

price improvement received will offset the change in the fee structure for such orders. The Exchange believes that if it provided both a rebate and price improvement for such executions the Exchange would be overly incentivizing hidden liquidity, which is contrary to the goals of this proposal. Further, the Exchange believes that reducing the standard rebate for non-displayed liquidity is beneficial to market participants including public investors, as this change, too, allows the Exchange to provide additional incentives for displayed liquidity.

Finally, the Exchange believes that the proposed changes to the Exchange's non-standard routing fees and strategies are competitive, fair and reasonable, and non-discriminatory in that they are designed to mirror the cost and/or rebate applicable to the execution if such routed orders were executed directly by the Member at each away market.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

No written comments were solicited or received.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>20</sup> and Rule 19b-4(f)(2) thereunder,<sup>21</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

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.

### **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-BATS-2011-019 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-BATS-2011-019. 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 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 a.m. and 3 p.m. Copies of such 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 No. SR-BATS-2011-019 and should be submitted on or before August 4, 2011.

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

**Cathy H. Ahn,**  
*Deputy Secretary.*

[FR Doc. 2011-17693 Filed 7-13-11; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 64845; File No. SR-PHLX-2011-90]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Board of Director Qualifications**

July 8, 2011.

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 June 30, 2011, 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, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to amend Exchange By-Law Article III, Section 3-2 regarding Board of Director qualifications.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these 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.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

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

<sup>21</sup> 17 CFR 240.19b-4(f)(2).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

*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 Exchange By-Law Article III, Section 3–2 to expand the qualifications for a director position so that the Exchange's Board of Directors is comprised of representatives of various interests. Specifically, the Exchange proposes to amend the current provision of Section 3–2, regarding issuer representative(s), to require at least one Director representative of issuers and investors, along with the requisite Public Directors,<sup>5</sup> Industry Directors<sup>6</sup> and Member Representative Directors.<sup>7</sup>

Currently, Article III, Section 3–2 provides: “[T]he number of Non-Industry Directors, including at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives), shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors to be elected under the terms of the LLC Agreement.” The Exchange recently adopted this provision to its By-Laws.<sup>8</sup>

The Exchange is now seeking to expand the requirement to have a Director representative of issuers and investors instead of the requirement to have at least one issuer representative (or if the Board consists of ten or more Directors at least two issuer representatives).<sup>9</sup> The Director representative of issuers and investors would be nominated by the Nominating Committee and elected by the sole shareholder, The NASDAQ OMX Group, Inc.<sup>10</sup>

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, because the composition of the Exchange's Board of Directors fosters the protection of investors by insuring [sic] that they are represented on the Board.

The Exchange believes that the proposed Board composition satisfies Section 6(b)(3) of the Act,<sup>13</sup> in that one Director representative represents issuers and investors. The Board composition continues to provide for fair representation on the Exchange's board as required by Section 6(b)(3) of the Act<sup>14</sup> in that twenty percent of the Directors represent members and there is a process for selecting Member Representative Directors to the Board.<sup>15</sup> Finally, the Public Directors continue to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the Exchange's governance process and also bring a unique, unbiased perspective to the Board. The Exchange believes that this amendment continues to maintain the necessary board requirements which serve to protect the public interest and provide for fair representation of members.

*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**

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–Phlx–2011–90 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–2011–90. 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 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 a.m. and 3 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–2011–90 and should be submitted on or before August 4, 2011.

<sup>5</sup> See Exchange By-Law Article I(gg).

<sup>6</sup> See Exchange By-Law Article I(p).

<sup>7</sup> See Exchange By-Law Article I(w).

<sup>8</sup> See Securities Exchange Act Release No. 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR–Phlx–2011–13) (A rule change, among other things, to conform the Exchange By-Laws to the By-Laws of the NASDAQ Stock Market LLC).

<sup>9</sup> The Exchange believes that this qualification is more appropriate for the Exchange which does not have the expansive listings of the NASDAQ Stock Market LLC.

<sup>10</sup> See By-Law Article V, Section 5–3 and Article II, Section 2–1.

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

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

<sup>13</sup> 15 U.S.C. 78f(b)(3).

