

consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>14</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>15</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.

#### 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-BYX-2013-005 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-BYX-2013-005. 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 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-BYX-2013-005, and should be submitted on or before February 27, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68801; File No. SR-NYSEMKT-2013-11]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 128—Equities, Which Governs Clearly Erroneous Executions, Extending the Effective Date of the Pilot Until September 30, 2013 and Adopting New Paragraph (i) to Rule 128-Equities in Connection With the Upcoming Operation of the Plan To Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS Under the Act

February 1, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 30, 2013, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 amend Rule 128—Equities, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate until September 30, 2013. The pilot is currently scheduled to expire on February 4, 2013. The Exchange also proposes to adopt new paragraph (i) to Rule 128—Equities in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the "Limit Up-Limit Down Plan" or "Plan").<sup>4</sup> The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release").

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii). 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>15</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>16</sup> 17 CFR 200.30-3(a)(12).

## 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 Rule 128—Equities, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate, until September 30, 2013. The pilot is currently scheduled to expire on February 4, 2013.<sup>5</sup> The Exchange also proposes to add new paragraph (i) to Rule 128—Equities in connection with the upcoming implementation of the Limit Up-Limit Down Plan.

On September 10, 2010, the Commission approved, on a pilot basis, market-wide amendments to exchanges' rules for clearly erroneous executions to set forth clearer standards and curtail discretion with respect to breaking erroneous trades. In connection with this pilot initiative, the Exchange amended Rule 128(c), (e)(2), (f), and (g)—Equities. The amendments provide for uniform treatment of clearly erroneous execution reviews (1) in Multi-Stock Events<sup>6</sup> involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on

the Exchange.<sup>7</sup> The amendments also eliminated appeals of certain rulings made in conjunction with other exchanges with respect to clearly erroneous transactions and limited the Exchange's discretion to deviate from Numerical Guidelines set forth in the Rule in the event of system disruptions or malfunctions.

If the pilot were not extended, the prior versions of paragraphs (c), (e)(2), (f), and (g) of Rule 128—Equities would be in effect, and the Exchange would have different rules than other exchanges and greater discretion in connection with breaking clearly erroneous transactions. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through September 30, 2013, which is the date that the Exchange anticipates that the phased implementation of the Limit Up-Limit Down Plan will be complete. As explained in further detail below, although the Limit Up-Limit Down Plan is intended to prevent executions that would need to be nullified as clearly erroneous, the Exchange believes that certain protections should be maintained while the industry gains initial experience operating with the Limit Up-Limit Down Plan, including the provisions of Rule 128—Equities that currently operate as a pilot.

#### Proposed Limit Up-Limit Down Provision to Rule 128—Equities

The Exchange proposes to adopt new paragraph (i) to Rule 128—Equities, to provide that the existing provisions of Rule 128—Equities will continue to apply to all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in proposed paragraph (i). Accordingly, other than as proposed below, the Exchange proposes to maintain and continue to apply the Clearly Erroneous Execution standards in the same way that it does today. Notably, this means that the Exchange might nullify transactions that occur within the price bands disseminated pursuant to the Limit Up-Limit Down Plan to the extent such transactions qualify as clearly erroneous under existing criteria. As an example, assume that a Tier 1 security pursuant to the

Plan has a reference price pursuant to both the Plan and Rule 128—Equities of \$100.00. The lower pricing band under the Plan would be \$95.00 and the upper pricing band under the Plan would be \$105.00. An execution could occur on the Exchange in this security at \$96.00, as this is within the Plan's pricing bands. However, if subjected to review as potentially clearly erroneous, the Exchange would nullify an execution at \$96.00 as clearly erroneous because it exceeds the 3% threshold that is in place pursuant to Rule 128(c)(1)—Equities for securities priced above \$50.00 (*i.e.*, with a reference price of \$100.00, any transactions at or below \$97.00 or above \$103.00 could be nullified as clearly erroneous). Accordingly, this proposal maintains the status quo with respect to reviews of Clearly Erroneous Executions and the application of objective numerical guidelines by the Exchange. The proposal does not increase the discretion afforded to the Exchange in connection with reviews of Clearly Erroneous Executions.

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by a single plan processor as defined in the Limit Up-Limit Down Plan.<sup>8</sup> The possibility remains that the Exchange could experience a technology or systems problem with respect to the implementation of the price bands disseminated pursuant to the Plan. To address such possibilities, the Exchange proposes to adopt language to make clear that if an Exchange technology or systems issue results in any transaction occurring outside of the price bands disseminated pursuant to the Plan, an Officer of the Exchange or senior level employee designee, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Officer of the Exchange or other senior level employee designee shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer of the Exchange or other senior level employee designee must be taken by no later than the start of regular trading hours<sup>9</sup> on the trading day following the date on which the execution(s) under review occurred. Although the Exchange will act as

<sup>5</sup> See Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-NYSEAmex-2010-60). See also Securities Exchange Act Release Nos. 63480 (December 9, 2010), 75 FR 78333 (December 15, 2010) (SR-NYSEAmex-2010-116); 64233 (April 7, 2011), 76 FR 20736 (April 13, 2011) (SR-NYSEAmex-2011-24); 65066 (August 9, 2011), 76 FR 50506 (August 15, 2011) (SR-NYSEAmex-2011-58); 66137 (January 11, 2012), 77 FR 2587 (January 18, 2012) (SR-NYSEAmex-2011-106); and 67567 (August 1, 2012), 77 FR 47136 (August 7, 2012) (SR-NYSEAmex-2012-28).

