

### H. Identification of Marketplace of Execution

Not Applicable.

### III. Solicitation of Comments

The Commission seeks general comments on Amendment No. 29. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 S7-24-89 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 S7-24-89. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all written statements with respect to the proposed Plan Amendment that are filed with the Commission, and all written communications relating to the proposed Plan Amendment 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 the filing also will be available for Web site viewing and printing at the Office of the Secretary of the Committee, currently located at the CBOE, 400 S. LaSalle Street, Chicago, IL 60605. 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 S7-24-89 and should be submitted on or before June 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-12041 Filed 5-20-13; 8:45 am]

BILLING CODE 8011-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69576; File No. SR-BX-2013-036]

#### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change for Permanent Approval of a Pilot To Permit BX Options To Accept Inbound Options Orders From NASDAQ OMX PHLX LLC and NASDAQ Options Services LLC

May 15, 2013.

Pursuant to Section 19(b)(1) 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 May 7, 2013, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") 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 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 has submitted a proposal for the permanent approval of the Exchange's pilot program to permit the BX Options System to accept inbound options orders routed by Nasdaq Options Services LLC ("NOS") from NASDAQ OMX PHLX LLC ("Phlx") and The NASDAQ Stock Market LLC's NASDAQ Options Market ("NOM").

#### 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

In conjunction with PHLX and NOM providing outbound routing services to all options markets using its affiliated routing broker, NOS,<sup>4</sup> BX proposed that NOS be permitted to route orders from PHLX and NOM to BX Options on a pilot basis, subject to certain limitations and conditions, as described below.<sup>5</sup> The current pilot program expires June 26, 2013.

NOS is a broker-dealer and member of NASDAQ, PHLX and BX. NOS provides all routing functions for NOM, BX Options and PHLX. BX, NASDAQ, NOM, PHLX and NOS are affiliates.<sup>6</sup> Accordingly, the affiliate relationship between BX and NOS, its member, raises the issue of an exchange's affiliation with a member of such exchange. 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.<sup>7</sup>

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, the Exchange previously proposed, and the Commission approved, limitations and conditions on

<sup>4</sup> See Securities Exchange Act Release Nos. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32); and 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (order approving File Nos. SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080).

<sup>5</sup> Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030).

<sup>6</sup> See Securities Exchange Act Release Nos. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) (order approving NASDAQ OMX's acquisition of BX); and 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR-Phlx-2008-31) (order approving NASDAQ OMX's acquisition of PHLX).

<sup>7</sup> See Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR-NASDAQ-2008-098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR-NASDAQ-2010-100). See also Securities Exchange Act Release No. 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008) (SR-NASDAQ-2008-061) (Permitting NOS to be affiliated with PHLX).

<sup>9</sup> 17 CFR 200.30-3(a)(27).

<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.

NOS's affiliation with the Exchange.<sup>8</sup> 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, the Exchange previously proposed, and the Commission approved,<sup>9</sup> NOS's affiliation with the Exchange to permit the Exchange to accept inbound orders that NOS routes in its capacity as a facility of PHLX and NOM, subject to the certain limitations and conditions. The Exchange now proposes to permit BX to accept inbound options orders that NOS routes in its capacity as a facility of PHLX and NOM on a permanent basis, subject to the limitations and conditions of this pilot:

- First, the Exchange and FINRA maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d-2 under the Act ("17d-2 Agreement").<sup>10</sup> Pursuant to the Regulatory Contract and the 17d-2 Agreement, FINRA is allocated regulatory responsibilities to review NOS's compliance with certain Exchange rules.<sup>11</sup> Pursuant to the Regulatory Contract, however, BX retains ultimate responsibility for enforcing its rules with respect to NOS.

- Second, FINRA monitors NOS for compliance with the Exchange's trading rules, and collects and maintains certain related information.<sup>12</sup>

- Third, FINRA provides a report to the Exchange's chief regulatory officer ("CRO"), on a quarterly basis, that: (i) Quantifies all alerts (of which 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, the Exchange has in place BX Rule 2140(c), which requires The NASDAQ OMX Group, Inc., as the holding company owning both the

Exchange 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 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.<sup>13</sup>

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 responsibility with respect to NOS, as well as demonstrate that NOS cannot use any information advantage it may have because of its affiliation with the Exchange. Because the Exchange has met all the above-listed conditions, it now seeks permanent approval of this inbound routing relationship. The Exchange will continue to comply with the conditions 1-4 stated above.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>14</sup> in general, and with Sections 6(b)(5) of the Act,<sup>15</sup> 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 the Exchange to continue to receive inbound orders from NOS, acting in its capacity as a facility of PHLX and NOM, in a manner consistent with prior approvals and established protections. The Exchange believes that these conditions establish mechanisms that protect the independence of the Exchange'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 the Exchange to its advantage.

