

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66754; File No. SR-Phlx-2012-41]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing of Non-Customer Orders

April 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 27, 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 Exchange Rule 1080(m), Order Routing, to expand the routing capabilities of certain options orders that are eligible for electronic routing to other market centers by the Exchange’s fully automated options trading system, PHLX XL.³ Under the proposal, non-customer FIND orders (as defined below) that are received during open trading will now be eligible for routing to other market centers for execution.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to expand the routing capabilities of option orders that are eligible for routing to other market centers when the Exchange cannot execute such orders at the National Best Bid or Offer (“NBBO”), by making non-customer FIND orders eligible for routing during open trading. In addition, the Exchange is revising the definition of the term “SRCH order” to be clear that only customer SRCH orders will continue to be eligible for routing.

Current Rule

Currently, Rule 1080(m) states that the PHLX XL system will route only customer⁴ FIND⁵ and SRCH⁶ orders to away markets. For purposes of this rule, the term “customer” includes a “professional” customer as defined in Exchange Rule 1000(b)(14).⁷ FIND and

⁴ For purposes of this proposal, the term “customer” means a person or entity that is neither a broker-dealer nor a direct or indirect affiliate of a broker-dealer.

⁵ A FIND order is currently defined as an order that is routable upon receipt. A FIND order received during open trading that is not marketable against the PHLX best Bid/Offer “PBBO” or the Away Best Bid/Offer (“ABBO”) will be entered into the limit order book at its limit price. The FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process. See Exchange Rule 1080(m)(iv)(B).

⁶ A SRCH order is an order that is routable at any time. A SRCH order received during open trading that is not marketable against the PBBO or the ABBO will be entered into the Phlx XLII book. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market. See Exchange Rule 1080(m)(iv)(C).

⁷ The term “professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g) (except with respect to all-or-none orders, which will be treated like customer orders, except that orders submitted pursuant to Rule 1080(n) for the beneficial account(s) of professionals with an all-or-none designation will be treated in the same manner as off-floor broker-dealer orders), 1033(e), 1064.02 (except professional orders will be considered customer orders subject to facilitation), 1080(n) and 1080.08 as well as Options Floor Procedure Advices B-6, B-11 and F-5. Member

SRCH Orders designated as available for routing are first checked by the PHLX XL system for available contracts for potential execution on the Exchange. After checking the PHLX XL system for available contracts, orders are sent to other available market centers for potential execution. When checking the book, the PHLX XL system seeks to execute at the price at which it would send the order to a destination market center. In situations where the Exchange’s disseminated bid or offer is inferior to the NBBO price, the PHLX XL system will contemporaneously route an order marked as an Intermarket Sweep Order (“ISO”)⁸ to each away market disseminating prices better than the Exchange’s price, for the lesser of: (a) The disseminated size of such away markets, or (b) the order size and, if order size remains after such routing, trade at the Exchange’s disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted after routing, they are posted on the Exchange’s limit order book. Whether and under what circumstances such unexecuted contracts are re-routed depends upon the order’s status as a FIND or SRCH order, as defined above.⁹

The Proposal

The Exchange is proposing to add non-customer FIND orders as a new category of orders that are eligible for routing. Non-customer FIND orders would be eligible for routing only during open trading, and not during the Opening Process.¹⁰ Customer FIND and SRCH orders received prior to the opening would continue to be treated as they are currently under the rule, *i.e.*, both are eligible for routing during the Opening Process.

Under the current rule and practice, a customer FIND order received during open trading that is not marketable against the PHLX Best Bid or Offer (“PBBO”) or the Away Best Bid or Offer (“ABBO”) is entered into the limit order book at its limit price. If the FIND order is marketable against the ABBO, it is routed to markets disseminating the ABBO. If the order still has remaining

organizations must indicate whether orders are for professionals. See Exchange Rule 1000(b)(14).

⁸ An ISO is a limit order for an options series that is identified as an ISO when routed to an away market center and, simultaneously with the routing of the order, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO, with such additional orders also marked as ISOs.

⁹ See *supra* notes 5 and 6.

¹⁰ See Exchange Rule 1017(l)(iii).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ This proposal refers to “PHLX XL” as the Exchange’s automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as “Phlx XL II.” See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from “Phlx XL II” to “PHLX XL” for branding purposes.

size after routing, it will be entered into the limit order book. Such FIND order, or its remainder, is not eligible for routing again until the next time the affected option series is subject to a new Opening Process. Under the proposal, non-customer FIND orders would be treated in the same manner as customer FIND orders, except that non-customer FIND orders would not be eligible for routing during the Opening Process. The Exchange is proposing to route only customer FIND orders during the opening process to ensure that customers retain priority respecting all liquidity available as part of the Opening Process whether that liquidity is on PHLX or on another exchange. During open trading this is not an issue because two FIND orders will not be received at precisely the same time; generally, a customer FIND order would always have priority over a non-customer FIND order.

Unlike the treatment of FIND orders, the treatment of SRCH orders is not subject to change under the proposal. Currently, Exchange Rule 1080(m) states that the PHLX XL system will route only customer FIND and SRCH orders. While the proposed rule change would expand routable FIND orders to include non-customer FIND orders, the proposal would re-define a SRCH order as a customer order that is routable at any time. The purpose of this change is to ensure that only customer SRCH orders continue to be eligible for routing. Just as today, non-customer SRCH orders will not be eligible for routing. Non-customer orders received that are designated as SRCH orders will be placed on the limit order book if not executed on the Exchange upon receipt.

