

responding to customer requests, configuring NASDAQ's systems, programming to user specifications, and administering the service, among other things, and may provide NASDAQ with a profit to the extent costs are covered.

NASDAQ also believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act<sup>7</sup> because 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 mechanism of a free and open market and a national market system. PRM is designed to assist member firms in avoiding entry of erroneous orders by screening out those that exceed pre-determined limits, which otherwise may harm both the member firm and the quality of the markets. As such, PRM is an important compliance tool that members may use to help maintain the regulatory integrity of the markets. NASDAQ believes that the amendments to the fees assessed for PRM and its services may encourage more member firms to subscribe to this useful compliance tool.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ 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.

#### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>9</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2011-099 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-NASDAQ-2011-099. This file number should be included on the subject line if e-mail 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-NASDAQ-2011-099 and should be submitted on or before August 29, 2011.

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

**Elizabeth M. Murphy,**

*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65010; File No. SR-PHLX-2011-100]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Member and Member Organization Participation**

August 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on July 26, 2011, 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 Substance of the Proposed Rule Change**

The Exchange proposes to apply Exchange Rule 3211 entitled "PSX Participant Registration" to members and member organizations conducting an options business.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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

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

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<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.

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 purpose of the proposed rule change is to apply Exchange Rule 3211, entitled "PSX Participant Registration" to members and member organizations transacting options. The Exchange proposes to clearly specify requirements for all members and member organizations to access the Exchange's trading system.

The Exchange currently requires PSX Participants to comply with certain requirements to access the Exchange's trading system as specified in Exchange Rule 3211.<sup>3</sup> The Exchange proposes to apply substantially the same requirements in new Exchange Rule 911 to members and member organizations transacting options, by eliminating paragraphs (a) through (c) in Exchange Rule 3211, located in the PSX Rules, and adopting new Exchange Rule 911, which is proposed to be located in the Rules of the Exchange, and making it applicable to all members of the Exchange. The Exchange proposes to add new Exchange Rule 911 to the list of Rules in Exchange Rule 3202, entitled "Application of Other Rules of the Exchange," so that paragraphs (a) through (c) in Exchange Rule 911 would continue to apply to PSX Participants. Also, the Exchange proposes to rename Exchange Rule 3211 "Sponsored Participants" to accurately reflect the substance of the remaining language in 3211(d), which the Exchange would rename as paragraph "a" to reflect the removal of the previous paragraphs.

Today, the Exchange's trading system is accessible to all Exchange members and member organizations, transacting equities or options, that meet the registration, qualification and other membership requirements set forth in the Exchange Rules. The Exchange's trading system, for purposes of this Rule 911, shall include NASDAQ OMX PSX ("PSX"),<sup>4</sup> PHLX XL<sup>®</sup><sup>5</sup> and the Floor

Broker Management System ("FBMS"),<sup>6</sup> (collectively "System").<sup>7</sup>

Specifically, the Exchange proposes to apply the provisions of new proposed Rule 911 to options members and member organizations. The provisions in section (a) are clarifying amendments as options members are required to comply with these provisions today. For example, the obligation to register in paragraph (a) and to execute all applicable agreements applies today to option members.<sup>8</sup> The requirement to have a membership in or arrangement with a clearing agency also applies today to option members.<sup>9</sup> Compliance with all applicable Rules and procedures is specified in By-Law Article VI, Section 6–1 entitled "Rights and Privileges" and Section 6–12 entitled "Dealing on the Exchange," which By-Laws apply to all Exchange members.<sup>10</sup> The maintenance of physical security of the equipment located on the premises of the member or member organization and improper use of the Exchange's System is also currently enumerated in the Rules which are applicable to options members.<sup>11</sup> The acceptance and settlement of trades effected by a member or member organization is delineated in the Rules today and applicable to option members.<sup>12</sup> The

the system as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

<sup>6</sup> FBMS is designed to enable floor brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by floor brokers on the Exchange. See Exchange Rule 1080, commentary .06

<sup>7</sup> PSX Participants are not subject to this Rule, but are subject to Exchange Rule 3211. See Exchange Rule 3211.

<sup>8</sup> See Exchange Rules 600 (Registration), 604 (Registration and Termination of Registered Persons), 620 (Trading Floor Registration), 640 (Continuing Education for Registered Persons), 901 (Denials of and Conditions to Membership), Rule 908 (Rights and Privileges of A–1 Permits) and Rule 910 (Qualification as Member Organization), among other Rules.

<sup>9</sup> See Exchange Rule 59 (Deliveries through Registered Clearing Agencies).

<sup>10</sup> See also Exchange Rule 1080 (Phlx XL and PHLX XL II) describes PHLX XL and the obligations of options members.

