

connection with the reorganization were paid by applicant and Morgan Stanley Investment Management, applicant's investment adviser.

*Filing Date:* The application was filed on September 12, 2014.

*Applicant's Address:* c/o Morgan Stanley Investment Management Inc., 522 Fifth Ave., New York, NY 10036.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73246; File No. SR-Phlx-2014-59]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation Period of the New Options Floor Broker Management System Until November 3, 2014

September 29, 2014.

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 September 19, 2014, 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 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.

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

The Exchange proposes to extend the implementation rollout of its new Options Floor Broker Management System.

The text of the proposed rule change is 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 proposal is to extend the rollout of the Exchange's enhancements to the Options Floor Broker Management System ("FBMS"). Today, FBMS enables Floor Brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also establishes an electronic audit trail for options orders represented by Floor Brokers on the Exchange. Floor Brokers can use FBMS to submit orders to Phlx XL, rather than executing the orders in the trading crowd.

With the new FBMS, all options transactions on the Exchange involving at least one Floor Broker are required to be executed through FBMS. In connection with order execution, the Exchange allows FBMS to execute two-sided orders entered by Floor Brokers, including multi-leg orders up to 15 legs, after the Floor Broker has represented the orders in the trading crowd. FBMS also provides Floor Brokers with an enhanced functionality called the complex calculator that calculates and displays a suggested price of each individual component of a multi-leg order, up to 15 legs, submitted on a net debit or credit basis.

The Exchange received approval to implement the FBMS enhancements as of June 1, 2013,<sup>3</sup> and delayed implementation until July 2013,<sup>4</sup> until

September 2013,<sup>5</sup> until December 2013,<sup>6</sup> until March 2014,<sup>7</sup> and again until September 1, 2014.<sup>8</sup> The Exchange made a number of improvements intended to improve the performance of the new system.

Implementation began on March 7, 2014. In its most recent filing delaying implementation,<sup>9</sup> the Exchange stated that the implementation period would be up to September 1, 2014, during which the new FBMS enhancements and related rules would operate along with the existing FBMS and rules.<sup>10</sup> At this time, the Exchange needs additional time to complete the implementation because of technology issues with the new system. The new FBMS is available to all users (Floor Brokers) and in all options. Nevertheless, the Exchange believes that the Floor Brokers need additional time to familiarize themselves with the new features of FBMS, based on that ongoing experience, offer input regarding system performance, and provide the Exchange with the opportunity to address performance improvements. Given some technology issues that the Exchange has encountered during the implementation period, the delay is needed to allow Floor Brokers additional time to adapt to the new system as the Exchange works to improve the performance of the new system. As the performance issues are resolved, the delay will allow the Floor Brokers to migrate their business in a prudent manner. The delay is not as a result of major technology changes from the original proposal and no rule changes are being made; rather, the Exchange continues to work to, generally, make the system more user-friendly and provide more useful interfaces for the ultimate user, the Floor Broker.

Accordingly, the Exchange seeks an additional two month period (until November 3, 2014) to be able to continue the implementation rollout; the Exchange announced the specific date on which the trial period will end and the old FBMS will no longer be available in advance through an Options

<sup>5</sup> Securities Exchange Act Release No. 70141 (August 8, 2013), 78 FR 49565 (August 14, 2013) (SR-Phlx-2013-83).

<sup>6</sup> Securities Exchange Act Release No. 70629 (October 8, 2013), 78 FR 62852 (October 22, 2013) (SR-Phlx-2013-100).

<sup>7</sup> Securities Exchange Act Release No. 71212 (December 31, 2013), 79 FR 888 (January 7, 2014) (SR-Phlx-2013-129).

<sup>8</sup> Securities Exchange Act Release No. 72135 (May 9, 2014), 79 FR 27966 (May 15, 2014) (SR-Phlx-2014-33).

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

<sup>10</sup> In the original filing, the Exchange stated its intent to implement these enhancements with a trial period of two to four weeks. *Id.*

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 69471 (April 29, 2013), 78 FR 26096 (May 3, 2013) (SR-Phlx-2013-09).

<sup>4</sup> Securities Exchange Act Release No. 69811 (June 20, 2013), 78 FR 38422 (June 26, 2013) (SR-Phlx-2013-67).

