbered as proposed new By-Law 6-14. By-Law Section 29-8 titled Distributions would be renumbered as proposed new By-Law Section 6-15. Proposed new By-Law Section 6-16 titled “Waiver of Notice” and By-Law Section 6-17 titled “Execution of Instruments Contracts, etc.” are being added and mirror language contained in the NASDAQ Stock Market LLC By-Laws.⁵⁵

The title to proposed new By-Law Article VII captioned “Exchange Authorities” would be added. Proposed new By-Law Section 7-1 titled “Rules”, By-Law Section 7-2 titled “Disciplinary Proceedings”, By-Law Section 7-3 titled “Membership Qualifications”, By-Law Section 7-4 titled “Fees, Dues, Assessments, and Other Charges”, and By-Law Section 7-5 titled “Authority to Take Action Under Emergency or Extraordinary Market Conditions” are being added and substantially mirror language in the NASDAQ Stock Market By-Laws.⁵⁶ By-Law Section 12-1 titled Right to Issue Permits and Non-Transferability was deleted and renumbered and is currently Section 7-6.

Rules

The Exchange is proposing to delete definitions from Rule 1. The Exchange is proposing to delete definitions that relate to foreign currency options participations because the Exchange is proposing to eliminate such participations. The following definitions are related to foreign currency option participations and are proposed for

⁵⁵ See NASDAQ Stock Market LLC By-Laws at Article VII, Sections 1 and 2.

⁵⁶ See NASDAQ Stock Market LLC By-Laws at Article IX, Sections 1 through 5.

deletion: “Foreign Currency Options Participant or Participant”, “Foreign Currency Option Participant Organization”, “Approved Lessor”, “Lessee and Lessor”.

The Exchange is also proposing to delete definitions that related to the former XLE trading system. The following definitions relate to XLE and are obsolete and proposed for deletion: “Approved Dealer”, “Market Maker”, “Market Maker Authorized Trader”, “Participant Authorized User or PAU”, “Routing Agreement”, “XLE”, “XLE Participant”, “Quote Management Instruction or QMI”, “Public Agency Order”, “Professional Order”, “Proprietary Order”, “Mixed Lot”, “Round Lot” and “Odd Lot”. The term “Member Organization Representative” is also being deleted and replaced by the proposed term “Executive Representative”.

The Exchange is also proposing to add several clarifying definitions such as “Act, Exchange Act or Securities Exchange Act”, “Associated Person or Person Associated with a Member Organization”, “Board or Board of Directors”, “By-Laws”, “Commission”, “Director”, “FINRA”, “Investment Banking or Securities Business”, “SEC”, “Representative” and “Securities Act”. The Exchange believes these definitions, which are located throughout the Rules, will clarify the meaning of each of these terms. The Exchange also proposed to alphabetize the definitions.

The Exchange is proposing several universal amendments to both the By-Laws and Rules of the Exchange. The Exchange is proposing to change references from “Board of Governors” to “Board of Directors”. The Exchange is proposing to change references to “National Association of Securities Dealers” or “NASD” to “Financial Industry Regulatory Authority, Inc.” or “FINRA”. The Exchange is proposing to replace certain references to “XLE” with “PSX”, where applicable and delete all obsolete

references. The Exchange is proposing to replace “Member Organization Representative” with “Executive Representative”. The Exchange is proposing to delete all references to Foreign Currency Options Participation, Participation, Lessor and Lessee. The Exchange is proposing to replace certain usages of “Phlx” with “Exchange”. The Exchange proposes to remove certain references to AUTOM and AUTO-X, which terms were replaced by Phlx XL.⁵⁷

The Exchange is proposing to replace “NASDAQ OMX PHLX, Inc.” with “NASDAQ OMX PHLX LLC”.⁵⁸ References to the “Certificate of Incorporation” are proposed to be replaced with “Limited Liability Company Agreement” and/or “Certificate of Formation” where appropriate.⁵⁹

The Exchange is proposing to add Rules as indicated above that were originally contained in the By-Laws. The Exchange is proposing to make capitalizations of certain terms consistent such as the words “Rules” and “By-Laws”. Also, the Exchange proposes to reference Member and Member Organization with capitalizations in the By-Laws and lower case letters in the Rules. The Exchange proposes to delete certain Equity Floor Procedure Advices which are no longer relevant because the Exchange does not have an equity trading floor or because XLE is no longer utilized.