<sup>11</sup> See Exchange By-Law Article VI, Section 6–3 (Use of Facilities of Exchange), Rule 606 (Communication and Equipment), Option Floor Procedure Advice F–31 (Communications and Equipment), By-Law Article VII, Sec. 7–3 (Membership Qualifications) and Exchange Rule 1080 (Phlx XL and PHLX XL II) describes PHLX XL and the obligations of options members.

<sup>12</sup> See Exchange Rules 1035 (Acceptance of Bid or Offer), 1044 (Delivery and Payment) and 1052

input of accurate information into the Exchange's System<sup>13</sup> and the effective date of a member or member organization's registration, are described in the Rules regarding registration of members and member organizations, which are applicable to option members.<sup>14</sup>

The member and member organization's continuing obligation to report any noncompliance with registration requirements is inferred today in the Exchange's Rules.<sup>15</sup> The Exchange believes that this provision in section (b) of proposed Rule 911 should be equally applied to option members as it is currently applicable to PSX Participants today.

Finally, the provision in section (c) to impose temporary restrictions upon the automated entry or updating of orders or quotes/orders as the Exchange may determine is not currently applicable to options members but only PSX members today. The Exchange is proposing to apply this provision to options members in order that the Exchange uniformly may apply its rules regarding System access to all members of the Exchange. The Exchange believes that this provision of the proposed Rule is necessary to protect the integrity of the Exchange's systems. For example, such temporary restrictions may be necessary to address a system problem at a particular member or member organization or at the Exchange, or an unexpected period of extremely high message traffic. The scope of any such restrictions shall be communicated to the affected options member or member organization in writing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>17</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

(Responsibility of Clearing Options Members for Exchange Options Transactions). These Rules are applicable to options members today.

<sup>13</sup> See Exchange Rule 1053 (Filing Of Trade Information), 1055 (Reporting of Compared Trades to Options Clearing Corporation) and 1063 (Responsibilities of Floor Brokers). These Rules are applicable to options members today.

<sup>14</sup> See Exchange Rules 600 (Registration), 604 (Registration and Termination of Registered Persons) and 620 (Trading Floor Registration). These Rules are applicable to options members today.

<sup>15</sup> See Exchange Rule 908 (Rights and Privileges of A–1 Permits) which provides that permit holders must abide by the By-Laws and Rules of the Exchange.

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

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> See Exchange Rule 3211 entitled "PSX Participant Registration," which is applicable to PSX Participants.

<sup>4</sup> PSX is a cash equities electronic trading platform. Specifically, PSX is an open-access fully electronic integrated order display and execution system for NMS stocks.

<sup>5</sup> PHLX XL<sup>®</sup> is the Exchange's automated options trading system. This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to

open market and a national market system, and, in general to protect investors and the public interest, by further clarifying the Exchange's Rules with respect to its members and member organizations transacting options. The Exchange believes that equally applying the rule to both options members and member organizations and PSX Participants further protects the public interest.

The Exchange believes that this proposed rule would, in part, clarify the obligations of an option member or member organization with respect to the provisions in section (a)(1) through (6) of the proposed Rule. As specified herein, the Exchange believes that option members today are subject to these requirements and the proposal merely serves to clarify these obligations in a single Rule. These requirements in section (a) of the proposed rule seek to ensure that the option members and member organizations are required to maintain certain standards to protect the integrity of the Exchange's systems, as is the case today for PSX Participants.

The Exchange believes that an options member and member organization's continuing obligation to report any noncompliance with registration requirements is inferred in the Rules today as described herein. The application of proposed Rule 911 to option members would adopt a clear Rule for option members regarding their obligation to report noncompliance with any registration requirement, as is the case today for PSX Participants. The Exchange believes this provision is instrumental in assisting the Exchange with its regulatory responsibilities.

Finally, the Exchange proposes to add a new provision, that it may impose temporary restrictions upon the automated entry or updating of orders or quotes/orders as the Exchange may determine to be necessary to protect the integrity of the Exchange's systems, for option members. This provision is applicable today to PSX Participants. The Exchange believes that this ability to impose a temporary restriction upon members and member organizations transacting options would assist the Exchange in maintaining the integrity of the market and protecting investors and the public interest.

#### *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*

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6)<sup>19</sup> thereunder.

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-100 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.

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

<sup>19</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.

All submissions should refer to File Number SR-Phlx-2011-100. This file number should be included on the subject line if e-mail 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-Phlx-2011-100 and should be submitted on or before August 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority:<sup>20</sup>

**Elizabeth M. Murphy,**  
Secretary.

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BILLING CODE 8011-01-P

#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-65015; File No. SR-MSRB-2011-08]**

**Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed New Rule A-11, on Municipal Advisor Assessments, and New Form A-11-Interim**

August 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

<sup>20</sup> 17 CFR 200.30-3(a)(12).