

purpose under Article VIII, Section 5(e) of the by-laws. OCC believes that it is not as clear that it has authority to pledge a suspended clearing member's margin deposits. Rule 1104(a) provides, among other things, that upon the suspension of a clearing member, OCC shall promptly "convert to cash," in the most orderly manner practicable, all of the clearing member's margin deposits. Although this mandate might be construed to include the authority to pledge margin assets as collateral for borrowings under the committed credit facility, the phrase "convert to cash" has generally been used in the by-laws as synonymous with "liquidate" to refer to a final disposition of an asset. And even if OCC does have implied authority to pledge margin assets, that may not be transparent to all clearing members because it is not expressly stated in the rule. In order to eliminate any ambiguity, OCC proposed to (i) Amend Rule 1104 and Rule 1106 to replace the phrases "convert to cash," "conversion to cash" and "converted to cash" with the words "liquidate," "liquidation" and "liquidated," respectively; and (ii) amend Rule 1104(b) to expressly give OCC the power to pledge a suspended clearing member's margin deposits as security for loans if designated executive officers of OCC determine that immediate liquidation of such assets for cash under then-existing circumstances would not be in the best interests of OCC, other clearing members, or the general public.

While OCC's \$2 billion committed credit facility should normally be more than sufficient to meet OCC's liquidity needs, it is nevertheless possible that OCC could encounter a liquidity demand that exceeds the size of that facility. Moreover, it could be difficult to maintain the size of the facility under unfavorable market conditions (*i.e.*, if the credit markets tighten significantly). In addition, future regulatory requirements for clearinghouses could impose liquidity requirements that would be difficult to meet with a committed credit facility alone. In order to be better prepared to deal with such situations, OCC believes that it is necessary to actively explore a variety of means for raising and maintaining liquidity resources, including participation in securities lending or tri-party repo markets. Therefore, OCC proposed to amend both Article VIII, Section 5(e) of the by-laws and Rule 1104(b) to clarify that OCC's authority to use a suspended clearing member's margin and clearing fund deposits and other clearing members' clearing fund deposits to obtain temporary liquidity

for purposes of meeting Default Obligations is not limited to pledging such assets under the committed credit facility. Rather, OCC would have express authority to use such assets to obtain liquidity through any reasonable means as determined by designated executive officers of OCC in their discretion. The addition of the language "or otherwise obtain" in Article VIII, Section 5(e) of the by-laws reflects that certain transactions by which OCC may obtain liquidity could be characterized as something other than a transaction in which funds are "borrowed." For example, in a Master Repurchase Agreement, the Agreement states that the parties' intent is for the transactions to be "sales" and "purchases," but also contains provisions if such transactions are deemed to be loans. Accordingly, the use of "or otherwise obtain" in the phrase "borrow or otherwise obtain" addresses the possibility that the transaction by which OCC obtains funds may not be deemed to be a "borrowing" and forestalls technical arguments that it would be necessary for the transaction to be a "loan" in order for OCC to borrow funds.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.⁶ The proposed rule change is designed to clarify OCC's authority to take action following a clearing member default in order to facilitate the settlement of the defaulting clearing member's payment obligations with respect to option premiums, settlement of cash-settled option exercises, and mark-to-market payments. The Commission believes that the express authority to obtain funds based on a suspended member's clearing fund deposits and margin deposits may facilitate OCC's ability to obtain the liquidity it needs to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control or for which OCC is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the

requirements of Section 17A of the Act⁷ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-OCC-2011-15) be, and hereby is, approved.⁹

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011-32142 Filed 12-14-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65934; File No. SR-Phlx-2011-170]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change to Request Permanent Approval of the Pilot Program to Permit NASDAQ OMX PSX to Accept Inbound Orders that Nasdaq Execution Services, LLC Routes in its Capacity as a Facility of The NASDAQ Stock Market LLC

December 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 1, 2011, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission (the "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

Phlx is filing this proposed rule change to request permanent approval of the Exchange's pilot program to permit the Exchange's NASDAQ OMX PSX system ("PSX") to accept inbound orders that Nasdaq Execution Services, LLC ("NES") routes in its capacity as a facility of The NASDAQ Stock Market

⁷ 15 U.S.C. 78q-1.

⁸ 15 U.S.C. 78s(b)(2).

⁹ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78a-1(b)(3)(F).

LLC ("NASDAQ"). Phlx proposes to implement the rule change upon Commission approval. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx>, at Phlx's principal office, 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, NES is the approved outbound routing facility of NASDAQ for cash equities, providing outbound routing from NASDAQ to other market centers.³ PSX also has been previously approved to receive inbound routes of cash equities orders by NES in its capacity as an order routing facility of NASDAQ on a pilot basis.⁴ The Exchange hereby seeks permanent approval to permit PSX to accept inbound orders that NES routes in its capacity as a facility of NASDAQ (subject to the attendant obligations and conditions).

