

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68127; File No. SR-Phlx-2012-124)

November 1, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Branch Offices

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 October 24, 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 proposes to amend Rule 748 titled “Supervision” to require member organizations for which the Exchange is the Designated Examining Authority (“DEA”) to file a list of their branch offices with 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

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

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

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 Rule 748 which provides that each office, location, department, or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member or member organization establishing it and of an appropriately qualified supervisor. When the Exchange is the DEA, it examines its members and member organizations for compliance with Rule 748 with respect to supervision. Accurate information related to branch offices is an important component of the examination process. The Exchange currently does not require members or member organizations to report branch office information.

The Exchange is proposing to adopt a reporting requirement for member organizations for which the Exchange is the DEA to report branch office information for purposes of conducting regulatory oversight, specifically through its examination program. The Financial Industry Regulatory Authority (“FINRA”) has a requirement for its members to register and keep current information with respect to branch offices.<sup>3</sup> Phlx member organizations for which the Exchange is the DEA do not have access to the Form BR filing process because they are not

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<sup>3</sup> This is accomplished through an electronic filing process in WebCRD using the Uniform Branch Office Registration Form (Form BR).

FINRA members. The Exchange believes that adopting Rule 748(f) to require member organizations for which the Exchange is the DEA to provide a list identifying its [sic] branch offices would assist the Exchange in maintaining an efficient examination schedule for Exchange member organizations for which it is the DEA.

Specifically, the Exchange is proposing that each member organization for which the Exchange is the DEA file a Branch Office Disclosure Form with the Exchange which requires identification of the member organization's branch offices.<sup>4</sup> These member organizations would also be subject to a continuing requirement to file amendments to the Branch Office Disclosure Form with the Exchange no later than thirty (30) days from the date of any change to the information previously provided on the Form. Member organizations for which the Exchange is the DEA shall provide information about its [sic] branch offices, including, but not limited to: location, designated supervisor, contact information, number of traders at the location and type of activity conducted at the branch office. The Exchange intends to provide its member organizations notice of this requirement to report branch offices.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

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<sup>4</sup> Member organizations for which the Exchange is not the DEA would not be subject to this requirement.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

open market and a national market system and, in general, to protect investors and the public interest. The Exchange is proposing to require its member organizations, for which the Exchange is the DEA, to provide the Exchange with similar information that is being provided today by other market participants that report information through Form BR related to branch offices.<sup>7</sup>

The information on branch offices is necessary for the Exchange to conduct proper regulatory oversight of its member organizations where the Exchange is the DEA.<sup>8</sup> Today, other options exchanges have similar rules. The International Stock Exchange, LLC (“ISE”) requires its members approved to do options business with the public to file with the exchange and keep current a list of each of its branch offices.<sup>9</sup> The Chicago Board Options Exchange, Inc. (“CBOE”) also has a similar rule applicable to TPH organizations.<sup>10</sup>

The Exchange believes that the proposed rule change would be beneficial because it

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<sup>7</sup> Currently, members and member organization of the New York Stock Exchange, Inc. (“NYSE”), and FINRA require their members to report branch offices in Web CRD on the Form BR. See Securities Exchange Act Release No. 51923 (June 24, 2005), 70 FR 38229 (July 1, 2005) (SR-NYSE-2005-13).

<sup>8</sup> Section 19(g)(1) of the Act, among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act. With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions. Pursuant to 17d-1, the Commission is authorized to name a single SRO as the DEA to examine common members for compliance with the SRO rules. See 15 U.S.C. 78q(d), 15 U.S. C. 78s(g)(1) and 15 U.S.C. 78s(g)(2).

<sup>9</sup> See ISE Rule 607.

<sup>10</sup> See CBOE Rule 9.6. A “TPH” is a trading permit holder.

would provide the Exchange with additional information necessary for the supervision of branch offices. The Exchange does not believe that it is burdensome for member organizations for which the Exchange is the DEA to comply with this request as the information pertaining to branch offices is readily available and member organizations are required to supervise employees in those locations. Also, the Exchange is only requiring this information of its member organizations for which it is the DEA because those are the firms for which the Exchange is examining compliance with Rule 748 in connection with sales practices and trading activities and practices. Member organizations for which the Exchange is not the DEA are subject to the rules of their respective DEA with respect to branch office reporting.<sup>11</sup>

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.

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 after the date of the filing, or such shorter time as the

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<sup>11</sup> See also NYSE Rule (Options) [sic] 342, FINRA [sic] IM-1000-4, NASDAQ OMX BX, Inc. ("BX") Rule Chapter XI, Section 6 and The NASDAQ Stock Market LLC ("NASDAQ") Rule Chapter XI, Section 6.

Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</sup> thereunder.

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-124 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.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR-Phlx-2012-124. 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 Phlx. 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-2012-124, 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>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).