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 filings also will be available for inspection and copying at the principal office of the Exchanges. 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–NYSEArca–2012–28 and should be submitted on or before August 24, 2012. Rebuttal comments should be submitted by September 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[144]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18107 Filed 7–24–12; 8:45 am]

BILLING CODE 8011–01–P

[144] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67466; File No. SR–Phlx–2012–93]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Managed Data Solution for PHLX Top of Options

July 19, 2012.

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 July 6, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to establish a program for Managed Data Solutions for PHLX Top of Options data offered by Distributors externally distributing data to clients and/or client organizations that are using the TOPO information internally. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com,* 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 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 III 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

PHLX is proposing to create a new data distribution model (a Managed Data Solution) to further the distribution of the Top of PHLX Options datafeed (''TOPO''). The Managed Data Solution offers a new delivery method to firms seeking simplified market data administration. The Managed Data Solution may be offered by Distributors externally distributing data to clients and/or client organizations that are using the TOPO information internally. This new pricing and administrative option is in response to industry demand, as well as due to changes in the technology used to distribute market data. Distributors offering Managed Data Solutions continue to be fee liable for the applicable distributor fees for the receipt and distribution of TOPO data.

A Managed Data Solution is a delivery option that will assess a new, innovative fee schedule to Distributors of TOPO that provide datafeed solutions such as an Application Programming Interface (API) or similar automated delivery solutions to recipients with only limited entitlement controls (*e.g.,* usernames and/or passwords) (''Managed Data Recipients''). However, the Distributor must first agree to reformat, redisplay and/or alter the TOPO data prior to retransmission, but not to affect the integrity of TOPO data and not to render it inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. A Managed Data Solution is any retransmission data product containing PHLX TOPO offered by a Distributor where the Distributor manages and monitors, but does not control, the information. However, the Distributor does maintain contracts with the Managed Data Recipients and is liable for any unauthorized use by the Managed Data Recipients under a Managed Data Solution. The Recipient of a Managed Data Solution may use the information for internal purposes only and may not distribute the information outside of their organization.

Currently, the Exchange does not distinguish between Managed Data Recipients and a recipient of an uncontrolled data product. Some Distributors believe that the Managed Data Solution is a viable alternative to an uncontrolled data product. Some Distributors have even held-off on deploying new PHLX TOPO offerings, pending the initiation of Managed Data Solutions. Thus, offering a Managed Data Solution fee schedule would not only result in PHLX offering lower fees for existing Managed Data Recipients utilizing a Managed Data Solution, but will allow new Distributors to deliver Managed Data Solutions to new clients, thereby increasing transparency of the market. PHLX proposes to establish two fees for Distributors that adopt the Managed Data Solution to Distributors, a monthly Managed Data Solution Administration fee of $1,500 and a monthly Subscriber fee of $250. The proposed monthly License fee would be in addition to the monthly Distributor fee of $2,500 (for external usage) currently set forth in Section IX of the PHLX Fee Schedule, and the $250 monthly Subscriber fee would be assessed for each Subscriber of a Managed Data Solution.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) of the Act,[4] in particular, in that it provides an equitable allocation of reasonable fees among Subscribers and Recipients of PHLX data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[5]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

PHLX believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a ''due, fee or other charge imposed by the self-regulatory organization,'' the Commission adopted a policy and subsequently a rule stipulating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. PHLX believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned not-for-profit corporations into for-profit investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, we believe that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoaltion,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. PHLX believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post

[5] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end Subscribers only insofar as they provide information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decrease, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including nine existing SRO markets (plus two more expected this year) [sic], as well as various forms of alternative trading systems (''ATSs''). Each SRO market competes to produce transaction reports via trade executions. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, CBOE, ISE, NYSE Amex, and NYSEArca.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end Subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end Subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers

proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. PHLX and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, BATS Trading and Direct Edge.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that the proprietary data at issue in the case is used to attract order flow. PHLX believes, however, that evidence not then before the court clearly demonstrated that availability of data attracts order flow.

