

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73586; File No. SR-Phlx-2014-71]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation of the New Options Floor Broker Management System Until November 3, 2015

November 13, 2014.

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 October 31, 2014, 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 the Substance of the Proposed Rule Change

The Exchange proposes to extend the implementation rollout of its new Options Floor Broker Management System.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.cchwallstreet.com/>, 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

Currently, the Exchange operates two Floor Broker Management Systems concurrently on the options trading floor: The original Floor Broker Management System operating since 2005 (“old FBMS”); and the enhanced Floor Broker Management System (“new FBMS”). The purpose of the proposal is to continue the concurrent operation of old FBMS and new FBMS for a temporary period ending November 3, 2015 for the reasons stated below.

Old FBMS enables Floor Brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. Old FBMS also establishes an electronic audit trail for options orders represented by Floor Brokers on the Exchange. Floor Brokers can also use old FBMS to submit orders to Phlx XL, rather than executing the orders in the trading crowd.

New FBMS was launched in March 2014. With the new FBMS, all options transactions on the Exchange involving at least one Floor Broker are required to be executed by the new FBMS. In connection with order execution, the Exchange allows the new FBMS to execute two-sided orders entered by Floor Brokers, including multi-leg orders up to 15 legs, after the Floor Broker has represented the orders in the trading crowd. New FBMS also provides Floor Brokers with an enhanced functionality called the complex calculator that calculates and displays a suggested price of each individual component of a multi-leg order, up to 15 legs, submitted on a net debit or credit basis.

The Exchange received approval to implement the new FBMS as of June 1, 2013,<sup>3</sup> and delayed implementation until July 2013,<sup>4</sup> until September 2013,<sup>5</sup> until December 2013,<sup>6</sup> and until March 7, 2014, with the new FBMS operating

concurrently with the old FBMS. The Exchange intended to retire the old FBMS after a specified implementation period. The new FBMS has been fully rolled out to all Floor Brokers and in all options. Nevertheless, the Exchange delayed the retirement of the old FBMS until September 1, 2014<sup>8</sup> and, most recently, until November 3, 2014,<sup>9</sup> for reasons of the performance of the new FBMS.

The Exchange has been making improvements intended to improve the performance of the new system. However, the Floor Brokers have experienced, among other things, some latency in order processing as well as some occasional difficulty accessing certain order entry screens in a timely manner. Accordingly, the Exchange does not believe that the old FBMS should be retired on November 3, 2014. Therefore, the Exchange proposes to continue operation of the old FBMS and new FBMS concurrently for a one year period ending November 3, 2015.

During this time period, the Exchange intends to identify an alternative system to the new FBMS to ultimately replace both old FBMS and new FBMS.

If an alternative to the new FBMS could be implemented sooner than this date, the Exchange will seek to implement it sooner. In addition, the Exchange will notify the Floor Brokers and file a proposed rule change addressing any changes to its rules before implementing any new system.

During this additional time period, the Exchange will continue to permit Floor Brokers to use both the old and the new FBMS based on their business needs and Floor Brokers can choose whether to use one or both. Both old FBMS and new FBMS will continue to be available in all options and to all Floor Brokers. For example, a Floor Broker will be able to use the old FBMS for one order and the new FBMS for the next order. Accordingly, the Exchange believes that the performance issues with the new FBMS are less likely and should decrease because the Floor Broker can choose the old FBMS.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup>

<sup>3</sup> Securities Exchange Act Release No. 69471 (April 29, 2013), 78 FR 26096 (May 3, 2013) (SR-Phlx-2013-09).

<sup>4</sup> Securities Exchange Act Release No. 69811 (June 20, 2013), 78 FR 38422 (June 26, 2013) (SR-Phlx-2013-67).

<sup>5</sup> Securities Exchange Act Release No. 70141 (August 8, 2013), 78 FR 49565 (August 14, 2013) (SR-Phlx-2013-83).

<sup>6</sup> Securities Exchange Act Release No. 70629 (October 8, 2013), 78 FR 62852 (October 22, 2013) (SR-Phlx-2013-100).

<sup>7</sup> Securities Exchange Act Release No. 71212 (December 31, 2013), 79 FR 888 (January 7, 2014) (SR-Phlx-2013-129).

<sup>8</sup> Securities Exchange Act Release No. 72135 (May 9, 2014), 79 FR 27966 (May 15, 2014) (SR-Phlx-2014-33).

<sup>9</sup> Securities Exchange Act Release No. 73246 (September 29, 2014), 79 FR 59874 (October 3, 2014) (SR-Phlx-2014-59).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

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

in particular, in that it is designed to promote just and equitable principles of trade and protect investors and the public interest, by providing options Floor Brokers with two different FBMS offerings for order entry and processing. Despite its performance issues, the new FBMS offers many beneficial features to the Floor Brokers that the old FBMS does not, such as the complex calculator and increased automation described above, such that the Exchange has determined not to shut down the new FBMS. This should enable Floor Brokers to operate their businesses and comply with the relevant rules, which is consistent with the protection of investors and the public interest. Continuing to operate both old FBMS and new FBMS concurrently for a temporary period should also promote just and equitable principles of trade by providing Floor Brokers with the tools to enter and process their orders efficiently. The proposal is not unfairly discriminatory because all Floor Brokers will be able to use both the old and the new FBMS.

#### *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. The Exchange believes that permitting Floor Brokers to use both the old FBMS and new FBMS for an additional period of time while the Exchange considers an alternative approach to address the efficient operation of the Exchange's trading floor should allow it to compete with other floor-based exchanges and help the Exchange's Floor Brokers compete with floor brokers on other options exchanges.

#### *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**

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) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup> A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>14</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>15</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that the full implementation of the new FBMS was scheduled to occur on November 3, 2014. The Exchange has indicated that it has experienced performance issues with the new FBMS and that it needs additional time to identify an alternative system to the new FBMS. While it seeks this alternative, the Exchange represents that it will continue to operate the old FBMS and new FBMS concurrently and that all Floor Brokers may use either the old FBMS or the new FBMS. Based on the foregoing, the Commission has determined to waive the 30-day operative date so that the proposal may take effect upon filing.<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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.<sup>17</sup> If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.<sup>18</sup>

### **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:

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> *Id.*

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>18</sup> *Id.*

### *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-2014-71 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2014-71. 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 offices 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 2014-71, and should be submitted on or before December 10, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

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

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<sup>19</sup> 17 CFR 200.30-3(a)(12).