

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71535; File No. SR-Phlx-2014-011)

February 12, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ OMX PSX's Optional Anti-Internalization Functionality

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 4, 2014, 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 modify the optional anti-internalization functionality of NASDAQ OMX PSX ("PSX").

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqomxphlx.cchwallstreet.com/>, 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

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

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

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx is proposing to modify PSX's voluntary anti-internalization functionality to provide an additional option under that functionality. In addition, the proposed rule change contains certain clarifications to the text of the rule. Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act ("ERISA") that preclude and/or limit broker-dealers managing accounts governed by ERISA from trading as principal with orders generated for those accounts. The functionality can also assist market participants in avoiding execution fees that may result from the interaction of executable buy and sell trading interest from the same firm. Phlx notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) they would have originally obtained if execution of the order was not inhibited by the functionality.

Currently, market participants may apply anti-internalization logic to all quotes/orders entered through a particular MPID, or to all orders entered through a particular order entry port, to which a unique group identification modifier is then appended. In other words, the logic may

be applied on an MPID-by-MPID, or on a port-by-port basis.<sup>3</sup> Currently, two forms of anti-internalization logic may be applied: (i) if quotes/orders are equivalent in size, both quotes/orders will be cancelled, or if they are not equivalent in size, the smaller will be cancelled and the size of the larger will be reduced by the size of the smaller; or (ii) regardless of the size of the quotes/orders, the oldest quote/order will be cancelled in full. The applicable logic may be applied to an entire MPID, or alternatively, different logic may be applied to different order entry ports under a particular MPID.<sup>4</sup>

In response to member input, the proposed rule change will add an additional form of anti-internalization logic that a market participant could choose to apply, under which the most recent quote/order would be cancelled. As with the two existing forms of anti-internalization logic, the logic could be applied to an entire MPID, or to selected order entry ports under a particular MPID.<sup>5</sup> Phlx believes that the change will provide members with an additional tool for managing the book of orders that they submit to PSX and the associated execution costs.

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<sup>3</sup> In the proposed rule change that introduced the ability to assign a group identification modifier with respect to anti-internalization processing, Phlx stated that the modifier may be assigned “at the port level.” Securities Exchange Act Release No. 65869 (December 2, 2011), 76 FR 76793 (December 8, 2011) (SR-Phlx-2011-080). However, this level of specificity was not included in the text of Rule 3307. In addition, although the rule indicates that designation of functionality at the port level is an option available to the market participant, the rule does not make it clear that in order to make use of these options, market participants must use PSX’s OUCH order entry protocol. Thus, the proposed rule change also adds additional specificity to the rule text with respect to these aspects of the anti-internalization functionality.

<sup>4</sup> With respect to this functionality also, participants wishing to make designations on the order port level must use the OUCH order entry protocol.

<sup>5</sup> Id.

## 2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(5) of the Act<sup>7</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, Phlx believes that the change, which is responsive to member input, will facilitate transactions in securities and perfect the mechanism of a free and open market by providing members with additional optional functionality that may assist them with managing the book of orders that they submit to PSX and the associated execution costs.

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

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, by offering market participants additional options with regard to preventing inadvertent internalization of orders submitted to PSX, the change has the potential to enhance PSX's competitiveness with respect to other trading venues, thereby promoting greater competition. Moreover, the change does not burden competition in that its use is optional and provided at no additional cost to members.

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 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)(ii) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup>

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:

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>9</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.

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-2014-011 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-2014-011. 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 Web site (<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-2014-011 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>10</sup>

Kevin M O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).