

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67700; File No. SR-Phlx-2012-108)

August 21, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Rule 1014

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 13, 2012, 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 is filing with the Commission a proposal to amend Rule 1014 (Obligations and Restrictions Applicable to Specialists and Registered Options Traders) to indicate that compliance with specified market making obligations pursuant to the rule will be determined on a monthly basis.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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 this proposed rule change is to amend Rule 1014 to indicate that compliance with specified market making obligations pursuant to the rule will be determined on a monthly basis.

Background

Market makers on the Exchange include Registered Options Traders (“ROTs”),<sup>3</sup> Streaming Quote Traders (“SQTs”),<sup>4</sup> Remote Streaming Quote Traders (“RSQTs”),<sup>5</sup>

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<sup>3</sup> An ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Rule 1014 (b)(i).

<sup>4</sup> An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Rule 1014(b)(ii)(A).

<sup>5</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Rule 1014(b)(ii)(B).

specialists,<sup>6</sup> and Remote Specialists.<sup>7</sup> As set forth in Rule 1014, market makers have an obligation to make two-sided markets in products listed on the Exchange. This rule change proposal does not negate any of the general market making obligations established in Rule 1014. These Rule 1014 market making obligations continue in force. This proposal only clarifies one discreet part of Rule 1014 to make it identical to the rules of other options exchanges, as discussed below.

#### Market Making Obligations

Currently, Rule 1014 sets forth the market making obligations of all market makers. Sub-section (b)(ii)(D)(1) of Rule 1014 states that SQTs and RSQTs (when they do not function as Remote Specialists) shall be responsible to quote two-sided markets in not less than 60% of the series in which such SQTs or RSQTs are assigned; provided that, on any given day, a DRSQT or DSQT shall be responsible to quote two-sided markets in the lesser of 99% of the series listed on the Exchange or 100% of the series listed on the Exchange minus one call-put pair. The sub-section states also that whenever a DSQT or DRSQT enters a quotation in an option in which such DSQT or DRSQT is

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Rule 1014 also discusses other market makers including Directed SQTs and Directed RSQTs, which receive Directed Orders as defined in Rule 1080(l)(i)(A). Specialists may likewise receive Directed Orders.

<sup>6</sup> A member may not act as an options specialist (to include a Remote Specialist as defined in Rule 1020(a)(ii)) in any option unless such member is registered as an options specialist in such option by the Exchange pursuant to Rule 501 and such registration may be revoked or suspended at any time by the Exchange. See Rule 1020(a)(i).

<sup>7</sup> A Remote Specialist is an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501. See Rule 1020(a)(ii).

assigned, such DSQT or DRSQT must maintain until the close of that trading day quotations for the lesser of 99% of the series of the option listed on the Exchange or 100% of the series of the option listed on the Exchange minus one call-put pair. Subsection (b)(ii)(D)(2) of Rule 1014 states that a specialist (including the RSQT functioning as a Remote Specialist in particular options) shall be responsible to quote two-sided markets in the lesser of 99% of the series or 100% of the series minus one call-put pair in each option in which such specialist is assigned. To satisfy the requirement of subsection (b)(ii)(D)(2) with respect to quoting a series, the specialist must quote such series 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as the Exchange may announce in advance.<sup>8</sup>

#### Determining Compliance on a Monthly Basis

Rule 1014 does not currently indicate the timeframe within which the Exchange can review whether a member has met the quoting obligations in sub-section (b)(ii)(D).<sup>9</sup>

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<sup>8</sup> For all market making obligations, see Rule 1014(b)(ii)(D).

<sup>9</sup> Sub-section (b)(ii)(D) currently states, in relevant part: "In addition to the other requirements for ROTs set forth in this Rule 1014, except as provided in subparagraph (4) below, and except as provided in subparagraph (2) below when an RSQT functions as a Remote Specialist in particular options, an SQT and an RSQT shall be responsible to quote two-sided markets in not less than 60% of the series in which such SQT or RSQT is assigned, provided that, on any given day, a Directed SQT ("DSQT") or a Directed RSQT ("DRSQT") (as defined in Rule 1080(l)(i)(C)) shall be responsible to quote two-sided markets in the lesser of 99% of the series listed on the Exchange or 100% of the series listed on the Exchange minus one call-put pair, in each case in at least 60% of the options in which such DSQT or DRSQT is assigned. Whenever a DSQT or DRSQT enters a quotation in an option in which such DSQT or DRSQT is assigned, such DSQT or DRSQT must maintain until the close of that trading day quotations for the lesser of 99% of the series of the option listed on the Exchange or 100% of the series of the option listed on the Exchange minus one call-put pair. To satisfy the applicable requirements of this subparagraph (D)(1) with respect to quoting a series, an SQT, RSQT, DSQT, or DRSQT must quote such series 90% of the trading day (as a

