

Penny Pilot Options. Additionally, the increased Firm fee narrows the differential as between Firms and Broker-Dealers. Further, the Exchange is offsetting the Firm fee increase with an increased opportunity to obtain the Electronic Firm Fee Discount of \$0.17 per contract by decreasing the Firm volume requirement. The increased Firm discount of \$0.17 per contract applies equally to all Firms. The Exchange does not believe that any of the proposed amendments impose a burden on competition as between market participants. The Exchange proposes to balance an increased fee applicable only to Firms with an increased opportunity for Firms to benefit from a discount.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>17</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-10 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-2013-10. 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 available publicly. All submissions should refer to File Number SR-Phlx-2013-10 and should be submitted on or before March 7, 2013.

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. 2013-03390 Filed 2-13-13; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68889; File No. SR-Phlx-2013-15]

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change for the Permanent Approval of a Pilot Program To Permit PSX To Accept Inbound Orders Routed by Nasdaq Execution Services LLC From the BX Equities Market**

February 8, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 6, 2013, NASDAQ OMX PHLX, LLC ("Exchange" or "Phlx") 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 self-regulatory organization. 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 is filing with the Commission a proposed rule change for the permanent approval of its pilot program to permit the NASDAQ OMX PSX facility of PHLX ("System") to accept inbound orders routed by Nasdaq Execution Services LLC ("NES") from the NASDAQ OMX BX Equities Market of NASDAQ OMX BX, Inc. ("BX").

**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.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

1. Purpose

In conjunction with BX providing outbound routing services to all markets using its affiliated routing broker, NES,<sup>4</sup> PHLX proposed that NES be permitted to route orders from BX to the Exchange on a pilot basis, subject to certain limitations and conditions, as described below.<sup>5</sup> The current pilot program expires March 30, 2013.<sup>6</sup>

NES is a broker-dealer and member of NASDAQ, PHLX and BX. NES provides all routing functions for The NASDAQ Stock Market ("NASDAQ"), BX and PHLX. BX, NASDAQ, PHLX and NES are affiliates. Accordingly, the affiliate relationship between PHLX and NES, its member, raises the issue of an exchange's affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.<sup>7</sup>

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, the Exchange previously proposed, and the Commission approved, limitations and conditions on NES's affiliation with the Exchange.<sup>8</sup> Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously proposed, and the Commission approved,<sup>9</sup> NES's affiliation with the Exchange to permit the Exchange to accept inbound orders that NES routes in its capacity as a

facility of NASDAQ, subject to the certain limitations and conditions. The Exchange now proposes to permit PHLX to accept inbound orders that NES routes in its capacity as a facility of BX on a permanent basis, subject to the limitations and conditions of this pilot:

- First, the Exchange and FINRA maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d-2 under the Act ("17d-2 Agreement").<sup>10</sup> Pursuant to the Regulatory Contract and the 17d-2 Agreement, FINRA is allocated regulatory responsibilities to review NES's compliance with certain Exchange rules.<sup>11</sup> Pursuant to the Regulatory Contract, however, PHLX retains ultimate responsibility for enforcing its rules with respect to NES.
- Second, FINRA monitors NES for compliance with the Exchange's trading rules, and collects and maintains certain related information.<sup>12</sup>
- Third, FINRA provides a report to the Exchange's chief regulatory officer ("CRO"), on a quarterly basis, that: (i) Quantifies all alerts (of which FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules.
- Fourth, the Exchange has in place PHLX Rule 985, which requires The NASDAQ OMX Group, Inc., as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

The Exchange has met all the above-listed conditions. By meeting the above conditions, the Exchange has set up mechanisms that protect the independence of the Exchange's

regulatory responsibility with respect to NES, as well as demonstrate that NES cannot use any information advantage it may have because of its affiliation with the Exchange. Because the Exchange has met all the above-listed conditions, it now seeks permanent approval of this inbound routing relationship. The Exchange will continue to comply with the conditions 1-4 stated above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>13</sup> in general, and with Sections 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, because the proposed rule change will allow the Exchange to continue to receive inbound orders from NES, acting in its capacity as a facility of BX, in a manner consistent with prior approvals and established protections. The Exchange believes that these conditions establish mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as ensure that NES cannot use any information it may have because of its affiliation with the Exchange to its advantage.

*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, as amended. Permanent approval of the current pilot program does not raise any issues of intramarket competition because it involves inbound routing from an affiliated exchange. Nor does it result in a burden on competition among exchanges, because there are many competing exchanges that provide routing services, including through an affiliate.

<sup>4</sup> See Securities Exchange Act Release No. 65470 (October 3, 2011), 76 FR 62489 (October 7, 2011) (SR-BX-2011-048).

