

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 CBOE. 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-2015-044 and should be submitted on or before August 6, 2015.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amendment in the **Federal Register**. Amendment No. 1 modifies the proposed rule change by removing proposed amendments to the strategy-based customer margin requirements in CBOE Rule 12.3 and removing references to portfolio margining. The Commission believes that the removal of the proposed margin requirements for Asian and Cliquet FLEX Broad-Based Index options, set forth in Amendment No. 1, simply clarify that the Exchange would apply the existing strategy-based customer margin requirements for broad-based index options to Asian and Cliquet options. In addition, the Commission notes that the Exchange has represented that it will monitor trading in the proposed products and would continue to evaluate the strategy-based customer margin levels.<sup>14</sup> Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,<sup>15</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-CBOE-2015-044), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75424; File No. SR-Phlx-2015-56]

#### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Midpoint Peg Post-Only Order Under Rule 3301A(b)

July 10, 2015.

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 June 26, 2015, 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 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 the Substance of the Proposed Rule Change

The Exchange proposes to adopt a Midpoint Peg Post-Only Order under Rule 3301A(b).

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

The Exchange is proposing to adopt a Midpoint Peg Post-Only Order<sup>3</sup> for use on the Exchange’s NASDAQ OMX PSX System (“PSX System” or “PSX”), which is based on the Midpoint Peg Post-Only Order of the NASDAQ Stock Market (“NASDAQ”).<sup>4</sup> A Midpoint Peg Post-Only Order is a Non-Displayed<sup>5</sup> Order that is priced at the midpoint between the National Best Bid and Offer (“NBBO”) and that will execute upon entry against locking or crossing quotes only in circumstances where economically beneficial to the party entering the Midpoint Peg Post-Only Order. Because the Order is priced at the midpoint, it can provide price improvement to incoming Orders when it is executed after posting to the PSX book. The Midpoint Peg Post-Only Order will be available during regular market hours (9:30 a.m. until 4:00 p.m. ET) only.

A Midpoint Peg Post-Only Order must be assigned a limit price. When a Midpoint Peg Post-Only Order is entered, it will be priced at the midpoint between the NBBO, unless such midpoint is higher than (lower than) the limit price of an Order to buy (sell), in which case the Midpoint Peg Post-Only Order will be priced at its limit price. If the NBBO is locked, the Midpoint Peg Post-Only Order will be priced at the locking price, if the NBBO is crossed, it will nevertheless be priced at the midpoint between the NBBO (provided, however, that the Order may execute as described below), and if there is no NBBO,<sup>6</sup> the Midpoint Peg Post-Only Order will be rejected. The Midpoint Peg Post-Only Order will post to the PSX book unless it is a buy (sell) Order that is priced higher than (lower than) a sell (buy) Order on the PSX book, in which case it will execute at the price of the Order on the PSX book; provided, however, that if the Order has

<sup>3</sup> The term “Order” is defined in Rule 3301(e).

<sup>4</sup> The Exchange notes that the proposed rule text is based on newly-amended NASDAQ rule text, which provides a clearer and more detailed description of its Midpoint Peg Post-Only Order functionality than its prior rule. See Securities Exchange Act Release No. 75252 (June 22, 2015) (not yet published in the **Federal Register**) (Order approving SR-NASDAQ-2015-024).

<sup>5</sup> See Rule 3301B(k).

<sup>6</sup> That is, if no market center is disseminating a displayed bid or a displayed offer, such that it is impossible to determine a midpoint price.

<sup>14</sup> See Amendment No. 1.

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<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.

a Time-in-Force of IOC, the Order will be cancelled after determining whether it can be executed. For example, if the Best Bid was \$11 and the Best Offer was \$11.06, the price of the Midpoint Peg Post-Only Order to buy would be \$11.03. If there was a Non-Displayed Order (or another Order with a Non-Display Order Attribute) on the PSX book to sell at \$11.02, the incoming Midpoint Peg Post-Only Order to buy would execute against it at \$11.02. However, if there was a Non-Displayed Order (or another Order with a Non-Display Order Attribute) to sell at \$11.03, the Midpoint Peg Post-Only Order to buy would post at \$11.03. While a Midpoint Peg Post-Only Order that posts to the PSX book is locking a preexisting Order, the Midpoint Peg Post-Only Order will execute against an incoming Order only if the price of the incoming sell (buy) Order is lower (higher) than the price of the preexisting Order. Thus, in the previous example, if the incoming Midpoint Peg Post-Only Order locked the preexisting Non-Displayed Order at \$11.03, the Midpoint Peg Post-Only Order could execute only against an incoming Order to sell priced at less than \$11.03.

A Midpoint Peg Post-Only Order that would be assigned a price of \$1 or less per share will be rejected or canceled, as applicable.

If a Midpoint Peg Post-Only Order is entered through RASH or FIX, the Midpoint Peg Post-Only Order may be repriced in the following manner after initial entry and posting to the PSX book:

- The price of the Midpoint Peg Post-Only Order will be updated repeatedly to equal the midpoint between the NBBO; provided, however, that the Order will not be priced higher (lower) than the limit price of an Order to buy (sell). In the event that the midpoint between the NBBO becomes higher than (lower than) the limit price of an Order to buy (sell), the price of the Order will stop updating and the Order will post (with a Non-Display Order Attribute) at its limit price, but will resume updating if the midpoint becomes lower than (higher than) the limit price of an Order to buy (sell). Similarly, if a Midpoint Peg Post-Only Order is on the PSX book and subsequently there is no NBBO, the Order will be cancelled. The Midpoint Peg Post-Only Order receives a new timestamp each time its price is changed.