The Exchange proposes to update names of certain self-regulatory organizations to reflect corporate actions. The Exchange proposes to change references to the Examinations Department to reflect the Exchange or the Membership Department as

⁵⁷ See Exchange Rule 1080(a).

⁵⁸ See Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR-Phlx-2010-104).

⁵⁹ See Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR-Phlx-2010-104).

applicable. The Exchange has restructured certain departments and would like to clarify which departments should receive such information and in some cases reflect the Exchange instead of a specific department because the Exchange otherwise uses forms or indicates via its website which specific person should receive certain information. The Exchange also proposes to change references from “Market Surveillance” to “Regulatory staff.” This change also reflects the restructuring of certain departments.

The Exchange is proposing to clarify certain Standing Committee references. References to the “Options Trade Review Committee” are proposed to be changed to “Market Oversight Review Committee”. This Market Oversight Review Committee would be utilized for both equity and options matters.⁶⁰ The Exchange is proposing to delete Rules 930-949 which concern Foreign Currency Option Participations, which the Exchange is proposing to delete.

The Exchange is reserving the following rules which related to XLE and are no longer necessary as they do not relate to PSX: Rule 111, Bids and Offers Binding, Rule 125, Order Entry and Execution Increments, Rule 161, Transmission of Bids or Offers, Rule 162, Orders Deemed Regular Way, Rule 163, Clearly Erroneous Executions, Rule 164, Trading Halts, Rule 165, Clearance and Settlement, Rule 170, Registration of Market Makers, Rule 171, Obligations of Market Maker Authorized Traders, Rule 172, Registration of Market Makers in a Security, Rule 173, Obligations of Market Makers, Rule 174, Hearing and Review of Decisions by the Exchange Staff, Rule 180, Access, Rule 181, Order Entry, Rule 182, Order Marking, Rule 183, Trading Sessions Customer Disclosure, Rule 184, Order Ranking and Display, Rule 185, Orders and Order

⁶⁰ See Exchange Rule 1092 (Obvious Errors and Catastrophic Errors) and 3312 (Clearly Erroneous Transactions).

Execution, Rule 186, Locking or Crossing Quotations in NMS Stocks, Rule 187, Odd and Mixed Lots and Rule 189, Clearance and Settlement and Anonymity.

These Rules are related to XLE, the Exchange's former equity trading system, which ceased operations in October 2008.⁶¹ The Exchange recently launched a new cash equities trading platform.⁶² The Exchange filed to establish rules relating to PSX. Specifically, Rule 3202 notes existing rules which are applicable to PSX. The aforementioned rules are not related to PSX or the Exchange's options business and are therefore obsolete.

With respect to Exchange Rule 3202, the Exchange relocated several By-Laws, which are applicable to PSX Participants to sections of the Rules. The Exchange is amending Rule 3202 to specifically enumerate those former by-laws as proposed rules applicable to PSX Participants. The new Rules, which were previously By-Laws, include Rules 52, 53, 54, 55, 56, 57, 58, 59, 62, 63, 64, 70, 71, 72, 73, 74, 75, 76, 798, 910 and 925. Additionally, the Exchange is proposing to add Rule 803, Criteria for Listing –Tier 1, to Rule 3202. The Exchange previously filed a rule change which discussed the applicability of Rule 803 to PSX Participants.⁶³ The Exchange proposes to note that rule is applicable to PSX Participants by adding Rule 803 to the list of Rules notes in 3202.

The Exchange is removing references to XLE in Rule 110, Bids and Offers-Precedence, Rule 120, Precedence of Offers at Same Price, and Rule 136 Trading Halts

⁶¹ See Securities Exchange Act Release No. 58613 (September 22, 2008), 73 FR 57181 (October 1, 2008) (SR-Phlx-2008-65).

⁶² See Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR-Phlx-2010-79).

⁶³ See Securities Exchange Act Release Nos. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR-Phlx-2010-79).

in Certain Exchange Traded Funds, because those references are no longer relevant. The Exchange is amending the title of Rule 124, “Disputes-Options” to indicate that Rule applies to options and not equities.