In contrast, NYSE Arca establishes a time period of a month to determine whether a market maker or lead market maker has met his quoting obligation, stating that compliance with the two-sided quoting obligation will be determined on a monthly basis.<sup>10</sup> The Exchange now proposes to insert a similar monthly time frame into its quoting rules.

Specifically, the Exchange proposes to state in sub-sections (b)(ii)(D)(1) and (b)(ii)(D)(2) of Rule 1014 that compliance with the quoting obligation will be determined on a monthly basis. The proposed language is exactly the same language used by another options exchange, NYSE Arca.<sup>11</sup> The proposed change puts the Exchange and its members on an equal footing with other options markets in terms of compliance with the noted quoting obligations.

The proposal ensures that compliance standards for two-sided quoting will be the same on the Exchange as on other options exchanges. The proposal does not, however, change the quoting requirements set forth in Rule 1014 or the Exchange's regulatory oversight (monitoring) of the requirements. To the contrary, subsequent to the approval of this proposal, the quoting requirements will remain and the Exchange will continue to

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percentage of the total number of minutes in such trading day) or such higher percentage as the Exchange may announce in advance. The Exchange may consider exceptions to the requirement to quote 90% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances.”

<sup>10</sup> See NYSE Arca Rule 6.37B. See also NYSE MKT (NYSE Amex) Rule 925.1NY (establishing a time period of a month to determine compliance).

<sup>11</sup> Id.

monitor (surveil) market maker quoting behavior on a daily basis with an eye toward whether market makers meet Rule 1014 quoting requirements.<sup>12</sup>

While quoting will continue to be monitored daily, the Exchange believes that it is appropriate, fair and generally more efficient for the Exchange and market participants to evaluate compliance on a monthly rather than daily basis. Thus, a market maker that may have quoted less on a single day of a month may meet his overall Rule 1014 quoting obligations, and still be compliant with the Rule, by posting substantially more two-sided quotes on the other days of the month. The Exchange believes that the proposal will not diminish, and in fact may increase, market making activity on the Exchange, by establishing a quoting compliance standard that is reasonable and is already in use on other options exchanges.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national

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<sup>12</sup> On the basis of the daily monitoring activity, the Exchange will continue to have the ability to let market makers know if they are failing to achieve their quoting requirements. Moreover, on the basis of the daily monitoring activity, the Exchange can determine whether market makers violated any other Exchange rules such as, for example, Rule 707 regarding just and equitable principles of trade. Such daily monitoring will allow the Exchange to investigate unusual activity and to take appropriate regulatory action (e.g. consideration of a Rule 707 violation proceeding based on market maker stoppage of quoting and total withdrawal from the market during market disturbances).

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

<sup>14</sup> 15 U.S.C. 78f(b)(5).

market system, and, in general to protect investors and the public interest. The Exchange would do this through a proposed rule change indicating that compliance with market making quoting obligations will be determined on a monthly basis. The specified one month review period clarifies how compliance will be monitored, which should enhance compliance efforts by market makers and the Exchange and is consistent with requirements currently in place on other exchanges.

The proposal ensures that compliance standards for two-sided quoting will be the same on the Exchange as on other options exchanges. The Exchange believes that the proposal will not diminish, and in fact may increase, market making activity on the Exchange, by establishing a quoting compliance standard that is reasonable and is already in use on other options exchanges, while continuing to monitor quoting activity on a daily basis.

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. To the contrary, the Exchange believes the proposal is pro-competitive. The proposal would enable the Exchange to provide members with rules that are similar to those of other options exchanges, and to add clarity to its rules. This should promote trading and hedging activity on the Exchange to the benefit of the Exchange, its members, and market participants.

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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>15</sup> of the Act and Rule 19b-4(f)(6)(iii) thereunder<sup>16</sup> because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-108 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-2012-108. 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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2012-108 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>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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