

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of \* 21

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No.\* SR - 2012 - \* 41

Amendment No. (req. for Amendments \*)

Proposed Rule Change by NASDAQ OMX PHLX LLC.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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## Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Exhibit 2 Sent As Paper Document Exhibit 3 Sent As Paper Document **Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

Proposed rule change relating to routing of non-customer orders.

**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name *	<input type="text" value="Richard"/>	Last Name *	<input type="text" value="Rudolph"/>
Title *	<input type="text" value="Associate General Counsel"/>		
E-mail *	<input type="text" value="richard.rudolph@nasdaqomx.com"/>		
Telephone *	<input type="text" value="(215) 496-5074"/>	Fax	<input type="text"/>

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date By   
(Name \*)  
(Title \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information (required)**

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

### 1. Text of the Proposed Rule Change

NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”), 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> proposes to amend Exchange Rule 1080(m), Order Routing, to expand the routing capabilities of certain options orders that are eligible for electronic routing to other market centers by the Exchange’s fully automated options trading system, PHLX XL.<sup>®3</sup> Under the proposal, non-customer FIND orders (as defined below) that are received during open trading will now be eligible for routing to other market centers for execution.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is set forth below.

Brackets indicate deletions; underlining indicates new text.

#### **Phlx XL and Phlx XL II**

**Rule 1080.** (a) - (l) No change.

**(m) Order Routing** - The Phlx XL II system will route [only customer] FIND and SRCH Orders (as defined below) with no other contingencies. IOC Orders will be cancelled immediately if not executed, and will not be routed. Eligible orders can be designated as either available for routing or not available for routing. [Customer] Routable FIND and SRCH Orders (as defined in Rule 1080(m)(iv) below) designated as available for routing will first be checked by the Phlx XL II system for available contracts for potential execution. After checking the Phlx XL II system for available contracts, orders are sent to other available market centers for potential execution. When checking the book, the Phlx XL II system will seek to execute at the price at which it would send the order to a destination market center. In situations where the Exchange's disseminated bid or offer is inferior to the NBBO price, the Phlx XL II system will

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

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

<sup>3</sup> This proposal refers to “PHLX XL” as the Exchange’s automated options trading 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 “Phlx XL II” to “PHLX XL” for branding purposes.

contemporaneously route an order marked as an ISO to each away market disseminating prices better than the Exchange's price, for the lesser of: (a) the disseminated size of such away markets, or (b) the order size and, if order size remains after such routing, trade at the Exchange's disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the Phlx XL II system will not route the order to the locking or crossing market center, except as specified below.

(i) – (iii) No change.

(iv) The following order types are available:

(A) No change.

(B) *FIND Order*. A FIND order is an order that is routable upon receipt during open trading. Only a [, or any time the option goes through an opening process. A] customer FIND order on the Phlx XL II book [during an opening], whether it is received prior to the opening or it is a GTC FIND order from a prior day, may be routed as part of the Opening Process. Non-customer FIND orders are not eligible for routing during the Opening Process. Once the Opening Process is complete, [the] any FIND order is either eligible to trade at the Phlx price or placed on the Phlx book either at its limit price or at a price that is one Minimum Price Variation ("MPV") from the ABBO price if it would otherwise lock or cross the ABBO. Such [A] FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process.

A [customer] FIND order received during open trading that is not marketable against the PBBO or the ABBO will be entered into the Phlx XL II book at its limit price. The FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process.

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(C) *SRCH Order*. A SRCH order is a[n] customer order that is routable at any time. A SRCH order on the Phlx XL II book during the Opening Process (including a re-opening following a trading halt) [an opening], whether it is received prior to the opening or it is a GTC SRCH order from a prior day, may be routed as part of the Opening Process. Once the Opening Process is complete, a SRCH order is eligible either to: (1) trade at the Phlx price if that price is equal to or better than the ABBO or, if the ABBO is better than the Phlx price, orders have been routed to better priced markets for their full size; or (2) be routed to better priced markets if the ABBO price is the best price, and/or (3) be placed on the Phlx XL II book at its limit price if not participating in the Phlx opening at the opening price and not locking or crossing the ABBO. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market (see below).

