

Section 19(b)(2) of the Act<sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 18, 2011.

The Commission is hereby extending the 45-day period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change. In particular, the extension of time will ensure that the Commission has sufficient time to consider and take action on the Exchange's proposal.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act<sup>5</sup> and for the reasons stated above, the Commission designates June 2, 2011, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change File No. SR-Phlx-2011-13.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64282; File No. SR-Phlx-2011-28]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Expand the Number of Components in the PHLX Oil Service Sector<sup>SM</sup> Known as OSX<sup>SM</sup>, on Which Options Are Listed and Traded

April 8, 2011.

#### I. Introduction

On March 2, 2011, NASDAQ OMX PHLX LLC (the "Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to expand the number of components in the PHLX Oil Service Sector<sup>SM</sup> (the "Index" or "OSX"<sup>SM</sup>) and to change the Index weighting methodology. The proposed rule change was published for comment in the **Federal Register** on March 17, 2011.<sup>3</sup> The Commission received no comments on the proposal.

Section 19(b)(2) of the Act<sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is May 1, 2011.

The Commission is hereby extending the 45-day period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, which relates to the addition of components to the Index and a change to the Index weighting methodology.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act<sup>5</sup> and for the reason stated above, the Commission designates June 15, 2011, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change File No. SR-Phlx-2011-28.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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

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

<sup>3</sup> See Securities Exchange Act Release No. 64075 (March 11, 2011), 76 FR 14702 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 15 U.S.C. 78s(b)(2)(A)(ii)(I).

<sup>6</sup> 17 CFR 200.30-3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64283; File No. SR-FINRA-2011-012]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Relating to TRACE Reporting of Asset-Backed Securities

April 8, 2011.

#### I. Introduction

On March 3, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change that would amend the FINRA Rule 6700 Series and FINRA Rule 7730 to prepare for the reporting of Asset-Backed Securities transactions to TRACE.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on March 21, 2011.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is May 5, 2011.

<sup>1</sup> 15 U.S.C. 78s(b)(2).

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

<sup>3</sup> On February 22, 2010, the Commission approved a proposed rule change that amends the FINRA Rule 6700 Series to define Asset-Backed Securities as TRACE-Eligible Securities and to require members to report transactions in such securities to TRACE, and, concomitantly, FINRA Rule 7730, to establish reporting fees for transactions in such securities. See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010) (Order Approving File No. SR-FINRA-2009-065) ("TRACE ABS filing") and *Regulatory Notice* 10-23 (April 2010). The rule amendments in the TRACE ABS filing currently are anticipated to become effective on May 16, 2011. See Securities Exchange Act Release No. 63223 (November 1, 2010), 75 FR 68654 (November 8, 2010) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2010-054 to Extend the Implementation Period for SR-FINRA-2009-065); *Regulatory Notice* 10-55 (October 2010) (establishing May 16, 2011 as the effective date).

<sup>4</sup> See Securities Exchange Act Release No. 64084 (March 16, 2011), 76 FR 15352 ("Notice").

<sup>5</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> 15 U.S.C. 78s(b)(2)(A)(ii)(I).

<sup>6</sup> 17 CFR 200.30-3(a)(31).

The Commission is hereby extending the 45-day period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change. The extension of time will ensure that the Commission has sufficient time to consider and take action on the Exchange's proposal.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act<sup>6</sup> and for the reasons stated above, the Commission designates June 19, 2011, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change File No. SR-FINRA-2011-012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-9048 Filed 4-13-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64285; File No. SR-NASDAQ-2011-025]

### Self-Regulatory Organizations; NASDAQ Stock Market, LLC; Order Approving Proposed Rule Change To Amend The NASDAQ OMX Group, Inc. By-Laws

April 8, 2011.

#### I. Introduction

On February 8, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the By-Laws of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). The proposed rule change was published for comment in the *Federal Register* on February 24, 2011.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

NASDAQ proposes amending the By-Laws of NASDAQ OMX to: (i) Amend

the name of the Nominating Committee to the Nominating & Governance Committee; (ii) amend the NASDAQ OMX PHLX, Inc. reference to reflect a recent conversion to a limited liability company; and (iii) clarify By-Law Article IV, Section 4.4 that broker nonvotes are not counted as a vote cast either "for" or "against" a Director.

Currently, NASDAQ OMX By-Laws provide for a Nominating Committee that is appointed pursuant to the By-Laws. In addition to the responsibilities listed in By-Law Article IV, Section 4.13(h), NASDAQ states that the Nominating Committee also conducts certain governance functions such as consulting with the Board and the management to determine the characteristics, skills and experience desired for the Board as a whole and for its individual members, overseeing the annual director evaluation, and reviewing the overall effectiveness of the Board.

Accordingly, the Exchange proposes to rename and change all references to the "Nominating Committee" in the By-Laws, to the "Nominating & Governance Committee" so that the title of the committee accurately reflects all of its current functions, including those that are deemed governance functions. NASDAQ's proposal to rename the Nominating Committee would not change the function of the committee, but is intended to clarify the current functions and its governance role with respect to the Board selection process.

Additionally, NASDAQ proposes to amend Article 1, Section (o) of NASDAQ OMX's By-Laws to change the reference to "NASDAQ OMX PHLX, Inc." to "NASDAQ OMX PHLX LLC" to reflect a recently filed rule change to NASDAQ OMX PHLX, Inc. from a Delaware corporation to a Delaware limited liability company.<sup>4</sup>

Finally, NASDAQ proposes to add the words "and broker nonvotes" to NASDAQ OMX's By-Law Article IV, Section 4.4 to make clear that broker nonvotes will not be counted as a vote cast either "for" or "against" that director's election. In its filing, NASDAQ noted that NASDAQ OMX's past practice has been to not count a broker nonvote as a vote cast either for or against a director's election. Accordingly, this change would clarify this practice by codifying it into the By-Laws.

NASDAQ also stated that in 2010, NASDAQ OMX amended its By-Laws to state that in an uncontested election, a

majority voting standard would apply to the election of its directors, requiring directors to be elected by the holders of a majority of the votes cast at any meeting for the election of directors at which a quorum is present in an uncontested election.<sup>5</sup> A plurality standard would still remain in a contested election. In its filing, NASDAQ noted that, the practice of not counting a broker nonvote as a vote cast either for or against a director's election will remain unchanged by the amendment to a majority vote standard. In support of this change, in its filing NASDAQ states that under Delaware case law, broker nonvotes are not considered as votes cast for or against a proposal or director nominee.<sup>6</sup>

#### III. Discussion and Commission's Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(1)<sup>9</sup> of the Act, in particular, in that it is designed to enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act. In addition, the Commission finds that the proposal is consistent with Section 6(b)(5)<sup>10</sup> of the Act 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 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.

The Commission believes that the proposed amendments to NASDAQ OMX's By-Laws by changing the name of the Nominating Committee to the Nominating and Governance Committee, and amending references to

<sup>5</sup> See Securities Exchange Act Release No. 61876 (April 8, 2010), 75 FR 19436 (April 14, 2010) (SR-NASDAQ-2010-025).

<sup>6</sup> See *Berlin v. Emerald Partners*, 552 A.2d 482 494 (Del Supr. 1988).

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(1).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(A)(ii)(I).

<sup>7</sup> 17 CFR 200.30-3(a)(31).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 63925 (February 17, 2011), 76 FR 10418 (February 24, 2011) ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR-Phlx-2010-104).