

proposed rule change confers upon Market-Makers are offset by the continued, and for PMMs, LMMs, DPMs and e-DPMs increased, responsibilities to provide significant liquidity to the market to the benefit of market participants. In addition, the proposal allows flexibility with respect to PMMs', LMMs', DPMs' and e-DPMs' assignments that contain relatively fewer series and reduces unnecessary rigidity in DPMs' quoting obligations with respect to singly listed series.

The proposed rule change also protects investors and the public interest by creating more uniformity and consistency among the Exchange's rules related to Market-Maker quoting obligations and deleting a provision regarding functionality that is no longer used by the Exchange.

Finally, the proposed rule change allows the Exchange to require its Market-Makers to provide continuous quotes in a percentage of series in their appointed classes for a portion of the trading day that is the same as that of market-makers at other exchanges, which the Exchange believes will ultimately make the Exchange more competitive and help remove impediments to and promote a free and open market.

For the foregoing reasons, the Exchange believes that the balance between the benefits provided to Market-Makers and the obligations imposed upon Market-Makers by the proposed rule change is appropriate.

#### *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. In this regard and as indicated above, the Exchange notes that the proposed rule change is comparable to current rules at competing options exchanges related to market-maker continuous quoting obligations<sup>17</sup> and will ensure fair competition among the options exchanges with respect to these obligations.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. Impose any significant burden on competition; and

C. 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)<sup>18</sup> of the Act and Rule 19b-4(f)(6)<sup>19</sup> thereunder.

At any time within 60 days of the filing of this 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-CBOE-2012-064 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-CBOE-2012-064. 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 10:00 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-CBOE-2012-064 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

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

[FR Doc. 2012-17348 Filed 7-16-12; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67413; File No. SR-NASDAQ-2012-084]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rule 4751(f)(7) Concerning the Processing of the Price To Comply Order**

July 11, 2012.

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 July 2, 2012, The NASDAQ Stock Market LLC ("NASDAQ" 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 modify how the processing of a Price to Comply

<sup>20</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>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> See *supra* note 3.

Order under Rule 4751(f)(7) operates based on the method of entry.

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.

\* \* \* \* \*

#### 4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

(a)–(e)

(f) The term “Order Type” shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(6) No change.

(7) “Price to Comply Order” are orders that, if, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order entered through an OUCH port *that crosses the market will [may] be adjusted once and, depending on the election of the member firm, either rest on the book or [multiple times depending upon the election of the member firm and changes to the prevailing NBBO] be canceled if the previously-locking price becomes available. The displayed and undisplayed prices of a Price to Comply order entered through an OUCH port that locks the market will be adjusted once and, depending on the election of the member firm, either rest on the book, be canceled, or adjusted a second time if the previously-locking price becomes available. The displayed and undisplayed prices of a Price to Comply order entered through a RASH port may be adjusted multiple times, depending upon changes to the prevailing NBBO.*

(8)–(14) No change.

(g)–(i) No change.

\* \* \* \* \*

#### 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

NASDAQ is proposing to modify how OUCH port-entered Price to Comply Orders<sup>3</sup> will operate. Price to Comply Orders, as described in Rule 4751(f)(7), allow member firms to quote aggressively and still comply with the locked and crossed markets provisions of Regulation NMS.<sup>4</sup> NASDAQ recently amended Rule 4751(f)(7) to clarify the effect that the methods of order entry have on the processing of Price to Comply Orders.<sup>5</sup> The rule change clarified that OUCH port-entered Price to Comply Orders are now eligible for price adjustment either once or multiple times, depending on the election of the member firm.<sup>6</sup> The Exchange noted in the rule change that offering OUCH port users the ability to have NASDAQ reprice a Price to Comply Order multiple times will serve to reduce the excessive volume of orders entered into the System<sup>7</sup> and ultimately canceled.<sup>8</sup> Accordingly, a Price to Comply Order entered through an OUCH port that a member firm has designated for multiple price adjustment will be adjusted more than once in response to changes in the prevailing National Best

<sup>3</sup> “Price to Comply Order” is an order such that, if, at the time of entry, it would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers).

<sup>4</sup> 17 CFR 242.610.

<sup>5</sup> See Securities Exchange Act Release No. 67024 (May 18, 2012), 77 FR 31055 (May 24, 2012) (SR–NASDAQ–2012–060).