During the pilot period, the Exchange committed to the following conditions:

1. Pursuant to a regulatory services agreement (the "FINRA RSA") between the Exchange and Financial Industry Regulatory Authority, Inc. ("FINRA"),

FINRA will review NES's compliance with the Exchange's rules through FINRA's examination program.⁵ Pursuant to the FINRA RSA, however, the Exchange retains ultimate responsibility for enforcing its rules with respect to NES.

2. FINRA and the Exchange⁶ will monitor NES for compliance with the Exchange's trading rules, and will collect and maintain certain related information.⁷

3. FINRA will provide a report to the Exchange's CRO, on a quarterly basis, that: (i) Quantifies all alerts (of which FINRA and the Exchange are aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) quantifies the number of all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules.

4. The Exchange will adopt and maintain Rule 985(c)(2), which requires NASDAQ OMX, 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.

5. The routing of orders from NES to the Exchange, in NES's capacity as a facility of NASDAQ, will be authorized for a pilot period of twelve months (later extended for an additional six months).

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 responsibilities 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. Since the Exchange has met all the above-listed conditions, it now seeks permanent approval of the PSX and NES inbound routing relationship. The Exchange will continue to comply with conditions 1–4 on an ongoing basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Section 6(b)(5) of the Act,⁹ 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. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from NES acting in its capacity as a facility of NASDAQ, in a manner consistent with prior approvals and established protections. The Exchange believes that its having met the commitments established during the pilot program demonstrates that (i) The Exchange has mechanisms to protect the independence of the Exchange's regulatory responsibilities with respect to NES, and (ii) NES cannot use any information advantage it may have because of its affiliation with the Exchange.

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

Phlx 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.

³ See NASDAQ Rule 4758. See also Securities Exchange Act Release Nos. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004) (Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc.) and 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR-NASD-2005-128) (Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System).

⁴ See Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR-Phlx-2010-79) (the "PSX Approval Order"). See also Securities Exchange Act Release No. 65552 (October 13, 2011), 76 FR 64989 (October 19, 2011) (Sr-Phlx-2011-139) (extending pilot through April 8, 2012).

⁵ In addition, NES is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements.

⁶ Personnel performing real-time oversight of equity trading on NASDAQ will also perform similar functions with respect to PSX pursuant to a regulatory services agreement among NASDAQ, the Exchange, NASDAQ OMX BX, Inc., and NASDAQ OMX (the "Intercompany RSA") under the direction, authority, and oversight of Phlx's Chief Regulatory Officer ("CRO") and the Regulatory Oversight Committee ("ROC") of its Board of Directors.

⁷ Pursuant to the FINRA RSA, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of Nasdaq routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will 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.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

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 self-regulatory organization 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. Please include File Number SR-Phlx-2011-170 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-2011-170. 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

a.m. and 3 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 publicly available. All submissions should refer to File Number SR-Phlx-2011-170 and should be submitted on or before January 5, 2012.

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

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65933; File No. SR-NYSEAmex-2011-96]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule

December 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 1, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 proposes to propose to [sic] amend the NYSE Amex Options Fee Schedule ("Fee Schedule") to permit the Exchange to exclude data from the calculation of Excessive Bandwidth Utilization Fees and Cancellation Fees if one or more ATP Firms or the Exchange experiences a bona fide systems problem and make other technical changes. The proposed change will be operative on December 1, 2011. The text of the proposed rule

change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

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 self-regulatory organization 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 those 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 parts 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 proposes to amend the Fee Schedule to permit the Exchange to exclude data from the calculation of Excessive Bandwidth Utilization Fees and Cancellation Fees if one or more ATP Firms or the Exchange experiences a bona fide systems problem and make other technical changes.

The Exchange presently has three fees related to use of systems capacity: (1) The Cancellation Fee, (2) the Order To Trade Ratio Fee, and (3) the Messages To Contracts Traded Ratio Fee. The latter two fees are referred to as Excessive Bandwidth Utilization Fees. Under the current Fee Schedule, if an ATP Firm is liable for either or both of the Excessive Bandwidth Utilization Fees and/or for charges pursuant to the Cancellation Fee in a given month, that firm would only be charged the largest one of those three fees for the month.³ The Exchange may exclude one or more days of data in calculating the Messages To Contracts Traded Ratio Fee for an ATP Firm if the Exchange determines, in its sole discretion, that one or more ATP Firms or the Exchange experienced a bona fide systems problem. The Exchange proposes to amend the Fee Schedule to extend its discretion to exclude data in the event of a bona fide systems problem to the calculation of the Order To Trade Ratio Fee and the Cancellation Fee as well as the Messages To Contracts Traded Ratio Fee and to move the relevant text to proposed endnote 12.⁴

³ See current Fee Schedule at n. 13.

⁴ An ATP Firm seeking relief as a result of a systems problem will be required to notify the Exchange via email with a description of the

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.