Trader Alert. During the additional time period, the Exchange will continue to encourage Floor Brokers to use the new FBMS in order to help them become more familiar with the new features of FBMS.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in particular, 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 enhancing FBMS to make the Exchange's markets more efficient, to the benefit of the investing public. Although the Exchange needs additional time to finalize the implementation rollout, this time period is expected to be limited, depending on user input, and will involve advance notice to the Exchange membership.

### 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 continues to believe, as it stated when proposing these enhancements, that these enhancements to FBMS should result in the Exchange's trading floor operating in a more efficient way, which should help it compete with other floor-based exchanges and help the Exchange's Floor Brokers compete with floor brokers on other options exchanges.

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

A written comment was received in support of the proposal.<sup>13</sup> The Exchange did not solicit comments. The Comment Letter requested the Commission and Phlx postpone the implementation rollout of the new FBMS from September 1, 2014 to a later date. The Comment Letter alleges that the Floor Brokers did not have proper notice of the end of the implementation period. Also, the Comment Letter requests that the new FBMS be postponed to ensure

the public outcry system is maintained. Consistent with what the Comment Letter requests, the Exchange is filing this delay of implementation to extend the implementation rollout of its new FBMS for an additional two month period. The Exchange has provided written notice on numerous occasions.<sup>14</sup> With respect to preserving the open outcry system, the Exchange notes that under the new FBMS orders will continue to be represented in the trading crowd; order exposure has not been eliminated. The Exchange is merely modernizing how orders are executed and reported to support the maintenance of an accurate audit trail.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>17</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>18</sup> The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can implement the enhancements once they are ready from a technology perspective.

The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as it will clarify when the delayed implementation of the FBMS will be effective and operative immediately. In addition, because the proposal only delays the implementation date of the FBMS and does not make any additional changes to the FBMS itself, it does not

raise any novel regulatory issues. The Commission notes that the implementation period was scheduled to expire on September 1, 2014, when the existing FMBS would cease to operate and the new FBMS would be fully implemented. However, Phlx has indicated that it needs additional time to continue the implementation rollout of the new FMBS. Therefore, the Commission designates the proposal operative upon filing.<sup>19</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.<sup>20</sup> If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.<sup>21</sup>

### 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-2014-59 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2014-59. 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

<sup>14</sup> See e.g. Options Trader Alerts 2014-26 and 2014-5.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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

<sup>18</sup> *Id.*

<sup>19</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>20</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>21</sup> *Id.*

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See letter from various Phlx Floor Brokers to Mary Jo White, Chairwoman of the Securities and Exchange Commission, dated August 28, 2014 ("Comment Letter").

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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2014-59, and should be submitted on or before October 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73245; File No. SR-FINRA-2014-026]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes To Increase Arbitrator Honoraria and Increase Certain Arbitration Fees and Surcharges

September 29, 2014.

#### I. Introduction

On June 13, 2014, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend FINRA's Code of Arbitration Procedure for Customer Disputes ("Customer Code") and the Code of Arbitration Procedure for Industry Disputes ("Industry Code")

(together, "Codes") to increase certain arbitration filing fees, member surcharges and process fees, and hearing session fees for the primary purpose of increasing arbitrator honoraria. The proposed rule change was published for comment in the **Federal Register** on July 2, 2014.<sup>3</sup> The Commission received eight comment letters on the proposal.<sup>4</sup> On August 5, 2014, FINRA granted the Commission an extension of time, until September 30, 2014, to act on the proposal.<sup>5</sup> FINRA responded to the comment letters on September 18, 2014.<sup>6</sup> This order approves the rule change as proposed.

#### II. Description of the Proposed Rule Change

##### A. Background

As stated in the Notice, FINRA is proposing to amend the Codes to increase certain arbitration filing fees, member surcharges and process fees, and hearing session fees for the primary purpose of increasing arbitrator honoraria.<sup>7</sup> In support of the proposal, FINRA stated that it has "received numerous complaints in recent years from its arbitrators regarding the honoraria paid to them for their service."<sup>8</sup> FINRA further noted that

<sup>3</sup> See Securities Exchange Act Release No. 72479 (Jun. 26, 2014), 79 FR 37786 (Jul. 2, 2014) ("Notice").

