

Exchange members and other persons using its facilities.

The Exchange believes that its proposal to extend the applicability of the Cap for Active SQF Port Fees is both reasonable and equitable because it would allow member organizations additional time to transition from SQF 5.0 to SQF 6.0. The proposal is equitable and not unfairly discriminatory in that the Exchange is extending the Cap for all member organizations.

#### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>8</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 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-2011-105 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-2011-105. 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 Web site 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 a.m. and 3 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-2011-105 and should be submitted on or before September 1, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65041; File No. SR-NASDAQ-2011-107]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct the Proprietary Trader Registration Category**

August 5, 2011.

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 1, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, 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**

NASDAQ is filing with the Commission a proposed rule change to correct a prior filing to make it applicable to NASDAQ and not just the NASDAQ Options Market ("NOM").<sup>3</sup> The prior filing amended NASDAQ Rule 1032, Categories of Representative Registration, to adopt a new limited category of representative registration for proprietary traders, as described further below.

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at NASDAQ's principal office, 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 Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

<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. 64958 (July 25, 2011) (SR-NASDAQ-2011-095) ("NASDAQ Proprietary Trader Filing").

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

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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 correct a prior filing, the NASDAQ Proprietary Trader Filing, to make it applicable to NASDAQ and not just the NASDAQ Options Market ("NOM"). Although that filing was correctly submitted as a NASDAQ filing, the exhibit to the filing was incorrectly limited to NOM.

The NASDAQ Proprietary Trader Filing amended NASDAQ Rule 1032, Categories of Representative Registration, to adopt a new limited category of representative registration for proprietary traders. This new category should apply to all NASDAQ members, not just NOM participants. Specifically, paragraph (c) to Rule 1032 recognized the "Proprietary Trader" category of registration for persons engaged solely in proprietary trading; it expressly provides that such person's activities in the investment banking or securities business are limited solely to proprietary trading, that he passes the Series 56 and that he is an associated person of a proprietary trading firm as defined in Rule 1011(o).<sup>4</sup> NASDAQ proposes herein that Rule 1032(c) applies to all NASDAQ members.

Accordingly, as stated in the NASDAQ Proprietary Trader Filing, associated persons of NASDAQ members who deal with the public do not fit in this registration category and must continue to register as General Securities Representatives, and NASDAQ believes that the new limited registration category and qualification examination are appropriate, because they are tailored to proprietary trading functions. In addition, because NASDAQ rules require it, persons associated with NASDAQ members are, today, already registered as General Securities Representatives and have

<sup>4</sup> Rule 1011(o) defines a proprietary trading firm as an Applicant with the following characteristics: (1) The Applicant is not required by Section 15(b)(8) of the Act to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Act; (2) all funds used or proposed to be used by the Applicant for trading are the Applicant's own capital, traded through the Applicant's own accounts; (3) the Applicant does not, and will not have "customers," as that term is defined in Nasdaq Rule 0120(g); and (4) all Principals and Representatives of the Applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Applicant. "Applicant" is defined in Rule 1011(a).

passed the Series 7 examination. As applied to all NASDAQ members, this proposal does not require proprietary traders who have already registered as General Securities Representatives and have passed the Series 7 examination to register under the new category as Proprietary Traders or to pass the Series 56, because NASDAQ believes this would be redundant. Persons who are registered as General Securities Representatives and have passed the Series 7 may, of course, perform the functions of a Proprietary Trader, because the new Proprietary Trader registration category is a limited registration category. As applied to all NASDAQ members, this proposal does not preclude associated persons from registering as General Securities Representatives and passing the Series 7 examination and then functioning as a Proprietary Trader.

NASDAQ expects that new members might consider the new category when applying for NASDAQ membership, once the new category and examination become available to NASDAQ members in WebCRD. Accordingly, NASDAQ believes that the new category should be helpful to attracting new members to NASDAQ, while at the same time preserving the important goals of appropriate registration and qualification for persons in the securities business. Additionally, members who hire new associated persons might choose to register those persons in the new category.

Unlike the associated persons of proprietary trading firms covered by this proposal, associated persons of NASDAQ members that are NOT proprietary trading firms continue to be subject to registration as General Securities Representatives and have to pass the Series 7 examination.<sup>5</sup> They are not eligible for the new registration category and examination.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of: (1) Section 6(c)(3)(B) of the Act,<sup>7</sup> pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,<sup>8</sup> in that it is designed, among other

<sup>5</sup> Such persons may also be subject to registration as an Equity Trader pursuant to Rule 1032(f), which requires successful completion of the Series 55 exam (for which the prerequisite is the Series 7 examination).

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

<sup>7</sup> 15 U.S.C. 78(c)(3)(B) [sic].

<sup>8</sup> 15 U.S.C. 78f(b)(5).

things, to prevent fraudulent and manipulative acts and practices, 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, by offering a new, limited registration category to NASDAQ members. The Exchange believes that these new requirements should help ensure that all associated persons engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions, because the new category and examination are limited and tailored to persons performing proprietary trading functions. This proposal corrects the NASDAQ Proprietary Trader Filing by applying Rule 1032(c) to all NASDAQ members, not just NOM participants.

*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**

Pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Rule 19b-4(f)(6)<sup>11</sup> 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.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> *Id.*

Under Rule 19b-4(f)(6) of the Act,<sup>12</sup> a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30 day operative period for this filing so that it may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>13</sup> of the Act and subparagraph (f)(6) thereunder. The Exchange believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest as the waiver will allow the Exchange to apply NASDAQ Rule 1032(c) to all NASDAQ members, not just NOM participants, near the same time as other exchanges have established proprietary trading registration and qualification requirements. For the reasons stated above, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal as operative upon filing.<sup>14</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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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-NASDAQ-2011-107 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-NASDAQ-2011-107. 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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2011-107 and should be submitted on or before September 1, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65043; File No. SR-Phlx-2011-104]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Regarding Price Improvement XL

August 5, 2011.

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 1, 2011, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 Exchange Rule 1080(n), Price Improvement XL (“PIXL<sup>SM</sup>”) to extend, through July 18, 2012, a pilot program (the “pilot”) concerning (i) The early conclusion of the PIXL Auction (as described below), and (ii) permitting orders of fewer than 50 contracts into the PIXL Auction. The current pilot is scheduled to expire August 31, 2011.

The text of the proposed rule change is available on the Exchange's Web site 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

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 extend the pilot through July 18, 2012.

###### Background

The Exchange adopted PIXL in October, 2010 as a price-improvement mechanism on the Exchange.<sup>3</sup> PIXL is a

<sup>12</sup> *Id.*

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See also 17 CFR 200.30-3(a)(59).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<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. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010)