<sup>6</sup> Member firms must designate each OUCH protocol order port that it wishes to use with the multiple price adjustment functionality, and such ports will also be designated for automatic cancellation or “kick out” of other order types whose price was adjusted upon entry to prevent a violation of Rule 610(d) of Regulation NMS. In the absence of designation from a member firm, the Exchange will default the member’s OUCH port(s) to single price adjustment.

<sup>7</sup> As defined by Rule 4751(a).

<sup>8</sup> The Exchange noted that the OUCH protocol is used by member firms that are able to submit a large volume of orders. Such member firm will often submit a Price to Comply Order at an aggressive price that it anticipates will be at the NBBO, but it is not submitted at the NBBO and is not executed after repricing because the market does not move to the adjusted order price. In such cases, the member firm will typically submit additional aggressive orders, which likewise are not executed. *Supra* note 5.

Bid and Offer (“NBBO”) to move the displayed price closer to the original entered price and display the best possible price consistent with the provisions of Regulation NMS. Prior to the clarifying rule change, OUCH port-entered Price to Comply Orders that would lock or cross the market would be adjusted once and thereafter rest on the book. The Exchange has not implemented the recently-adopted changes<sup>9</sup> so that it could subsequently modify how the OUCH port-entered Price to Comply Orders will operate under Rule 4751(f)(7), as described below.

The Exchange has determined to modify Rule 4751(f)(7) so that a Price to Comply Order entered via an OUCH port designated for multiple price adjustment that would lock the market can be adjusted a maximum of two times—once upon entry and once again to move the displayed price to the original entered price when it becomes permissible under Regulation NMS to do so, thereby displaying the best possible price consistent with the provisions of Regulation NMS. Under the proposed rule change, such Price to Comply Orders that would cross the market upon entry would be price adjusted once upon entry to display at a permissible level and thereafter cancelled when the previously locking level becomes available. This cancellation allows the member to resubmit its order at a price more aggressive than the previously locking price should the member still desire to do so.<sup>10</sup> As such, and unlike as described in the recent rule change, the process applied to OUCH ports designated for multiple price adjustment will be similar to, yet different than, the process applied to RASH-entered Price to Comply Orders.

NASDAQ is not changing how Price to Comply Orders entered via an OUCH port not designated for multiple price adjustment operate. Such orders will continue to be adjusted once and thereafter remain on the book. Likewise, NASDAQ is not proposing to change how price adjusted orders are treated in terms of priority. Like RASH-entered Price to Comply Orders, each time the OUCH-entered order is price adjusted it will receive a new timestamp for purposes of determining its price/display/time priority.<sup>11</sup> As such, an

<sup>9</sup> *Supra* note 5.

<sup>10</sup> Similarly, orders other than Price to Comply Orders that are re-priced on entry due to Regulation NMS and submitted via OUCH ports designated for multiple price adjustment of Price to Comply Orders will be cancelled when the previously locking price level becomes available.

<sup>11</sup> As described in Rule 4757(a)(1).

OUCH-entered Price to Comply Order that is repriced upon entry will initially be prioritized among non-displayed orders at the locking price based on its time of entry. Upon the second repricing of an OUCH-entered Price to Comply Order that is entered at a locking price, the order will be prioritized among displayed orders at the previously locking price based on its time of repricing and thus is treated as a new displayed order in terms of priority. There is no guarantee that the OUCH-entered Price to Comply Order will receive priority amongst displayed orders when it becomes actionable after repricing, as other displayed orders may be entered before the Price to Comply Order is repriced. This priority treatment is identical to the treatment provided to RASH-entered Price to Comply Orders that are price adjusted. The Exchange will provide public notice five business days prior to the implementation date of the changes proposed herein, together with the changes proposed in the recent rule filing<sup>12</sup> not modified by this proposal, and such implementation date will be no later than thirty calendar days from the date of filing this proposal with the Commission.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>13</sup> in general, and with Section 6(b)(5) of the Act<sup>14</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. NASDAQ believes this proposal is consistent with the Exchange Act and, specifically, Rules 610 and 611 of Regulation NMS in that it is designed to prevent orders from locking and crossing the market or trading through protected quotes, while also promoting a more efficient market. In this regard, NASDAQ believes that the proposed rule change will promote the efficient use of the Exchange by reducing the number of orders entered into the market and ultimately canceled. The proposed rule change will

accomplish this by providing the member firms that tend to enter the greatest number of such orders via OUCH ports an option to have the Exchange reprice two times a single order that would lock the market upon entry. NASDAQ also believes that permitting a high volume user the option to continue to have the Exchange reprice its Price to Comply Order only upon order entry, when appropriate, will ensure member firms with internal systems that act in reliance of this function will continue to operate without disruption.