If a Midpoint Peg Post-Only Order is entered through OUCH or FLITE, the Midpoint Peg Post-Only Order may be repriced in the following manner after initial entry and posting to the PSX book:

- The price at which the Midpoint Peg Post-Only Order is ranked on the PSX book is the midpoint between the NBBO, unless the Order has a limit price that is lower than the midpoint between the NBBO for an Order to buy (higher than the midpoint between the NBBO for an Order to sell), in which case the Order will be ranked on the PSX book at its limit price and will be available for potential execution at its limit price. The price of the Order will not thereafter be repriced based on changes to the NBBO. If, after being posted to the PSX book, the NBBO changes such that the midpoint of the NBBO is no longer equal to the price at which the Midpoint Peg Post-Only Order is posted, the Order will be cancelled back to the Participant. For example, if the Best Bid is \$11 and the Best Offer is \$11.06, a Midpoint Peg Post-Only Order to buy would post at \$11.03. If, thereafter, the Best Offer is reduced to \$11.05, the Midpoint Peg Post-Only Order will be cancelled back to the Participant.

The following Order Attributes may be assigned to a Midpoint Peg Post-Only Order:

- Price of more than \$1 per share.
- Size.<sup>7</sup>
- Time-in-Force;<sup>8</sup> provided, however, that a Midpoint Peg Post-Only Order with a Time-in-Force of IOC may not be entered through RASH or FIX, and provided further, that regardless of the Time-in-Force entered, a Midpoint Post-Only Order may not be active outside of the Regular Market Session. A Midpoint Peg Post-Only Order entered prior to the beginning of the Regular Market Session will be rejected. A Midpoint Peg Post-Only Order remaining on the System book at 4:00 p.m. ET will be cancelled by the System.
- Pegging<sup>9</sup> to the midpoint is required for Midpoint Peg Post-Only Orders entered through RASH or FIX. As discussed above, the price of a Midpoint Peg Post-Only Order entered through OUCH or FLITE will be pegged to the midpoint upon entry and not repriced thereafter.
- Minimum Quantity.<sup>10</sup>
- Non-Displayed. All Midpoint Peg Post-Only Orders are Non-Displayed.

The Exchange is proposing to implement the new Midpoint Peg Post-Only Order on July 1, 2015. The Exchange notes that it has completed the development and testing needed to implement the change. Moreover, Exchange participants are interested in

utilizing the new order type. As such, the Exchange believes it is appropriate to implement the change at the earliest time possible.

## 2. Statutory Basis

PHLX believes that the proposed rule changes are consistent with the provisions of section 6 of the Act,<sup>11</sup> in general, and with section 6(b)(5) of the Act,<sup>12</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; and also in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that offering market participants with an additional Order Type, which is currently available to NASDAQ market participants, will allow PSX market participants greater control over their executions and is indicative of the Exchange's maturation as an equities market. Allowing PSX market participants the ability to more precisely select the conditions in which their Order may be executed removes impediments to and perfects the mechanism of a free and open market and a national market system because it benefits all market participants and ensures that PHLX is able to compete with other market venues by providing similar tools and functionality. This functionality is nearly identical to the Midpoint Peg Post-Only Order of NASDAQ<sup>13</sup> that has been available on NASDAQ since 2011<sup>14</sup> and is well known to its market participants. As noted above, the Exchange is copying newly-amended NASDAQ rule text, which provides a clearer and more detailed description of its Midpoint Peg Post-Only Order functionality than its prior rule.<sup>15</sup> Lastly, offering Midpoint Peg Post-Only Order to PSX market participants raises no issues concerning unfair discrimination as the new Order

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>13</sup> The Exchange notes that NASDAQ uses a cross in its opening, closing and halt processes, which is accounted for in its Midpoint Peg Post-Only Order rule. PSX does not have such processes.

<sup>14</sup> See Securities Exchange Act Release No. 64430 (May 6, 2011), 76 FR 27699 (May 12, 2011) (SR-NASDAQ-2011-059).

<sup>15</sup> *Supra* note 4.

<sup>7</sup> See Rule 3301B(b).

<sup>8</sup> See Rule 3301B(a).

<sup>9</sup> See Rule 3301B(d).

<sup>10</sup> See Rule 3301B(e).

Type is available to all PSX market participants.

The Exchange notes that, like a Post-Only Order, a Midpoint Peg Post-Only Order allows a market participant to control its trading costs by executing upon entry when receiving price improvement but otherwise posting to the PSX book pegged to the midpoint subject to its limit price. Thereafter, the Order Type serves to provide price improvement to other incoming Orders by executing a price between the NBBO. As such, the Exchange believes the Midpoint Peg Post-Only Order further perfects the mechanism of a free and open market and promotes the public interest by both providing greater control to a market participant and improving market quality for all participants.

#### *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. Specifically, the Exchange believes that the proposal will enhance Phlx's competitiveness by providing its market participants with an additional control over the circumstances in which their Orders may be executed. As discussed above, the Midpoint Peg Post-Only Order is available on NASDAQ, and providing it on PSX will allow Phlx to compete with NASDAQ and any other market venue that provides a similar Order Type. This may, in turn, increase the extent of liquidity available on PSX and increase its ability to compete with other execution venues to attract Orders to PSX. The Exchange further believes that the introduction of the Midpoint Peg Post-Only Order will not impair in any manner the ability of market participants or other execution venues to compete.

#### *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 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>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>18</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>19</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay would provide PSX market participants with an additional option to designate the circumstances in which their Orders may be executed, thus giving them more control over the nature of their Orders. The Exchange stated that the programming changes needed to implement the proposed rule change are now ready and market participants have been provided notice of the change. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>20</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 change 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-2015-56 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-2015-56. 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-2015-56, and should be submitted on or before August 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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

<sup>17</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>18</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 17 CFR 200.30-3(a)(12).