

be included in the record pursuant to FINRA Rule 9261(a), which could be based on fairness concerns.

Third, the proposed rule change protects the public interest by requiring an attorney seeking to withdraw from a disciplinary case to file a motion (which will provide contact information for the party previously represented) before withdrawal would be approved. The proposed revision seeks to reduce any uncertainty as to whether a respondent is represented by an attorney. By requiring an attorney to file a motion for withdrawal, adjudicators and the parties will know that an attorney continues to represent the respondent until the motion is granted. This proposed revision promotes an effective disciplinary system in which cases can proceed to a hearing. By furthering an effective disciplinary system, the proposed rule change is consistent with the public interest in imposing disciplinary sanctions on FINRA firms and associated persons who violate FINRA Rules or the federal securities laws.

For each of these reasons, FINRA believes that the proposed rule change will improve the process and procedures that govern the adjudication of disciplinary cases and expedited proceedings.

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

FINRA 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.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2011-044 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-FINRA-2011-044. This file number should be included on the subject line if email 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 FINRA. 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-FINRA-2011-044 and should be submitted on or before December 14, 2011.

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

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2011-30255 Filed 11-22-11; 8:45 am]

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65779; File No. SR-PHLX-2011-152]

#### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Perform a Test of Routing Functionality**

November 17, 2011.

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 November 10, 2011, NASDAQ OMX PHLX LLC (the "Exchange" or "PHLX") filed with the Securities and Exchange Commission ("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**

PHLX is filing this proposed rule change to allow a limited use of its broker-dealer affiliate, Nasdaq Execution Services LLC ("NES"), to perform a test of routing functionality to be introduced by NASDAQ OMX PSX ("PSX"). PHLX proposes to implement the rule change prior to November 14, 2011. 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 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

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

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

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**

As provided in Rule 3315, PSX recently adopted rules that will allow it to route orders to other trading venues for execution.<sup>3</sup> Routing will be performed by NES, a registered broker-dealer that is an affiliate of the Exchange. In order to ensure that the routing functionality is operating properly prior to making it available to members, the Exchange proposes to use NES to perform test trades in an actual security, so as to track the performance of the systems to be used by the Exchange from order entry to clearance and settlement.

The test will be performed through two buy orders for 100 shares in a highly liquid security, such as the Power Shares QQQ Trust. Upon the execution of each buy order, NES will enter an offsetting sell order in the same security for the same quantity, in order to close out the test position and minimize financial impact on the Exchange. For the buy orders, NES will submit a routable marketable limit order with a time-in-force of Immediate or Cancel to the Exchange, with instructions to route to a directed away market. The Exchange will then deliver the order to NES, as the routing broker, which will route to the designated away market and receive an execution back. The first offsetting sell order will be handled in a similar manner. The second offsetting sell order will be executed at the Exchange itself, to ensure that the Exchange's systems are correctly distinguishing between routed and non-routed trades. To the extent that the offsetting trades require the Exchange to pay out funds, the funds will be provided out of the cash accounts of the Exchange; to the extent that the trades result in a profit, the funds will be deposited in the cash accounts of the Exchange.

**2. Statutory Basis**

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(5) of the Act,<sup>5</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 will allow it to perform adequate testing of its systems for routing member orders before such systems become operational. The Exchange believes that adequate testing of market functionality is an important component of the operation of the national market system.

*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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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 Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to

conduct a limited test to assess the performance of its routing functionality and related systems prior to implementation and use by its members. The Exchange believes that a limited test prior to the launch of its routing functionality will assist the Exchange in uncovering and fixing any potential "bugs" so as to increase the likelihood of a successful implementation. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to conduct a limited test without undue delay to ensure that its routing functionality and related systems are operating properly prior to implementation. Therefore, the Commission designates the proposal operative upon filing.<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.

**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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-152 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-2011-152. This file number should be included on the subject line if email 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/>

<sup>8</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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>3</sup> Securities Exchange Act Release No. 65469 (October 3, 2011), 76 FR 62486 (October 7, 2011) (SR-Phlx-2011-108).

<sup>4</sup> 15 U.S.C. 78f.

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

*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 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-2011-152 and should be submitted on or before December 14, 2011.

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

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65781; File No. SR-CBOE-2011-101]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify That CBSX Will Process Only Round-Lot Orders of HOLDRS

November 17, 2011.

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 November 15, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("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

The Exchange proposes to amend Rule 52.8 to clarify that CBOE Stock Exchange ("CBSX"), CBOE's stock trading facility, will only process round-lot orders<sup>3</sup> of HOLDRS Trust Issued Receipts ("HOLDRS") that trade on CBSX. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission.

#### 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 self-regulatory organization 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 those 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 parts of such statements.

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

###### 1. Purpose

Rule 52.8 states that odd-lot orders (including the odd-lot portion of a mixed-lot order) are processed in the same manner as are round-lot orders, except (i) If an incoming odd-lot order trades against a quote in the CBSX Book, the new quantity remaining in the quote will be rounded down to the nearest lower round-lot amount (zero or multiple of 100) for display purposes, with the remaining odd-lot amount being cancelled, or (ii) if an incoming order trades against a limit order resting on the CBSX Book and an odd-lot amount remains from the limit order resting on the CBSX Book, that odd-lot amount will remain in the system eligible for execution but will not be displayed.

<sup>3</sup> A "round-lot" order is an order for a quantity that is a multiple of 100 (e.g., 100, 400, 1200). An "odd-lot" order is an order for a quantity that is less than 100. A "mixed-lot" order is an order for a quantity that is greater than 100 but not a multiple of 100 (e.g., 135, 372, 1126).

HOLDRS are Trust Issued Receipts that trade on CBSX and represent an investor's beneficial ownership of a specified group of stocks in various industries, sectors or groups.<sup>4</sup> Currently, CBSX processes odd-lot and mixed-lot orders of HOLDRS in accordance with Rule 52.8, as described above. However, the prospectuses describing the terms of HOLDRS provide that investors may only acquire, hold, transfer, and surrender a round-lot of HOLDRS.<sup>5</sup> The purpose of the proposed rule change is to amend Rule 52.8 to state that CBSX will only process round-lot orders of HOLDRS that trade on CBSX in accordance with the trading terms of HOLDRS. CBSX will no longer accept odd-lot or mixed-lot orders of HOLDRS it receives.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and in general to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change serves to foster investor protection by ensuring that investors not only are aware of this restriction on transactions in HOLDRS but also comply with this restriction going forward, as CBSX will no longer accept transactions that do not.

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

CBOE 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 solicited or received with respect to the proposed rule change.

<sup>4</sup> The following is a list of current outstanding HOLDRS: Biotech (BBH), Broadband (BDH), B2B Internet (BHH), Europe 2001 (EKH), Internet (HHH), Internet Architecture (IAH), Internet Infrastructure (IIH), Market 2000+ (MKH), Oil Services (OIH), Pharmaceutical (PPH), Regional Bank (RKH), Retail (RTH), Semiconductor (SMH), Software (SWH), Telecom (TTH), Utilities (UTH), and Wireless (WMH).

<sup>5</sup> The prospectuses also provide, however, that bid and ask prices are quoted per single HOLDR.

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

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

<sup>9</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.