The Exchange notes that very few customers use the SRCH order type. Additionally, the Exchange has noted that there is no demand for the use of SRCH orders on the part of non-customers, as these participants tend to be sensitive to, and prefer to control, the charges incurred when their order is routed. The Exchange believes, however, that non-customers submitting their orders to the Exchange will use FIND orders. FIND orders allow participants to access potential liquidity on away markets while enabling them to manage expectations of the number of times their orders are routed. This helps participants to plan for and ascertain the fees they would incur each time their order is routed. Thus, the Exchange believes that the expansion of the FIND order to non-customer participants is appropriate and useful in the processing of non-customer orders seeking the best execution in the marketplace as a whole.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general and with Section 6(b)(5) of the Act,¹² in that it is designed 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act¹³ in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposal would expand the routing capabilities of certain orders that are eligible for routing to other exchanges, despite the fact that such other exchanges are competitors of the Exchange. This benefits investors because the Exchange's system will route to away markets at better prices.

The proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system by enabling non-customer orders to have access to liquidity on other exchanges each time they submit a FIND order to the Exchange, providing for best executions in the national market system.

The Exchange further believes that the proposed rule change does not permit unfair discrimination between customers, issuers, brokers, or dealers. FIND orders submitted after the Opening Process, by either customers or non-customers, will be handled by the PHLX XL system in the same manner and will be provided with equal access to liquidity on other exchanges. This treatment of customer and non-customer FIND orders ensures that there is no unfair discrimination between customers and non-customers submitting such orders to the Exchange after the Opening Process.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(8).

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.¹⁴ 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 email to rule-comments@sec.gov. Please include File No. SR-Phlx-2012-41 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 No. SR-Phlx-2012-41. 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

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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 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 No. SR-Phlx-2012-41 and should be submitted on or before May 3, 2012.

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

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-8778 Filed 4-11-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66765; File No. SR-NASDAQ-2012-043]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Establish the Market Quality Program

April 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 23, 2012, The NASDAQ Stock Market LLC ("NASDAQ") 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 substantially prepared by NASDAQ. On March 29, 2012, the Exchange submitted

Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ (also known as the "Exchange") is filing with the Commission a proposal to add new Rule 5950 (Market Quality Program) to enable market makers that voluntarily commit to and do in fact enhance the market quality (quoted spread and liquidity) of certain securities listed on the Exchange to qualify for a fee credit pursuant to the Exchange's Market Quality Program, and to exempt the Market Quality Program from Rule 2460 (Payment for Market Making). NASDAQ believes this voluntary program will benefit investors, issuers or companies, and market participants by significantly enhancing the quality of the market and trading in such listed securities.

The Market Quality Program set forth in Rule 5950 will be effective for a one-year pilot period beginning from the date of implementation of the program. During the pilot, NASDAQ will periodically provide information to the Commission about market quality in respect of the Market Quality Program.

The text of the proposed rule change is available from NASDAQ's Web site at <http://nasdaq.cchwallstreet.com/Filings/>, at NASDAQ's principal office, on the Commission's Web site at www.sec.gov, 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, NASDAQ 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. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

³ In Amendment No. 1, the Exchange made a technical amendment to Item I of Exhibit 1 to delete an erroneous reference to the NASDAQ Options Market and replace it with a reference to the Exchange.

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

1. Purpose

The purpose of the filing is to propose new Rule 5950 to enable Market Makers⁴ that enhance the market quality of certain securities listed on the Exchange (known as "targeted securities") and thereby qualify for a fee credit pursuant to the Market Quality Program ("MQP" or "Program"), and to exempt the Program from Rule 2460.

Rule 5950 will be effective for a one-year pilot period. The pilot period will commence when the Market Quality Program is implemented by the Exchange and an MQP Company⁵ and one or more related Market Makers are accepted into the MQP in respect of a security listed pursuant to the Program ("MQP Security").⁶ The pilot program will end one year after implementation.⁷

⁴ The term "Market Maker" is defined in Rule 5005(a)(24) as a dealer that, with respect to a security, holds itself out (by entering quotations in the NASDAQ Market Center) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such. Proposed Rule 5950(e)(5).

⁵ The term "MQP Company" is defined in proposed Rule 5950(e)(7) as a fund (Exchange Traded Fund) sponsor or other entity that lists one or more MQP Securities on NASDAQ pursuant to the Market Quality Program. The term "Company" is defined in Rule 5005(a)(6) as the issuer of a security listed or applying to list on NASDAQ, and may include an issuer that is not incorporated, such as, for example, a limited partnership.

⁶ The term "MQP Security" is defined in proposed Rule 5950(e)(1) as a security that meets all of the requirements to be listed on NASDAQ as an Exchange Traded Fund, Linked Security, or Trust Issued Receipt pursuant to Rules 5705, 5710, or 5720, respectively.

⁷ The Exchange believes that, based on discussions with the Financial Industry Regulatory Authority ("FINRA"), FINRA intends to file an immediately effective rule change that would exempt from FINRA Rule 5250 Exchange programs that are approved by the Commission. The Exchange notes that FINRA Rule 5250 does not preclude the Exchange from any action, but precludes FINRA members (not all Exchange members are FINRA members) from directly or indirectly accepting payment or consideration from an issuer of a security for acting as a market maker. See Securities Exchange Act Release Nos. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (SR-FINRA-2009-036) (order approving proposal to adopt NASD Rule 2460 without substantive change into the Consolidated FINRA Rulebook as Rule 5250); and 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997) (SR-NASD-97-29) (order approving adoption of NASD Rule 2460; FINRA Rule 5250 and NASDAQ Rule 2460 are based on NASD Rule 2460) ("1997 order"). Being mindful of the concern in the 1997 order about investor confidence and market integrity, the Exchange designed the MQP Program to be highly transparent with: clear public notification requirements; clear entry, continuation, and termination requirements; clear market maker accountability standards; and, perhaps most importantly, clear market quality (liquidity) enhancement standards that benefit investors and market participants.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.