

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68012; File No. SR-Phlx-2012-115)

October 9, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify Further That the Provisions of the Rule 800 Series Are Not Effective to Permit the Listing of Securities and Include a Reference on the Need to Comply with Rule 10C-1 under the Securities Exchange Act of 1934 Should the Exchange List Equity Securities in the Future

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 September 25, 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 the Substance of the Proposed Rule Change

Phlx is proposing to modify certain Exchange Rules to clarify further that the provisions of the Rule 800 Series are not effective to permit the listing of securities. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/>, at Phlx’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and the 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently adopted rules that require any national securities exchange that lists equity securities to have listing standards relating to the independence of compensation committees and their advisers.³

The Exchange operates NASDAQ OMX PSX ("PSX"), a fully integrated order display and execution system for all NMS stocks,⁴ as defined in SEC Rule 600(b)(47) under Regulation NMS.⁵ PSX trades stocks listed on other exchanges pursuant to unlisted trading privileges ("UTP"). As provided by SEC Rule 12f-5, the Exchange may extend UTP to any security for which the Exchange has in effect rules providing for transactions in such class or type of security.⁶ Accordingly, Phlx's rules include the Rule 800 Series to support UTP trading of all NMS stocks on PSX. However, the Exchange does not list any securities pursuant to the Rule 800 Series, and does not have any present intent to list securities under this series in the future.⁷

³ See 17 CFR 240.10C-1 and Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422 (June 27, 2012).

⁴ See Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR-Phlx-2010-079).

⁵ See 17 CFR 242.600(b)(47).

⁶ See 17 CFR 240.12f-5.

⁷ Pursuant to its Rule 1000, 1000A and 1000C Series, the Exchange lists only standardized options, as defined in Rule 9b-1 under the Act, issued by a clearing agency that is registered pursuant to Section 17A of the Act. As a result, the Exchange is not proposing any clarifying changes to its Rule 1000, 1000A and 1000C Series relating to Rule 10C-1 under the Act because Rule 10C-1 includes an exemption for listing of such standardized

The Exchange proposes to modify Rules 800-803 and 867.5 to clarify further that the provisions of the Rule 800 Series are not effective to permit the listing of securities. Specifically, the Exchange proposes to change the title of the Rule 800 Series from “Listing of Securities” to “Standards for Trading Securities Pursuant to Unlisted Trading Privileges.” Regarding Rule 801, the Exchange proposes to delete references to listing and add clarifying language to state that the Exchange lists only standardized options, as defined in Rule 9b-1 under the Act, issued by a clearing agency that is registered pursuant to Section 17A of the Act, pursuant to the Rule 1000, 1000A and 1000C Series. In addition, the Exchange will not list securities pursuant to any other rule until the Exchange files a proposed rule change under Section 19(b)(2) under the Act to amend its rules to make any changes needed to comply with Rules 10A-3 and 10C-1 under the Act and to incorporate additional qualitative and other listing criteria, and such proposed rule change is approved by the Commission. The Exchange also proposes to state explicitly in Rule 801, as well as Rule 803, which is discussed further below, that the provisions of the Rule 800 Series are not effective to permit the listing of securities.

Regarding Rule 802, the Exchange proposes to move the statement that “[t]he Exchange does not rate or guarantee the quality of any security dealt on the Exchange” to Rule 801. The Exchange also proposes to move the definition of the terms “public shareholder” and “public holder” to Rule 800, which includes definitions that apply to the entire Rule 800 Series. The Exchange proposes to delete the remainder of Rule 802, which relates to determinations

options. See 17 CFR 240.10C-1(b)(5)(iv). The Exchange’s Rule 1000B Series is a dormant set of rules applicable to trading of cash index participations, and the Exchange has no present intent to trade or list such securities. Should the Exchange ever propose to trade or list any securities pursuant to its Rule 1000, 1000A, 1000B or 1000C Series that are not entitled to an exemption under Rule 10C-1 under the Act, the Exchange recognizes that it must file a proposed rule change under Section 19(b)(2) under the Act to amend its rules to make any changes needed to comply with Rule 10C-1 under the Act and that such proposed rule change must be approved by the Commission.

concerning listing or delisting, and is therefore irrelevant since the Exchange does not list securities pursuant to the Rule 800 Series.

The Exchange proposes to change the title of Rule 803 from “Criteria for Listing—Tier I” to “Listing Standards for Unlisted Trading Privileges.” As discussed above, Rule 803(o) includes a statement that the provisions of the Rule 800 Series that permit the listing of securities will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Act to amend its rules to make any changes needed to comply with Rule 10A-3 under the Act and to incorporate additional qualitative listing criteria, and such proposed rule change is approved by the Commission. The Exchange proposes to move this language to Rule 801, so that it is more prominent at the beginning of this section of rules, and to revise the existing language to state that the Exchange will not list securities pursuant to any other rule until it complies with the aforementioned conditions. The Exchange also proposes to add a reference to Rule 10C-1 under the Act, which requires securities exchanges that list equity securities to adopt rules relating to the independence of compensation committees and their advisers,⁸ and to expand the reference to additional qualitative listing criteria to include other listing criteria as well. As a result of this new language, the Exchange cannot list securities pursuant to the Rule 800 Series until it files proposed rules under Rule 10C-1, and such rules are approved by the Commission.

Finally, the Exchange proposes to add similar clarifying language to Rule 867.5, which relates to compensation committees.

⁸ See 17 CFR 240.10C-1.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The rule change will promote these goals by clarifying further the intent of the Exchange's Rule 800 Series, which exists to permit the Exchange to extend UTP to NMS stocks that are listed on another national securities exchange. The proposed amendments to the Rule 800 Series emphasize that the Exchange does not list securities pursuant to that series and that it will not list securities pursuant to that series until it proposes certain rule changes and those changes are approved by the Commission. These clarifications will serve to protect investors and the public interest by preventing confusion about the intent of the Rule 800 Series.

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.

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.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2012-115 on the subject line.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

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-2012-115. 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 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-2012-115, 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.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).