The Exchange is also amending other references in the Rule text to correct cross-references to sections that were impacted by previous rule changes.⁶⁴ The Exchange has amended certain cross-references for technical accuracy. The Exchange has made technical amendments to certain rules which are reserved or require a heading for ease of reference. The Exchange added various additional clarifying text throughout to make the Rules more clear and provide additional references where necessary. These technical amendments were not substantive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶⁶ 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 streamlining subsidiary self-regulatory organizations of NASDAQ OMX Group to conform the corporate documents and provide clarity to its members. The Exchange believes that amending the Limited Liability Company Agreement and the By-Laws to amend the

⁶⁴ See Securities Exchange Act Release Nos. 42889 (June 2, 2000), 65 FR 36878 (June 12, 2000) (SR-Phlx-00-12) (a proposal to rescind Rule 132); 60169 (June 24, 2009), 74 FR 31782 (July 2, 2009) (SR-Phlx-2009-40) (a proposal to amend text in Rule 1043); and 63036 (October 4, 2010), 75 FR 62621 (October 12, 2010) (SR-Phlx-2010-131) (a proposal to revise Rule 1014).

⁶⁵ 15 U.S.C. 78f(b).

⁶⁶ 15 U.S.C. 78f(b)(5).

board structure and committees and eliminate the Series A Preferred Shareholder continues to provide for the fair representation for its members.

The Exchange is proposing to populate the board with public and non-industry Directors and Member Representative Directors, which would continue to comprise twenty percent of Directors. The Exchange is not amending its current structure which allows for the nomination of Directors by the membership. The Exchange believes that the current board structure and election process provide for the fair representation of members in the selection of directors and the administration of the Exchange consistent with the requirements of Section 6(b)(3) of the Exchange Act. This proposal will allow members to have a voice in the use of the Exchange and ensure that the Exchange is administered in a way that is equitable to all those who trade on it market or through its facilities. Additionally, the Exchange believes that the composition of the Board satisfies the requirements of Section 6(b)(3) of the Exchange Act, which requires that one or more directors be representative of issuers and investors and not be associated with a member of the Exchange, or a broker dealer.

The Regulatory Oversight Committee will continue to be comprised of Public Directors and ensure the Exchange's ability to protect the public interest and foster the integrity of the Exchange by bringing a unique, unbiased prospective to the process. The Exchange is not amending the composition of its Executive, Finance, Nominating or Member Nominating Committees. The Exchange is amending the composition of its Business Conduct Committee so that the majority of its committee members shall be Non-Industry members and the remaining committee members shall be Industry members. The Exchange is also amending the Quality of Markets Committee and the

Market Operations Review Committee (currently named Options Trade Review Committee) composition so that those committees are comprised of a number of Member Representative members that equal to at least twenty percent of the total number of members of the Quality of Markets Committee. These Committees continue to allow for fair representation of members.

The remaining conforming amendments to the Limited Liability Company Agreement and By-Laws to the NASDAQ Stock Market LLC model would streamline the NASDAQ's governance process and create equivalent governing standards among the NASDAQ self-regulatory organizations. The Exchange also renumbered various By-Law provisions into the Exchange By-Laws without substantive change.

The Exchange is also proposing certain amendments to eliminate the foreign currency option participations, delete obsolete terms, amend cross references, update terminology and conform the Rules to the proposed amendments to the Limited Liability Company Agreement and By-Laws. The Exchange believes that these amendments will provide more clarity and simplicity to the Exchange's Rules, Advices⁶⁷ and Regulations.

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.

⁶⁷ The Exchange's minor rule plan consists of options floor procedure advices ("OFPAs") And [sic] equity floor procedure advices ("EFPAs") (collectively "Advices") with preset fines, pursuant to Rule 19d-1(c) under the Act. See 17 CFR240.19d-1(c) [sic]. Most Advices have corresponding options rules.

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

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 shall: (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-2011-13 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-2011-13. 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 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-2011-13 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.⁶⁸

Cathy H. Ahn
Deputy Secretary

⁶⁸ 17 CFR 200.30-3(a)(12).