<sup>6</sup> Terms not defined herein are defined in Rule 128—Equities.

<sup>7</sup> Separately, the Exchange has proposed to extend the effective date of the trading pause pilot under Rule 80C—Equities, which requires to the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day. See Securities Exchange Act Release No. 68744 (January 28, 2013) (SR-NYSEAmex-2012-04) [sic].

<sup>8</sup> See Limit Up-Limit Down Release, *supra* note 4.

<sup>9</sup> Regular trading hours commence at 9:30 a.m. Eastern Time. See Rule 51(a)—Equities.

promptly as possible and the proposed objective standard (*i.e.*, whether an execution occurred outside the band) should make it feasible to quickly make a determination, there may be circumstances in which additional time may be needed for verification of facts or coordination with outside parties, including the single plan processor responsible for disseminating the price bands and other market centers. Accordingly, the Exchange believes it necessary to maintain some flexibility to make a determination outside of the thirty (30) minute guideline. In addition, the Exchange proposes that a transaction that is nullified pursuant to new paragraph (i) would be appealable in accordance with the provisions of Rule 128(e)(2)—Equities. In addition, the Exchange proposes to make clear that in the event that a single plan processor experiences a technology or systems problem that prevents the dissemination of price bands, the Exchange would make the determination of whether to nullify transactions based on Rule 128(a)–(h)—Equities.

The Exchange believes that cancelling trades that occur outside of the price bands disseminated pursuant to the Plan is consistent with the purpose and intent of the Plan, as such transactions are not intended to occur in the first place. If transactions do occur outside of the price bands and no exception applies—which necessarily would be caused by a technology or systems issue—then the Exchange believes the appropriate result is to nullify such transactions.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>11</sup> in particular in that 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, 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. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that

the extension of the pilot would promote just and equitable principles of trade because it would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria. Additionally, resolution of the incident will occur promptly through a transparent process, which the Exchange believes would protect investors and the public interest. The proposed rule change would also 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 because it would help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

Although the Limit Up-Limit Down Plan will be operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot for at least through the phased implementation of the Plan is operational will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 128—Equities is necessary once the Plan is operational and, if so, whether improvements can be made. Further, the Exchange believes it consistent with the protection of investors and the public interest to adopt objective criteria to nullify transactions that occur outside of the Plan's price bands when such transactions should not have been executed but were due to a systems or technology issue.

## 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 that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistent rules across market centers.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

## 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>15</sup> the Commission may 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 Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

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

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii). 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>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</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>10</sup> 15 U.S.C. 78f(b).

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

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-NYSEMKT-2013-11 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-NYSEMKT-2013-11*. 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 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-NYSEMKT-2013-11 and should be submitted on or before February 27, 2013.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68793; File No. SR-Phlx-2013-06]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Clarification to the Exchange's Pricing Schedule to Clarify When an Order is Adding or Removing Liquidity**

January 31, 2013.

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 January 18, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") 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 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 clarify its Pricing Schedule by clarifying when an order or quote is adding or removing liquidity.

The text of the proposed rule change is provided in *Exhibit 5*. The text of the proposed rule change is also 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 purpose of the proposed rule change is to amend Section I of the Pricing Schedule entitled "Rebates for Adding and Removing Liquidity in Select Symbols" to provide additional specificity with respect to the manner in which the Exchange assesses fees and pays rebates for adding and removing liquidity. Today, the Exchange determines whether to assess Fees for Removing Liquidity or Fees for Adding Liquidity and pay Rebates for Adding Liquidity based on the time the order or quote was received by Phlx XL.<sup>3</sup> The order or quote that arrives into the trading system first in time is considered the order or quote adding liquidity and the order or quote which trades against the order or quote that added liquidity is considered the order or quote removing liquidity.

The Exchange proposes to clarify that, with respect to Section I of the Pricing Schedule, the order that is received by the trading system first in time is considered the order adding liquidity and the order that trades against that order is considered the order removing liquidity, except with respect to orders that trigger an order exposure alert. For purposes of pricing, the order that triggered an order exposure alert is considered the order removing liquidity only during the order exposure period and the order that executed against such order is considered the order adding liquidity only during the order exposure period. For purposes of the Pricing Schedule only, the "order exposure period" is a time period established by the Exchange not to exceed one second. Accordingly, after the end of the order exposure period, the Exchange reverts back to considering the order received first as the order adding liquidity. This is the case today.

The Exchange seeks to clarify the manner in which it assesses its fees and pays rebates in Section I to clarify its Pricing Schedule and believes that defining the terms adding and removing liquidity in Section I of the Pricing Schedule should provide further clarity to market participants as well as transparency with respect to pricing. In

<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.

<sup>3</sup> PHLX XL<sup>®</sup> is the Exchange's automated options trading system.