

8. Applicants submit that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Global Fund to be made within 15 calendar days would not be inconsistent with the spirit and intent of section 22(e).<sup>19</sup> Applicants state that each Global Fund's statement of additional information ("SAI") will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days, up to 15 calendar days, needed to deliver the proceeds for that Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect redemptions of Creation Units in kind.

#### *Sections 17(a)(1) and (2) of the Act*

9. Section 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person ("second tier affiliate"), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines "control" of a fund as "the power to exercise a controlling influence over the management or policies" of the fund and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by an Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser (an "Affiliated Fund").

10. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b) to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more

requires that most securities transactions be settled within three business days of the trade date.

<sup>19</sup> Certain countries in which a Global Fund may invest have historically had settlement periods of up to 15 calendar days.

of the following: (a) Holding 5% or more, or more than 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

11. Applicants assert that no useful purpose would be served by prohibiting the affiliated persons described above from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be effected in exactly the same manner for all purchases and redemptions. The valuation of the Deposit Instruments and Redemption Instruments will be made in the same manner, and in the same manner as the Fund's Portfolio Positions, regardless of the identity of the purchaser or redeemer. Except with respect to cash determined in accordance with the procedures described in section I.G.1. of the application, Deposit Instruments and Redemption Instruments will be the same for all purchasers and redeemers. Therefore, applicants state that the in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons of a Fund to effect a transaction detrimental to other holders of Shares of that Fund. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

#### **Applicant's Conditions**

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. As long as the Funds operate in reliance on the requested order, the Shares of the Funds will be listed on a Listing Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain on a per Share basis, for each Fund, the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market

closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Listing Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Positions held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Adviser or any Fund Sub-Adviser, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

For the Commission, by the Division of Investment Management, under delegated authority.

**Robert W. Errett,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-77264; File No. SR-PHLX-2016-12]**

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Withdrawal of Proposed Rule Change to Adopt Limit Order Protection and Market Order Protection**

March 1, 2016.

On January 21, 2016, NASDAQ OMX PHLX LLC (the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a Limit Order Protection and a Market Order Protection feature for members accessing PSX. The proposed rule change was published for comment in the **Federal Register** on February 5, 2016.<sup>3</sup> The Commission received no comment letters on the proposal. On February 26, 2016, the Exchange withdrew the proposed rule change.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 77007 (February 1, 2016), 81 FR 6314.

<sup>4</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>4</sup>

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77269; File No. SR-FINRA-2016-010]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 4554 (Alternative Trading Systems—Recording and Reporting Requirements of Order and Execution Information for NMS Stocks)

March 1, 2016.

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 February 29, 2016, Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 FINRA. 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

FINRA is proposing to adopt FINRA Rule 4554 to require alternative trading systems (“ATSs”) to submit additional order information to FINRA.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA is proposing to adopt FINRA Rule 4554 to require ATSs to report additional order information to FINRA. While ATSs already submit order information to FINRA that is required by the Order Audit Trail System (“OATS”) rules, there is additional order information not currently required to be reported to OATS, such as order re-pricing events (e.g., changes to an order that is pegged to the National Best Bid or Offer (“NBBO”)) and order display and reserve size information, that, if available to FINRA, would greatly enhance FINRA’s ability to perform certain order-based surveillance, including layering, quote spoofing and mid-point pricing manipulation surveillance, by enabling FINRA to more fully reconstruct an ATS’s order book. FINRA therefore is proposing to require ATSs to report additional ATS-specific data elements in existing OATS reports for orders in NMS stocks. ATSs would be required to report this information to FINRA consistent with current OATS reporting requirements (no later than 8:00 a.m. Eastern Time on the calendar day following receipt of the order in an electronic form as prescribed by FINRA).

As described in more detail in Item C, FINRA initially solicited comment on this proposal in *Regulatory Notice* 14-51.<sup>3</sup> Based on concerns raised by commenters about potential burdens associated with the original proposal, FINRA has revised the original proposal to narrow some aspects of the order information required to be reported while still enhancing FINRA’s ability to reconstruct an ATS’s order book for surveillance purposes. The proposal sets forth four categories of reporting requirements: (1) Data to be reported by all ATSs at the time of order receipt; (2) data to be reported by all ATSs at the time of order execution; (3) data to be reported by ATSs that display subscriber orders; and (4) data specific to ATSs that are registered as ADF Trading Centers. The proposed requirements would apply to order and execution information for NMS stocks.<sup>4</sup>

#### Proposed Order Receipt Reporting Requirements Applicable to All ATSs That Trade NMS Stocks

The first category of proposed changes applies to all ATSs when reporting the receipt of an order to OATS. Specifically, the proposed rule would require each ATS to indicate on all orders received whether it displays subscriber orders outside of the ATS (other than to alternative trading system employees).<sup>5</sup> This requirement will enable FINRA to distinguish between ATSs that display orders outside the ATS, either to subscribers or through consolidated quote data (“display ATS”) and ATSs that do not display orders outside the ATS (“non-display ATS”).<sup>6</sup> A display ATS would also indicate whether the order book is displayed to subscribers only, or distributed for publication in the consolidated quotation data. Each ATS would also be required to identify whether it is an ADF Trading Center as defined in FINRA Rule 6220. An ATS would make these determinations on a general basis, but would provide this information through flags submitted on every order event. Each ATS also would be required to identify whether a specific order can be routed away from the ATS for execution, and whether there are any counter-party restrictions on the order. ATSs would also be required to provide FINRA with a unique identifier representing the specific order type other than market and limit orders that have no other special handling instructions. In order for FINRA to map the identifier to a specific order type, an ATS will also be required to provide FINRA with a list of all of its order types twenty days before such order types become effective, and if the ATS makes any subsequent changes to its order types, twenty days before such changes become effective.<sup>7</sup>

<sup>5</sup> The proposed requirements apply to any alternative trading system, as defined in Rule 300(a)(1) of SEC Regulation ATS, that has filed a Form ATS with the SEC and is subject to FINRA’s OATS and equity trade reporting rules. See 17 CFR 242.300(a)(1).

For purposes of this rule, the term “order” includes a broker-dealer’s proprietary quotes that are transmitted to an ATS.

<sup>6</sup> If an ATS meets the applicable volume thresholds, it is required to make its best bid and best offer available for publication in the consolidated quotation data. See 17 CFR 242.301(b)(3).

<sup>7</sup> In a Regulatory Notice announcing the implementation of this proposal, FINRA will provide a deadline prior to the implementation date by which current ATSs must initially submit lists of their existing order types to FINRA.

FINRA notes that, under current Rule 301(b)(2)(ii) of Regulation ATS, ATSs are required to file an amendment on Form ATS at least 20 calendar days

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

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

<sup>3</sup> See *Regulatory Notice* 14-51 (November 2014).

<sup>4</sup> See 17 CFR 242.600(b)(47).