

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.*

[FR Doc. 2013-02640 Filed 2-5-13; 8:45 am]

**BILLING CODE 8011-01-P**

## 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.

the ordinary sense of the terms “adding” and “removing,” the order or quote received first is considered to be adding liquidity to the Exchange. The Exchange believes that orders subject to an order exposure alert are different. During the order exposure period, those orders are, in effect, advertising in a certain way that they cannot be executed and therefore the Exchange is inviting liquidity to trade with them. The quotes and orders that respond to that advertisement are, therefore, considered to be adding liquidity, because they are adding liquidity to the advertised orders. Accordingly, the Exchange believes that considering those responsive orders to be adding liquidity is logical and fair, consistent with the Exchange’s goal of attracting the other side of advertised orders. At the end of the order exposure period, the Exchange reverts back to treating the advertised orders as adding liquidity, because the Exchange no longer presumes that a responsive order is specifically responding to the advertisement and might be coincidental. In that case, the Exchange believes that it is more appropriate to restore to the advertised order the status of being the order adding liquidity.

## 2. Statutory Basis

The Exchange believes that its proposal to clarify its Pricing Schedule is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act<sup>5</sup> in particular. The Exchange’s proposal to clarify its Pricing Schedule is intended to provide additional guidance to market participants with respect to the application of fees and rebates in Section I of the Pricing Schedule. The Exchange has added other clarifying rule text to its Pricing Schedule in the past to better address the applicability of its fees to certain transactions.<sup>6</sup> At this time, the Exchange believes that providing clarification regarding the manner in which the Exchange applies fee and rebates for adding and removing liquidity will provide additional transparency regarding the Pricing Schedule. The Exchange only recently adopted the order exposure alert message<sup>7</sup> and believes this filing will

serve to clarify the distinction in applying add rebates and remove fees in Section I with respect to those types of alerts. The Exchange believes that this clarification is reasonable because it would provide market participants with clear guidance on the application of Section I fees and rebates.<sup>8</sup>

The Exchange believes that the clarification is equitable and not unfairly discriminatory because it applies to all market participants in a uniform manner. With respect to Customer pricing, the Customer is not assessed a fee when adding or removing liquidity and therefore no fee advantage or disadvantage with respect to whether an order triggering the order exposure alert is considered to be adding or removing liquidity. With respect to Firms, Broker-Dealers and Professionals, the Fees for Adding Liquidity are \$0.45 per contract and the Fees for Removing Liquidity are \$0.44 per contract. There is no significant fee advantage or disadvantage with respect to whether an order triggering the order exposure alert is considered to be adding or removing liquidity. Finally, with respect to Specialists and Market Makers, the Exchange is seeking to encourage these market participants to trade against orders that generate an order exposure alert by paying the Rebate to Add Liquidity and assessing the lower Fee for Removing Liquidity when responding to an order exposure alert. Even though a market participant is assessed the Fee for Removing Liquidity, they are nevertheless avoiding any routing fees from other options exchanges on FIND and SRCH orders,<sup>9</sup> because, potentially as a result of the order exposure alert, the order would not be routed, which lowers the overall cost of the transaction.

The Exchange assesses similar fees and pays similar rebates, pursuant to Section I, on routable FIND and SRCH orders today and prior to the implementation of the order exposure alert, which are considered the remover of liquidity. This clarification seeks to make it clear that a DNR order<sup>10</sup> is viewed in a similar manner as FIND and SRCH orders when the order exposure alert occurs; that is, such order is treated as the remover of liquidity. The Exchange treats all orders executed on the Exchange similarly for purposes of the order exposure alert, regardless of the market participant.

The Exchange is filing this proposed rule change to define the terms adding

and removing liquidity to provide member organizations with greater transparency in pricing Section I fees and rebates. Additionally, the Exchange does not believe that there is confusion among market participants with respect to the application of add rebates and remove fees with respect to Section I generally or the order exposure alert specifically.

The Exchange believes that the proposal is consistent with of Section 6(b)(5) in that it is designed to promote just and equitable principles of trade, 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, by clarifying what fees and rebate in Section I of the Exchange’s Pricing Schedule apply to certain transactions. Moreover, the Exchange believes that treating orders subject to an order exposure period as removing liquidity during that period is consistent with this statutory standard, because the responding order can logically be considered adding liquidity. Thus, this rewards, in terms of fees, the order that responds and results in an execution on the Exchange. In clarifying how the Exchange applies certain fees and rebates, the Exchange believes that adding text to the Pricing Schedule to define the terms adding and removing liquidity provides transparency to market participants.

## 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. The Exchange is merely filing this clarification to further specify how certain fees and rebates in Section I are applied to market participants. The Exchange believes that this clarification will provide greater transparency to market participants. The Exchange does not believe that this amendment creates intramarket competition among its members as it is applied uniformly to all members and there is no significant fee advantage or disadvantage with respect to orders triggering the order exposure alert.

The Exchange believes that clarifying the applicability of certain fees and rebates for adding and removing liquidity within the Pricing Schedule provides market participants clear guidance. As mentioned herein, the Exchange has added similar guidance on the applicability of its pricing in the past in order that market participants can clearly determine the manner in

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>6</sup> See Securities Exchange Act. Release No. 62140 (May 20, 2010), 75 FR 29788 (May 27, 2010) (SR-Phlx-2010-69) (an immediately effective rule change to address the applicability of its fees to certain transactions).

<sup>7</sup> See Securities Exchange Act. Release No. 68517 (December 21, 2012), 77 FR 77134 (December 31, 2012) (SR-Phlx-2012-136).

<sup>8</sup> The order exposure alerts are only applicable to the Simple Orders in Section I.

<sup>9</sup> See Rule 1080(m).

<sup>10</sup> See Rule 1080(m).

which the Exchange applies its pricing and to avoid any ambiguity.

*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**

Pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(1)<sup>12</sup> thereunder, the Exchange has designated this proposal as one that constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO, and therefore has become effective.

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.

**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-Phlx-2013-06 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-2013-06. 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-Phlx-2013-06 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>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-68797; File No. SR-BATS-2013-008]**

**Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 11.17, Entitled "Clearly Erroneous Executions"**

January 31, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 30, 2013, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II

below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 is filing with the Commission a proposal to extend a pilot program related to Rule 11.17, entitled "Clearly Erroneous Executions." The Exchange also proposes to adopt new paragraph (h) to Rule 11.17 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>5</sup>

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.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 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 purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions and to adopt new paragraph (h) to Rule 11.17 in connection with upcoming operation of the Limit Up-Limit Down Plan.

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

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

<sup>5</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release").

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(1).

<sup>13</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.