

retail order flow to a public market. The Exchange also believes applying standard non-Retail Order rates to Retail Orders that execute against the Book or that are routed away from the Exchange and executed on another market is reasonable, equitable and not unfairly discriminatory because these are the rates that would apply to such orders, but for the Retail Order designation. The Exchange also believes that not charging RLPs that satisfy the percentage requirement of NYSE Rule 107(C)(f) for their executions of RPIs is reasonable, equitable and not unfairly discriminatory because it will incentivize member organizations to become RLPs and therefore could result in greater price improvement for Retail Orders. Similarly, the Exchange believes that not charging non-RLP member organizations that execute an ADV of at least 500,000 shares of RPIs during the month for their executions of RPIs is reasonable, equitable and not unfairly discriminatory because it will incentivize such non-RLPs to submit RPIs for interaction with Retail Orders. Conversely, the Exchange believes that charging RLPs and non-RLP member organizations that do not satisfy the percentage requirements of NYSE Rule 107(C)(f) and the 500,000 share ADV threshold, respectively, is reasonable, equitable and not unfairly discriminatory because it will incentivize RLPs and non-RLPs to submit RPIs and, therefore, contribute to robust amounts of RPI liquidity being available for interaction with the Retail Orders submitted by RMOs.

While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The pricing proposed herein, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would result in better prices for retail investors.

#### *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 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*

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>16</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>17</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE.

At any time within 60 days of the filing of such 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-NYSE-2012-30 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-NYSE-2012-30. 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 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-NYSE-2012-30 and should be submitted on or before August 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-18894 Filed 8-1-12; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67517; File No. SR-BX-2012-057]

### **Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Post-Only Order Type on BX Options**

July 27, 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 24, 2012, NASDAQ OMX BX, Inc. ("BX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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.

<sup>18</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>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

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

A proposal for the BX Options market ("BX Options") to add an additional feature to the Post-Only Order type.

The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com/>, at BX'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 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 III 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 Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

A Post-Only Order is an order that will not remove liquidity from the System and is to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market.<sup>3</sup> Currently, Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) If a Post-Only Order would lock or cross an order on the System, the order will be re-priced to \$.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the National Best Bid or Offer ("NBBO") as reflected in the protected quotation of another market center, the order will be handled pursuant to Chapter VI, Section 7(b)(3)(C).<sup>4</sup> Post-Only Orders received

prior to the opening cross or after market close will be rejected. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled or Immediate or Cancel.

At this time, the Exchange proposes to permit firms to have their Post-Only Orders returned whenever the order would lock or cross the NBBO.<sup>5</sup> Similarly, if the Post-Only Order would be placed on the book at a price other than its limit price, if the Participant so chooses, it will be returned. This includes situations where the Post-Only Order would lock or cross another order on the System, but also covers any situation where order is placed on the book at a price other than its limit price. The Exchange believes that this implementation will satisfy the needs of its Participants, because it will give them greater control over the circumstances in which their orders are executed. The Exchange will announce the implementation date to its membership by Options Trader Alert.

##### **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 Section 6(b)(5) of the Act<sup>7</sup> in particular, 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. BX believes that permitting Participants to have Post-Only Orders returned is consistent with just and equitable principles of trade and protects investors and the public interest, because Participants, who have requested this feature, may prefer to submit the order to another options exchange, for fee or other reasons, rather than leave the order on BX Options. Additionally, a Participant may expect the order to post at its limit price based on its view of the current state of the market. Due to its dynamic nature, however, the state of the market may change by the time the order is received

Through and Locked and Crossed Markets restrictions. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions.

<sup>5</sup> If the Participant does not affirmatively elect the return feature, the default setting is that the Post-Only Order will not be returned by the new feature, but will instead be handled under the existing rule.

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

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

by BX Options, resulting in the order being placed on the book at a price other than its limit price. In this case, the Participant would rather have the order returned so that it can reevaluate the market and make a new routing decision. In order to accommodate this request, BX is proposing the new feature for returning Post-Only Orders. The purpose of the Post-Only Order is to avoid removing liquidity and the resulting execution costs; with the proposed ability to have the order returned, Participants should have greater control over the execution and display of such order.

#### *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*

Written comments were neither solicited nor received.

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

Because the 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> At any time within 60 days of the filing of such 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

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

<sup>9</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the 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.

<sup>3</sup> See BX Options Rules, Chapter VI, Section 1(e)(11). Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030) (Approving the establishment of the BX Options market).

<sup>4</sup> An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by the member as routable will be routed in compliance with applicable Trade-

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-BX-2012-057 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-BX-2012-057. 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 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-BX-2012-057 and should be submitted on or before August 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67515; File No. SR-Phlx-2012-96]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update the Trading Floor Qualification Examination

July 27, 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 13, 2012, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a 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

Phlx proposes to revise its floor qualification examination. Specifically, the Exchange proposes to delete obsolete questions, revise outdated questions and add several new questions.

The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com>, 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 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.

<sup>10</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.

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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to improve the Exchange's program for qualification of members by updating its floor qualification examination. The Exchange has employed a written floor qualification examination, which is required for persons seeking to act as members on the trading floor,<sup>3</sup> for many years. The examination was last amended in late 2010.<sup>4</sup>

At this time, the Exchange proposes to update the exam in a variety of ways. The exam would continue to be comprised of 100 questions, randomly and electronically selected from a question bank of approximately 172 questions. The floor qualification examination is administered by the Exchange's membership department, and requires a passing score of 70 during a 75 minute testing period.

In terms of outdated questions, the Exchange proposes to delete about 19 obsolete or confusing questions, mostly pertaining to manual trading, which is less prevalent today. The Exchange proposes to modify approximately 38 questions to make various minor corrections and clarifications reflecting changes over time. Similarly, the Exchange proposes to add approximately 17 new questions generally covering Qualified Contingent Cross Orders, Complex Orders, Remote Specialists, and price improvement.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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

<sup>3</sup> See Rules 620(a) and 901(c). See also Rule 1061 applicable to Floor Brokers.

<sup>4</sup> See Securities Exchange Act Release No. 63603 (December 22, 2010), 75 FR 82419 (December 30, 2010) (SR-Phlx-2010-180). See also Securities Exchange Act Release No. 33304 (December 9, 1993), 58 FR 65613 (December 15, 1993) (SR-Phlx-92-34).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).