Competition among platforms has driven PHLX continually to improve its platform data offerings and to cater to customers' data needs. For example, PHLX has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. PHLX has created new products like Depth Data, TOPO and TOPO Plus Orders, because offering data in multiple formatting allows PHLX to better fit customer needs. PHLX offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. PHLX has developed an online administrative system to provide customers transparency into their datafeed requests and streamline data usage reporting.

Despite these enhancements and a dramatic increase in message traffic, PHLX's fees for market data have remained flat. In fact, as a percent of total Subscriber costs, PHLX data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to PHLX's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for proprietary information is significant and the Exchange believes that this proposal itself clearly evidences such competition. PHLX is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. PHLX continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with PHLX or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this proprietary information is highly competitive and continually evolves as products develop and change.

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.[6] 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.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2012–93 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–2012–93. 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–2012–93 and should be submitted on or before August 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. [7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18163 Filed 7–24–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67469; File No. SR–Phlx–2012–92]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rules 1014, 1051, and OFPA F–2

July 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on July 6, 2012, 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 is filing with the Commission a proposal to amend Exchange Rules 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, and 1051, General Comparison and Clearance Rule, and Options Floor Procedure Advice (''OFPA'') F–2, Allocation, Time Stamping, Matching and Access to Matched Trades, to delete obsolete and unnecessary provisions in the Rules and OFPA concerning ticket matching and trade reporting requirements for options trades executed in open outcry.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* 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 modify unnecessary or obsolete provisions currently contained in Exchange Rules 1014(g)(vi), 1051, and OFPA F–2 that set forth ticket matching and trade reporting requirements for members executing transactions on the Exchange. The proposed rule change is intended to adopt rules that reflect the current process for matching and reporting options trades executed in open outcry on the floor of the Exchange.

The matching and trade reporting requirements in the current rules apply to trades that are executed in open outcry, which may require the participants to submit written paper trade tickets for reporting. Portions of the Rules and OFPA apply to electronically executed trades, which are matched and reported to the consolidated tape automatically by the Exchange's automated options trading system, PHLX XL® [3]. The vast majority of options trades that are executed on the Exchange are reported to the consolidated tape and to the participants in the trade automatically. In certain instances, however, trades are executed in open outcry in the trading crowd without the use of electronic connectivity to PHLX XL (such as a verbal trade between market makers). The Exchange proposes to modify the Rules and OFPA to reflect the current procedures for reporting such trades.

Current Rules

Rule 1051(b) currently requires that all Exchange options transactions be reported at the time of execution to the Exchange for comparison of trade information at the specialist's post. Currently, not ''all'' options trades are executed in open outcry. In fact, the majority of option trades executed on the Exchange are executed electronically via PHLX XL. Upon the electronic execution of an options trade, PHLX XL sends an immediate report of the trade to the Options Price Reporting Authority (''OPRA''), the Options Clearing Corporation (''OCC''), and to the participants in the trade. Therefore, trades executed electronically via PHLX XL require no trade reporting action by participants.

Some trades still occur verbally in the trading crowd, such as when market makers trade with one another, or in very rare instances where there is a malfunction of the Exchange's system or the Options Floor Broker Management System (''FBMS,'' described below). In such instances, participants in the verbal trade are required to produce written trade tickets. Current Rule 1014(g)(vi) and OFPA F–2 require participants to allocate, match and time stamp executed trades as well as to submit the matched trade to the appropriate person at the respective specialist post. Once a trade has been matched and submitted for reporting at the post, current OFPA F–2(d) states that the respective Specialist Unit must preserve the matched tickets for a period of not less than three years.

Current Rule 1051(a) and OFPA F–2(b) require a member or member organization initiating an options transaction, whether acting as principal or agent, to report or ensure that the transaction is reported within 90 seconds of the execution to the tape, except that, when an order represented by a Floor Broker is executed against a limit order on the book, the Specialist must report or ensure that the portion of

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PHLX XL, formerly known as ''AUTOM,'' is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of Exchange-listed equity options, index options and U.S. dollar-settled foreign currency options orders to the Exchange trading floor. *See* Exchange Rule 1080(a). This proposal refers to ''PHLX XL'' as the Exchange's automated options trading and reporting system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to 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 ''AUTOM'' and ''Phlx XL II'' to ''PHLX XL'' for branding purposes.