continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. The Exchange believes that the proposed rule change reflects this competitive environment because it would broaden the conditions under which OTP Holders and OTP Firms may qualify for the tiers and because it would result in an increase in the corresponding credit rates.

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.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such 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.* Please include File Number SR–NYSEArca–2012–41 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–NYSEArca–2012–41. 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 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 available publicly. All submissions should refer to File Number SR–NYSEArca–2012–41 and should be submitted on or before June 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12618 Filed 5–23–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67026; File No. SR–Phlx–2012–68]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, by NASDAQ OMX PHLX LLC To Accept Inbound Orders From NASDAQ OMX BX's New Options Market

May 18, 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 May 15, 2012, NASDAQ OMX PHLX LLC (''Exchange'' or ''PHLX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Item I below, which Item has been prepared by the Exchange. On May 17, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] 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 file with the Commission a proposal for PHLX to accept inbound orders routed by NASDAQ Options Services LLC (''NOS'') from NASDAQ OMX BX's new options market (with the attendant obligations and conditions), as described further below, on a one year pilot basis.

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

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made a technical amendment to the Item 3.a of the Form 19b–4 and Item II of Exhibit 1 in the third bullet point, which begins with the word ''Third'' to add the words ''the Exchange or'' in front of the word ''FINRA'' in the second parenthetical.

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

In conjunction with a proposal by NASDAQ OMX BX (''BX'') to establish a new options market and provide outbound routing services to all markets using its affiliated routing broker, NOS,[4] PHLX proposes that NOS be permitted to route orders from BX to PHLX on a one year pilot basis.

NOS is a broker-dealer and member of PHLX, BX and The NASDAQ Stock Market (''NASDAQ''). NOS provides all routing functions for NASDAQ[5] and PHLX,[6] and BX has proposed that NOS do so for BX as well.[7] NASDAQ, PHLX, BX and NOS are affiliates. Accordingly, the affiliate relationship between PHLX and NOS, its member, raises the issue of an exchange's affiliation with a member of such exchange.[8] Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.[9]

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, PHLX previously proposed, and the Commission approved, limitations and conditions on NOS's affiliation with PHLX.[10] Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, PHLX previously proposed, and the Commission approved,[11] NOS's affiliation with PHLX to permit PHLX to accept inbound orders that NOS routes in its capacity as a facility of NASDAQ, subject to the certain limitations and conditions. PHLX now proposes to accept inbound options orders that NOS routes in its capacity as a facility of BX, subject to these same limitations and conditions:

- First, PHLX and the Financial Industry Regulatory Authority (''FINRA'') will maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[12] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NOS's compliance with certain PHLX rules.[13] Pursuant to the Regulatory Contract, however, PHLX retains ultimate responsibility for enforcing its rules with respect to NOS.
- Second, FINRA will monitor NOS for compliance with PHLX's trading rules, and will collect and maintain certain related information.[14]
- Third, FINRA will provide a report to PHLX's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange or FINRA is aware) that identify NOS as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NOS as a participant that has potentially violated Commission or Exchange rules.
- Fourth, PHLX has in place PHLX Rule 985, which requires NASDAQ OMX, as the holding company owning both PHLX and NOS, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to PHLX's systems as a result of its affiliation with PHLX, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to PHLX.
- Fifth, PHLX proposes that the routing of orders from NOS to PHLX, in NOS's capacity as a facility of BX be authorized for a pilot period of one year.

PHLX believes that the above-listed conditions protect the independence of PHLX's regulatory responsibility with respect to NOS, and that these mitigate the aforementioned concerns about potential conflicts of interest and unfair competitive advantage.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general, and with Section 6(b)(5) of the Act,[16] 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, because the proposed rule change will allow PHLX to receive inbound routes of orders from NOS, acting in its capacity as a facility of BX, in a manner consistent with prior approvals and established protections. PHLX believes that the proposed conditions establish mechanisms that protect the independence of PHLX's regulatory responsibility with respect to NOS, as well as ensure that NOS cannot use any information it may have because of its affiliation with PHLX to its advantage.

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.

[4] *See* SR–BX–2012–030.

[5] *See* NOM Rules Chapter VI, Section 11(e). *See also* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080).

[6] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[7] *See* SR–BX–2012–030.

[8] Absent an effective filing, Exchange Rule 985(b) would prohibit NOS from being a member of the Exchange.

[9] *See* Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (SR–NASDAQ–2008–098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR–NASDAQ–2010–100).

[10] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[11] *See e.g.,* Securities Exchange Act Release No. 65399 (September 26, 2011), 76 FR 60955 (September 20, 2011) (SR–Phlx–2011–111).

[12] 17 CFR 240.17d–2.

[13] NOS is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[14] Pursuant to the Regulatory Contract, both FINRA and PHLX will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in its capacity as a facility of BX routing orders to PHLX) is identified as a participant that has potentially violated applicable Commission or Exchange rules. PHLX 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.

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

[16] 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 will:

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–2012–68 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–2012–68. 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–Phlx–2012–68 and should be submitted on or before June 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12619 Filed 5–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67024; File No. SR–NASDAQ–2012–060]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rule 4751(f)(7) Concerning the Processing of the Price To Comply Order

May 18, 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 May 8, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' 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 how the processing of a Price to Comply Order under Rule 4751(f)(7) operates based on the method of entry. The Exchange will implement the change effective May 14, 2012.

The text of the proposed rule change is below. Proposed new language is italics; proposed deletions are in brackets.

* * * * *

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

(a)–(e)

(f) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(6) No change.

(7) ''Price to Comply Order'' are orders that, if, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order *entered through an OUCH port* may be adjusted once or multiple times depending upon [the method of order entry and]*the election of the member firm and* changes to the prevailing NBBO. *The displayed and undisplayed prices of a Price to Comply order entered through a RASH port may be adjusted multiple times, depending upon changes to the prevailing NBBO.*

(8)–(14) No change.

(g)–(i) No change.

* * * * *

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

NASDAQ is proposing to clarify the effect that the methods of order entry have on the processing of a Price to Comply Order, as described in Rule

[17] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.