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(n) - (o) No change.

Commentary: No change.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on August 19, 2011. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to Richard S.

Rudolph, Associate General Counsel, at (215) 496-5074.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of the proposed rule change is to expand the routing capabilities of option orders that are eligible for routing to other market centers when the Exchange cannot execute such orders at the National Best Bid or Offer (“NBBO”), by making non-customer FIND orders eligible for routing during open trading. In addition, the Exchange is revising the definition of the term “SRCH order” to be clear that only customer SRCH orders will continue to be eligible for routing.

### Current Rule

Currently, Rule 1080(m) states that the PHLX XL system will route only customer<sup>4</sup> FIND<sup>5</sup> and SRCH<sup>6</sup> orders to away markets. For purposes of this rule, the term “customer” includes a “professional” customer as defined in Exchange Rule 1000(b)(14).<sup>7</sup> FIND and SRCH Orders designated as available for routing are first checked by the PHLX XL system for available contracts for potential execution on the Exchange. After checking the PHLX XL system for available contracts, orders are sent to other available market centers for potential execution. When checking the book, the PHLX XL system seeks to execute at the price at which it would send the order to a destination market center. In situations where the Exchange's disseminated bid or offer is inferior to the NBBO price, the PHLX XL system will contemporaneously route an order marked as an Intermarket Sweep Order (“ISO”)<sup>8</sup> to each away market disseminating prices better than the Exchange's price, for the lesser of: (a) the

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<sup>4</sup> For purposes of this proposal, the term “customer” means a person or entity that is neither a broker-dealer nor a direct or indirect affiliate of a broker-dealer.

<sup>5</sup> A FIND order is currently defined as an order that is routable upon receipt. A FIND order received during open trading that is not marketable against the PHLX best Bid/Offer “PBBO” or the Away Best Bid/Offer (“ABBO”) will be entered into the limit order book at its limit price. The FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process. See Exchange Rule 1080(m)(iv)(B).

<sup>6</sup> A SRCH order is an order that is routable at any time. A SRCH order received during open trading that is not marketable against the PBBO or the ABBO will be entered into the Phlx XLII book. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market. . See Exchange Rule 1080(m)(iv)(C).

<sup>7</sup> The term “professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g)(except with respect to all-or-none orders, which will be treated like customer orders, except that orders submitted pursuant to Rule 1080(n) for the beneficial account(s) of professionals with an all-or-none designation will be treated in the same manner as off-floor broker-dealer orders), 1033(e), 1064.02 (except professional orders will be considered customer orders subject to facilitation), 1080(n) and 1080.08 as well as Options Floor Procedure Advices B-6, B- 11 and F-5. Member organizations must indicate whether orders are for professionals. See Exchange Rule 1000(b)(14).

<sup>8</sup> An ISO is a limit order for an options series that is identified as an ISO when routed to an away market center and, simultaneously with the routing of the order, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO, with such additional orders also marked as ISOs.

disseminated size of such away markets, or (b) the order size and, if order size remains after such routing, trade at the Exchange's disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted after routing, they are posted on the Exchange's limit order book.

Whether and under what circumstances such unexecuted contracts are re-routed depends upon the order's status as a FIND or SRCH order, as defined above.<sup>9</sup>

### The Proposal

The Exchange is proposing to add non-customer FIND orders as a new category of orders that are eligible for routing. Non-customer FIND orders would be eligible for routing only during open trading, and not during the Opening Process.<sup>10</sup> Customer FIND and SRCH orders received prior to the opening would continue to be treated as they are currently under the rule, *i.e.*, both are eligible for routing during the Opening Process.