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

The Exchange 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. Permanent approval of the current pilot program does not raise any issues of intra-market competition because it involves inbound routing from an affiliated exchange. Nor does it result in a burden on competition among exchanges, because there are many competing options exchanges that provide routing services, including through an affiliate.

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

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange 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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2013-036 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-BX-2013-036. This file number should be included on the

<sup>8</sup> Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030).

<sup>9</sup> *Id.*

<sup>10</sup> 17 CFR 240.17d-2.

<sup>11</sup> NOS is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

<sup>12</sup> Pursuant to the Regulatory Contract, both FINRA and the Exchange collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in its capacity as a facility of PHLX and NOM routing orders to BX) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA 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.

<sup>13</sup> See SR-BX-2013-035.

<sup>14</sup> 15 U.S.C. 78f.

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

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 will also 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-BX-2013-036 and should be submitted on or before June 11, 2013.

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

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-12035 Filed 5-20-13; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69586; File No. SR-Phlx-2013-50]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to FLEX Options

May 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on May 2, 2013, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1079 entitled "FLEX, Index, Equity and Currency Options" and Option Floor Procedure Advice ("OFPA") F-28 entitled "Trading FLEX Index, Equity and Currency Options."

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 the 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 1079(a) which concerns the characteristics applicable to FLEX options and 1079(b) and eliminate OFPA F-28 which concerns the procedures for quoting and trading FLEX options.<sup>3</sup> The Exchange is proposing to amend its FLEX rules in Rule 1079 to establish the same procedures for quoting and trading FLEX options as exist today on NYSE MKT LLC ("Amex").<sup>4</sup>

<sup>3</sup> The term "FLEX option" means a FLEX option contract that is traded subject to this Rule. Although FLEX options are generally subject to the rules in this section, to the extent that the provisions of this Rule are inconsistent with other applicable Exchange rules, this Rule takes precedence with respect to FLEX options.

<sup>4</sup> See Amex Rule 904G (FLEX Trading Procedures and Principles).

Today, a Requesting Member shall obtain quotes and execute trades in certain non-listed FLEX options at the specialist post of the non-FLEX option on the Exchange. The Requesting Member is a Phlx member qualified to trade FLEX options pursuant to paragraph (c) of Rule 1079 who initiates a FLEX Request For Quotes ("RFQ") pursuant to paragraph (b) of Rule 1079. FLEX options are not continuously quoted and series are not pre-established.<sup>5</sup> Today a Requesting Member may initiate an RFQ by first announcing all of the following contract terms to the trading crowd of the non-FLEX option and then submitting an RFQ ticket to that specialist post: (1) Underlying index, security or foreign currency, (2) type, size and crossing intention (3) in the case of FLEX index options and FLEX equity options, exercise style, (4) expiration date, (5) exercise price, and, (6) respecting index options, the settlement value. Thereafter, on receipt of an RFQ in proper form, the assigned specialist or Requesting Member shall cause the terms of the RFQ to be disseminated as an administrative text message through the Options Price Reporting Authority ("OPRA").

The Exchange proposes to adopt rules, similar to Amex, which requires a Requesting Member to submit to the FLEX Specialist an RFQ utilizing for that purpose the forms, formats and procedures established by the Exchange. Thereafter, on receipt of an RFQ in proper form, the assigned FLEX Specialist shall cause the terms and specifications of the RFQ to be immediately announced at the post. Such communication shall be disseminated as an administrative text message through the Options Price Reporting Authority ("OPRA").<sup>6</sup>

Today, following the RFQ announcement, a preset response time will begin, during which members may provide responsive quotes. The response time, between two and 15 minutes, will be determined by the Exchange. During the response time, members may provide responsive quotes to the RFQ, which may be entered, modified or withdrawn during such response time. Each assigned ROT

<sup>5</sup> The Exchange's electronic quoting and trading system is not available for FLEX options. The variable terms of FLEX options shall be established through the process described in Rule 1079. All transactions must be in compliance with Section 11 of the Securities Exchange Act of 1934 and the rules promulgated thereunder, which may include yielding priority to customer orders.

<sup>6</sup> See proposed Rule 1079(b)(1).

<sup>16</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.