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

The Exchange 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

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>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</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. The Exchange has provided the Commission written notice of its 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.

## 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-NASDAQ-2012-084 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-2012-084. 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 10:00 a.m. and 3:00 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2012-084 and should be submitted on or August 7, 2012.

<sup>12</sup> *Supra* note 5.

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67399; File No. SR-Phlx-2012-94]

### 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

July 11, 2012.

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 July 9, 2012, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") 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 Exchange Rule 1080(n), Price Improvement XL ("PIXL<sup>SM</sup>") to extend, through July 18, 2013, 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 July 18, 2012.

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, 2013.

##### Background

The Exchange adopted PIXL in October, 2010 as a price-improvement mechanism on the Exchange.<sup>3</sup> PIXL is a component of the Exchange's fully automated options trading system, PHLX XL<sup>®</sup> that allows an Exchange member (an "Initiating Member") to electronically submit for execution an order it represents as agent on behalf of a public customer, broker dealer, or any other entity ("PIXL Order") against principal interest or against any other order it represents as agent (an "Initiating Order") provided it submits the PIXL Order for electronic execution into the PIXL Auction ("Auction") pursuant to the Rule.

An Initiating Member may initiate a PIXL Auction by submitting a PIXL Order in one of three ways:

- First, the Initiating Member could submit a PIXL Order specifying a single price at which it seeks to execute the PIXL Order (a "stop price").
- Second, an Initiating Member could submit a PIXL Order specifying that it is willing to automatically match as principal or as agent on behalf of an Initiating Order the price and size of all trading interest and responses to the PIXL Auction Notification ("PAN," as described below) ("auto-match"), in which case the PIXL Order will be stopped at the National Best Bid/Offer ("NBBO") on the Initiating Order side of the market (if 50 contracts or greater) or, if less than 50 contracts, the better of: (i) the PHLX Best Bid/Offer ("PBBO") price on the opposite side of the market from the PIXL Order improved by at least one

minimum price improvement increment, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO and that such price is at least one increment better than the limit of an order on the book on the same side as the PIXL Order.

- Third, an Initiating Member could submit a PIXL Order specifying that it is willing to either: (i) stop the entire order at a single stop price and auto-match PAN responses, as described below, together with trading interest, at a price or prices that improve the stop price to a specified price above or below which the Initiating Member will not trade (a "Not Worse Than" or "NWT" price); (ii) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop price; or (iii) stop the entire order at the NBBO on the Initiating Order side (if 50 contracts or greater) or the better of: (A) the PBBO price on the opposite side of the market from the PIXL Order improved by one minimum price improvement increment, or (B) the PIXL Order's limit price (if the order is a limit order) on the Initiating Order side provided in either case that such price is at or better than the NBBO (if for less than 50 contracts), and auto-match PAN responses and trading interest are at a price or prices that improve the stop price up to the NWT price. In all cases, if the PBBO on the same side of the market as the PIXL Order represents a limit order on the book, the stop price must be at least one minimum price improvement increment better than the booked limit order's limit price.

After the PIXL Order is entered, a PAN is broadcast and a one-second blind Auction ensues. Anyone may respond to the PAN by sending orders or quotes. At the conclusion of the Auction, the PIXL Order will be allocated at the best price(s).

Once the Initiating Member has submitted a PIXL Order for processing, such PIXL Order may not be modified or cancelled. Under any of the above circumstances, the Initiating Member's stop price or NWT price may be improved to the benefit of the PIXL Order during the Auction, but may not be cancelled.

After a PIXL Order has been submitted, a member organization submitting the order has no ability to control the timing of the execution. The execution is carried out by the Exchange's PHLX XL<sup>®</sup> automated options trading system and pricing is determined solely by the other orders

<sup>3</sup> See Securities Exchange Act Release No. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR-Phlx-2010-108) (Order Granting Approval to a Proposed Rule Change Relating to a Proposed Price Improvement System, Price Improvement XL); Securities Exchange Act Release No. 65043 (August 5, 2011), 76 FR 49824 (August 11, 2011) (SR-Phlx-2011-104) (Extending Pilot for Price Improvement System, Price Improvement XL).

<sup>17</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.