Under the current rule and practice, a customer FIND order received during open trading that is not marketable against the PHLX Best Bid or Offer ("PBBO") or the Away Best Bid or Offer ("ABBO") is entered into the limit order book at its limit price. If the FIND order is marketable against the ABBO, it is routed to markets disseminating the ABBO. If the order still has remaining size after routing, it will be entered into the limit order book. Such FIND order, or its remainder, is not eligible for routing again until the next time the affected option series is subject to a new Opening Process. Under the proposal, non-customer FIND orders would be treated in the same manner as customer FIND orders, except that non-customer FIND orders would not be eligible for routing during the Opening Process. The Exchange is proposing to route only customer FIND orders during the opening process to ensure that customers retain

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<sup>9</sup> See supra notes 5 and 6.

<sup>10</sup> See Exchange Rule 1017(l)(iii).

priority respecting all liquidity available as part of the Opening Process whether that liquidity is on PHLX or on another exchange. During open trading this is not an issue because two FIND orders will not be received at precisely the same time; generally, a customer FIND order would always have priority over a non-customer FIND order.

Unlike the treatment of FIND orders, the treatment of SRCH orders is not subject to change under the proposal. Currently, Exchange Rule 1080(m) states that the PHLX XL system will route only customer FIND and SRCH orders. While the proposed rule change would expand routable FIND orders to include non-customer FIND orders, the proposal would re-define a SRCH order as a customer order that is routable at any time. The purpose of this change is to ensure that only customer SRCH orders continue to be eligible for routing. Just as today, non-customer SRCH orders will not be eligible for routing. Non-customer orders received that are designated as SRCH orders will be placed on the limit order book if not executed on the Exchange upon receipt.

The Exchange notes that very few customers use the SRCH order type. Additionally, the Exchange has noted that there is no demand for the use of SRCH orders on the part of non-customers, as these participants tend to be sensitive to, and prefer to control, the charges incurred when their order is routed. The Exchange believes, however, that non-customers submitting their orders to the Exchange will use FIND orders. FIND orders allow participants to access potential liquidity on away markets while enabling them to manage expectations of the number of times their orders are routed. This helps participants to plan for and ascertain the fees they would incur each time their order is routed. Thus, the Exchange believes that the expansion of the FIND order to non-customer participants is appropriate and useful in the processing of non-customer orders seeking the best execution in the marketplace as a whole.



b. Statutory Basis.

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>11</sup> in general and with Section 6(b)(5) of the Act,<sup>12</sup> in that it is designed 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act<sup>13</sup> in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposal would expand the routing capabilities of certain orders that are eligible for routing to other exchanges, despite the fact that such other exchanges are competitors of the Exchange. This benefits investors because the Exchange's system will route to away markets at better prices.

The proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system by enabling non-customer orders to have access to liquidity on other exchanges each time they submit a FIND order to the Exchange, providing for best executions in the national market system.

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

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

<sup>13</sup> 15 U.S.C. 78f(b)(8).

The Exchange further believes that the proposed rule change does not permit unfair discrimination between customers, issuers, brokers, or dealers. FIND orders submitted after the Opening Process, by either customers or non-customers, will be handled by the PHLX XL system in the same manner and will be provided with equal access to liquidity on other exchanges. This treatment of customer and non-customer FIND orders ensures that there is no unfair discrimination between customers and non-customers submitting such orders to the Exchange after the Opening Process.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2).

Pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange believes that the proposed rule change is “non-controversial” and therefore appropriate for filing pursuant to Rule 19b-4(f)(6) because a substantially similar rule is already operative on other options exchanges.

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. Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of its filing.

The Exchange believes that the proposed rule change is substantially similar to rules that are already in place on other options exchanges, as cited below. The Exchange also believes that the proposed rule change will provide non-customer investors with increased opportunities to receive best executions, whether on the Exchange or on away markets to which their orders are routed. Because the rule is currently in place on other options exchanges, the Exchange believes that it does not raise any new regulatory issues, and is thus appropriately filed for immediate effectiveness under Rule 19b-4(f)(6).<sup>16</sup>

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based, in part, on NASDAQ Options Market (“NOM”) Rules, Chapter VI, Section 11, and BATS Exchange, Inc. Rule 21.9. The Exchange’s proposal

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<sup>16</sup> The Commission has stated that it believes that a proposed trading rule change appropriately may be filed as an immediately effective rule so long as each policy issue raised by the proposed trading rule (i) has been considered previously by the Commission when the Commission approved another exchange's trading rule (that was subject to notice and comment) pursuant to Section 19(b)(2) of the Exchange Act. See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) (Commission Guidance and Amendment to the Rules Relating to Organization and Program Management Concerning Proposed Rule Changes Filed by Self-Regulatory Organizations).

differs slightly because its trading model is not based upon pure price-time priority, as are the models of the two exchanges cited; it does, however, add non-customer routing of certain orders to the system's functionality, which is similar to the functionality on these other exchanges.