<sup>5</sup> See Securities Exchange Act Release No. 65553 (October 13, 2011), 76 FR 64987 (October 19, 2011) (SR-Phlx-2011-138).

<sup>6</sup> See Securities Exchange Act Release No. 67996 (October 5, 2012), 77 FR 62282 (October 12, 2012) (SR-Phlx-2012-118).

<sup>7</sup> See Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR-NASDAQ-2008-098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR-NASDAQ-2010-100).

<sup>8</sup> See Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR-PHLX-2010-79).

<sup>9</sup> *Id.*

<sup>10</sup> 17 CFR 240.17d-2.

<sup>11</sup> NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

<sup>12</sup> Pursuant to the Regulatory Contract, both FINRA and the Exchange collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of BX routing orders to PHLX) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations.

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

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

*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**

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 Exchange consents, the Commission shall: (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-Phlx-2013-15 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-2013-15. 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, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also 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-2013-15 and should be submitted on or before March 7, 2013.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-03396 Filed 2-13-13; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68888; File No. SR-CBOE-2012-120]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change To Establish a Pilot Program, as Modified by Amendment Nos. 2, 3, and 4, To List and Trade a P.M.-Settled S&P 500 Index Option Product**

February 8, 2013.

**I. Introduction**

On December 5, 2012, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to permit the listing and trading of P.M.-settled options on the Standard & Poor's 500 Index ("S&P 500"). On December 17, 2012, the Exchange filed Amendments No. 1 and 2 to the proposed rule change.<sup>3</sup> The proposed rule change was published for comment

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

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

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

<sup>3</sup> The Exchange withdrew Amendment No. 1 on December 17, 2012. In Amendment No. 2, the Exchange represented that it does not believe that CBOE Trading Permit Holders will experience significant operations issues when trading P.M.-settled S&P 500 Index products on CBOE.

in the **Federal Register** on December 26, 2012.<sup>4</sup> On January 4, 2013, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>5</sup> On January 29, 2013, the Exchange filed Amendment No. 4 to the proposed rule change.<sup>6</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change, as modified, on a twelve-month pilot basis.

**II. Description of the Proposal**

The Exchange is proposing to amend its rules to permit it to list and trade, on a pilot basis, cash-settled S&P 500 index options with third-Friday-of-the-month ("Expiration Friday") expiration dates for which the exercise settlement value will be based on the index value derived from the closing prices of component securities ("P.M.-settled"). The proposed contract (referred to as "SPXPM") is currently traded on a pilot basis on C2 Options Exchange, Incorporated ("C2") (the "C2 Pilot Program").<sup>7</sup> CBOE is proposing to list and trade SPXPM on the same terms as the C2 Pilot Program, except that CBOE intends to list and trade SPXPM for an initial pilot period of twelve months.<sup>8</sup> CBOE and C2 will not concurrently list and trade SPXPM. In other words, C2 (which is wholly owned by the same corporation, CBOE Holdings, Inc., as CBOE) will cease trading SPXPM upon the introduction of SPXPM trading on CBOE. CBOE initially represented that it intended to begin trading SPXPM on or around January 22, 2013, but in Amendment No. 4, CBOE instead represented its intent to begin trading SPXPM on February 19, 2013.<sup>9</sup>

CBOE will list and trade SPXPM in a manner similar to how SPXPM currently is listed and traded on C2. In

<sup>4</sup> See Securities Exchange Act Release No. 68457 (December 18, 2012), 77 FR 76135 (December 26, 2012) ("Notice"). An amendment to the Notice was published in the **Federal Register** on January 8, 2013 with a corrected deadline for comments of January 16, 2013. See Securities Exchange Act Release No. 68457 (December 18, 2012), 78 FR 1296 (January 8, 2013).

<sup>5</sup> In Amendment No. 3, the Exchange explained that any P.M.-settled S&P 500 Index options series that are part of the SPX options class and that have an expiration on any day other than the third Friday of every month will remain under the SPXPM class to avoid investor confusion. Because Amendment No. 3 is technical in nature, the Commission is not publishing it for comment.

<sup>6</sup> In Amendment No. 4, the Exchange modified the anticipated start date for the listing and trading of the proposed contract on CBOE from January 22, 2013 to February 19, 2013. See Notice, *supra* note 4, at 76136. Because Amendment No. 4 is technical in nature, the Commission is not publishing it for comment.

<sup>7</sup> See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) ("C2 SPXPM Approval Order").

<sup>8</sup> The C2 Pilot Program is a fourteen month pilot.

<sup>9</sup> See Amendment No. 4, *supra* note 6.