<sup>4</sup> See Letters from Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated July 1, 2014 ("Caruso Letter"); Ryan K. Bakhtiari, Aidikoff, Uhl & Bakhtiari, dated July 2, 2014 ("Bakhtiari Letter"); Philip M. Aidikoff, Esq., Aidikoff, Uhl & Bakhtiari, dated July 2, 2014 ("Aidikoff Letter"); Jason Doss, President, Public Investors Arbitration Bar Association ("PIABA"), dated July 22, 2014 ("PIABA Letter"); Ellen Liang, Student Intern, Elissa Germaine, Supervising Attorney, and Jill Gross, Director, Pace Investor Rights Clinic ("PIRC"), Pace University School of Law, dated July 23, 2014 ("PIRC Letter"); David T. Bellaire, Esq., Executive Vice President and General Counsel, Financial Services Institute ("FSI"), dated July 23, 2014 ("FSI Letter"); Andrea Seidt, Ohio Securities Commissioner and President, North American Securities Administrators Association ("NASAA"), dated July 23, 2014 ("NASAA Letter"); and Michael J. Quarequio, Esq., Law Office of Michael J. Quarequio, P.A., dated July 23, 2014 ("Quarequio Letter").

<sup>5</sup> See Letter from Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution, Inc., to Lourdes Gonzalez, Assistant Chief Counsel, Sales Practices, Division of Trading and Markets, Securities and Exchange Commission, dated August 5, 2014.

<sup>6</sup> See Letter from Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution, Inc., to Brent J. Fields, Secretary, Securities and Exchange Commission, dated September 18, 2014 ("FINRA Response Letter").

<sup>7</sup> See Notice, 79 FR at 37786. See also *id.* at 37787 n. 3 (noting FINRA's last increase to arbitrator honoraria and citing Securities Exchange Act Rel. No. 41056 (Feb. 16, 1999), 64 FR 10041 (Mar. 1, 1999) (File No. SR-NASD-97-79)).

<sup>8</sup> Notice, 79 FR at 377887 (stating that FINRA is also aware that arbitrators in private arbitration

surveys of organizations and individuals recruited to be FINRA arbitrators, as well as reports from arbitrators at focus groups, and other arbitrator comments indicate a "heightened sensitivity to the comparatively low honoraria paid by FINRA."<sup>9</sup>

Although FINRA acknowledged that there are non-monetary benefits to serving as an arbitrator, FINRA still believes that "the current honoraria level is a barrier to recruiting."<sup>10</sup> FINRA also reported that "arbitrators have regularly cited the honoraria level when leaving the roster, particularly when they are asked to take a new training course or complete a survey or disclosure statement."<sup>11</sup> Accordingly, FINRA believes that increasing honoraria is needed to "retain a roster of high-quality arbitrators and attract qualified individuals who possess the skills necessary to manage arbitration cases and consider thoroughly all arbitration issues presented, which are essential elements for FINRA to meet its regulatory objective of protecting the investing public."<sup>12</sup>

To fund these honoraria increases, FINRA is proposing to increase certain fees and surcharges assessed in the arbitration forum. Specifically, FINRA's proposal would amend Rules 12214 (Payment of Arbitrators), 12800 (Simplified Arbitration), 12900 (Fees Due When a Claim is Filed), 12901 (Member Surcharge), 12902 (Hearing Session Fees, and Other Costs and Expenses), and 12903 (Process Fees Paid by Members) of the Customer Code. The proposed rule change would also amend Rules 13214 (Payment of Arbitrators), 13800 (Simplified Arbitration), 13900 (Fees Due When a Claim is Filed), 13901 (Member Surcharge), 13902 (Hearing Session Fees, and Other Costs and Expenses), and 13903 (Process Fees Paid by Members) of the Industry Code.<sup>13</sup>

In general, the proposal would increase the member surcharges and

forums set their own rates and charge significantly more than FINRA pays).

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

<sup>10</sup> *Id.* (noting the non-monetary benefits to serving as a FINRA arbitrator include "learning the skills necessary to be an effective commercial arbitrator, serving the public, or giving back to one's community by applying professional knowledge gained as an arbitrator").

<sup>11</sup> *Id.* (stating that "[t]hese extra requests are viewed as the 'last straw' that prevents good arbitrators from remaining on the roster at the current honoraria rate").

<sup>12</sup> *Id.*

<sup>13</sup> See *id.* at 37786-87. The text of the proposed rule change is available at the principal office of FINRA, on FINRA's Web site at <http://www.finra.org>, and at the Commission's Public Reference Room. For ease of reference, this Order generally refers only to rules in the Customer Code. However, the changes and discussion would also apply to the same rules of the Industry Code.

<sup>22</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.