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2012-41)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Routing of Non-Customer Orders

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 March 27, 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 proposes to amend Exchange Rule 1080(m), Order Routing, to expand the routing capabilities of certain options orders that are eligible for electronic routing to other market centers by the Exchange’s fully automated options trading system, PHLX XL.<sup>3</sup> Under the proposal, non-customer FIND orders (as defined below) that are received during open trading will now be eligible for routing to other market centers for execution.

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

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

<sup>3</sup> This proposal refers to “PHLX XL” as the Exchange’s automated options trading 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 “Phlx XL II” to “PHLX XL” for branding purposes.

The text of the proposed rule change is available on the Exchange's Website 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 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 expand the routing capabilities of option orders that are eligible for routing to other market centers when the Exchange cannot execute such orders at the National Best Bid or Offer ("NBBO"), by making non-customer FIND orders eligible for routing during open trading. In addition, the Exchange is revising the definition of the term "SRCH order" to be clear that only customer SRCH orders will continue to be eligible for routing.

Current Rule

Currently, Rule 1080(m) states that the PHLX XL system will route only customer<sup>4</sup> FIND<sup>5</sup> and SRCH<sup>6</sup> orders to away markets. For purposes of this rule, the term

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<sup>4</sup> For purposes of this proposal, the term "customer" means a person or entity that is neither a broker-dealer nor a direct or indirect affiliate of a broker-dealer.

“customer” includes a “professional” customer as defined in Exchange Rule 1000(b)(14).<sup>7</sup> FIND and SRCH Orders designated as available for routing are first checked by the PHLX XL system for available contracts for potential execution on the Exchange. After checking the PHLX XL system for available contracts, orders are sent to other available market centers for potential execution. When checking the book, the PHLX XL system seeks to execute at the price at which it would send the order to a destination market center. In situations where the Exchange's disseminated bid or offer is inferior to the NBBO price, the PHLX XL system will contemporaneously route an order marked as an Intermarket Sweep Order (“ISO”)<sup>8</sup> to each away market disseminating prices better than the Exchange's price, for the lesser of: (a) the disseminated size of such away markets, or (b) the order size and, if order size remains after such routing, trade at the Exchange's disseminated bid or offer up to its disseminated size. If contracts still

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<sup>5</sup> A FIND order is currently defined as an order that is routable upon receipt. A FIND order received during open trading that is not marketable against the PHLX best Bid/Offer “PBBO” or the Away Best Bid/Offer (“ABBO”) will be entered into the limit order book at its limit price. The FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process. See Exchange Rule 1080(m)(iv)(B).

<sup>6</sup> A SRCH order is an order that is routable at any time. A SRCH order received during open trading that is not marketable against the PBBO or the ABBO will be entered into the Phlx XLII book. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market. . See Exchange Rule 1080(m)(iv)(C).

<sup>7</sup> The term “professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g)(except with respect to all-or-none orders, which will be treated like customer orders, except that orders submitted pursuant to Rule 1080(n) for the beneficial account(s) of professionals with an all-or-none designation will be treated in the same manner as off-floor broker-dealer orders), 1033(e), 1064.02 (except professional orders will be considered customer orders subject to facilitation), 1080(n) and 1080.08 as well as Options Floor Procedure Advices B-6, B- 11 and F-5. Member organizations must indicate whether orders are for professionals. See Exchange Rule 1000(b)(14).

<sup>8</sup> An ISO is a limit order for an options series that is identified as an ISO when routed to an away market center and, simultaneously with the routing of the order, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO, with such additional orders also marked as ISOs.

remain unexecuted after routing, they are posted on the Exchange's limit order book. Whether and under what circumstances such unexecuted contracts are re-routed depends upon the order's status as a FIND or SRCH order, as defined above.<sup>9</sup>

### The Proposal

The Exchange is proposing to add non-customer FIND orders as a new category of orders that are eligible for routing. Non-customer FIND orders would be eligible for routing only during open trading, and not during the Opening Process.<sup>10</sup> Customer FIND and SRCH orders received prior to the opening would continue to be treated as they are currently under the rule, *i.e.*, both are eligible for routing during the Opening Process.

Under the current rule and practice, a customer FIND order received during open trading that is not marketable against the PHLX Best Bid or Offer ("PBBO") or the Away Best Bid or Offer ("ABBO") is entered into the limit order book at its limit price. If the FIND order is marketable against the ABBO, it is routed to markets disseminating the ABBO. If the order still has remaining size after routing, it will be entered into the limit order book. Such FIND order, or its remainder, is not eligible for routing again until the next time the affected option series is subject to a new Opening Process. Under the proposal, non-customer FIND orders would be treated in the same manner as customer FIND orders, except that non-customer FIND orders would not be eligible for routing during the Opening Process. The Exchange is proposing to route only customer FIND orders during the opening process to ensure that customers retain priority respecting all liquidity available as part of the Opening Process whether that liquidity is on PHLX or on

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<sup>9</sup> See *supra* notes 5 and 6.

<sup>10</sup> See Exchange Rule 1017(l)(iii).



another exchange. During open trading this is not an issue because two FIND orders will not be received at precisely the same time; generally, a customer FIND order would always have priority over a non-customer FIND order.

Unlike the treatment of FIND orders, the treatment of SRCH orders is not subject to change under the proposal. Currently, Exchange Rule 1080(m) states that the PHLX XL system will route only customer FIND and SRCH orders. While the proposed rule change would expand routable FIND orders to include non-customer FIND orders, the proposal would re-define a SRCH order as a customer order that is routable at any time. The purpose of this change is to ensure that only customer SRCH orders continue to be eligible for routing. Just as today, non-customer SRCH orders will not be eligible for routing. Non-customer orders received that are designated as SRCH orders will be placed on the limit order book if not executed on the Exchange upon receipt.

The Exchange notes that very few customers use the SRCH order type. Additionally, the Exchange has noted that there is no demand for the use of SRCH orders on the part of non-customers, as these participants tend to be sensitive to, and prefer to control, the charges incurred when their order is routed. The Exchange believes, however, that non-customers submitting their orders to the Exchange will use FIND orders. FIND orders allow participants to access potential liquidity on away markets while enabling them to manage expectations of the number of times their orders are routed. This helps participants to plan for and ascertain the fees they would incur each time their order is routed. Thus, the Exchange believes that the expansion of the FIND order to non-customer participants is appropriate and useful in the processing of non-customer orders seeking the best execution in the marketplace as a whole.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>11</sup> in general and with Section 6(b)(5) of the Act,<sup>12</sup> in that it is designed 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act<sup>13</sup> in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposal would expand the routing capabilities of certain orders that are eligible for routing to other exchanges, despite the fact that such other exchanges are competitors of the Exchange. This benefits investors because the Exchange's system will route to away markets at better prices.

The proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system by enabling non-customer orders to

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

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

<sup>13</sup> 15 U.S.C. 78f(b)(8).

have access to liquidity on other exchanges each time they submit a FIND order to the Exchange, providing for best executions in the national market system.

The Exchange further believes that the proposed rule change does not permit unfair discrimination between customers, issuers, brokers, or dealers. FIND orders submitted after the Opening Process, by either customers or non-customers, will be handled by the PHLX XL system in the same manner and will be provided with equal access to liquidity on other exchanges. This treatment of customer and non-customer FIND orders ensures that there is no unfair discrimination between customers and non-customers submitting such orders to the Exchange after the Opening Process.

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.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-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-Phlx-2012-41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

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<sup>15</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.

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 website 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-2012-41 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).