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

<sup>15</sup> See By-Law Article II.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-17691 Filed 7-13-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64843; File No. SR-NYSE-2011-22]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Amending NYSE Rule 70.40(3) To Permit Member Organizations To Engage in Proprietary Trading from Their Approved Booth Premises in Certain OTC Bulletin Board and OTC Markets Securities

July 8, 2011.

#### I. Introduction

On May 11, 2011, New York Stock Exchange LLC (“NYSE” or the “Exchange”), 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 NYSE Rule 70.40(3) to permit member organizations to engage in proprietary trading from their approved booth premises in certain OTC Bulletin Board (“OTCBB”) and OTC Markets securities. The proposed rule change was published for comment in the **Federal Register** on May 25, 2011.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

#### II. Description

NYSE proposes to amend NYSE Rule 70.40(3) to permit member organizations to engage in proprietary trading from their approved booth premises in certain OTCBB and OTC Markets securities.<sup>4</sup>

In June 2007, the Exchange adopted NYSE Rule 70.40, which permits a member organization to operate its booth premises on the Exchange Floor in a manner similar to its “upstairs” office, thereby allowing member

organizations to access other markets and trade a wider array of products from their booth premises and thus operate more efficiently and competitively.<sup>5</sup> At the time that NYSE Rule 70.40 was adopted, it included certain conditions and limitations on such trading, including that only trading on behalf of customers would be permitted. As such, NYSE Rule 70.40(3) prohibits member organizations approved to operate booth premises pursuant to such Rule from effecting any transaction from their approved booth premises for their own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion on the Exchange.

After more than three years of experience with NYSE Rule 70.40, member organizations have requested that certain types of proprietary trading be permitted under the Rule, and the Exchange has determined that it is appropriate to do so. Therefore, the Exchange proposes to revise NYSE Rule 70.40(3) to permit member organizations to effect transactions in the common, preferred, and debt securities of an operating company that is quoted on the OTC Bulletin Board or OTC Markets (an “OTC Security”) from their approved booth premises for their own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion, except that such member organizations could not effect such transactions in an OTC Security that is related to a security listed or traded on the Exchange or NYSE Amex.<sup>6</sup> Because trading would be limited to the common, preferred, and debt securities of an operating company, a member organization could not trade in an index-based or derivative security (e.g., a right or warrant) that is quoted on the OTCBB or OTC Markets.

Under the proposed rule change, an OTC Security would be considered related to a security listed or traded on the Exchange or NYSE Amex <sup>7</sup> if:

<sup>5</sup> See Securities Exchange Act Release 55908 (June 14, 2007), 72 FR 34056 (June 20, 2007) (SR-NYSE-2007-51) (notice of filing and immediate effectiveness of proposed rule change permitting member organizations to operate their booth premises as an upstairs office). Under NYSE Rule 70.40, only Floor Brokers may conduct activity from booth premises.

<sup>6</sup> Since the merger of NYSE and NYSE Amex in 2008, the exchanges have conducted equity trading from the same Trading Floor, and NYSE Amex has conducted options trading in rooms adjacent to the Trading Floor. See Securities Exchange Act Release No. 58673 (September 29, 2008) (SR-Amex-2008-62 and SR-NYSE-2008-60), 73 FR 57707 (October 3, 2008), and NYSE Rule 6A.

<sup>7</sup> Securities listed on The NASDAQ Stock Market are traded on NYSE Amex pursuant to unlisted

(a) The OTC Security is issued by an issuer of a security that is listed or traded on the Exchange or NYSE Amex or that underlies an NYSE Amex option, or an affiliate of such issuer;

(b) The OTC Security is subject to a corporate action that relates to the issuer of a security that is listed or traded on the Exchange or NYSE Amex or that underlies an NYSE Amex option, or an affiliate of such issuer;

(c) The OTC Security is issued by an issuer of a security that is a component of a narrow-based security index <sup>8</sup> that is linked to a security that is listed or traded on the Exchange or NYSE Amex or that underlies an NYSE Amex option; or

(d) The OTC Security is issued by a foreign issuer or is a depositary receipt (or the equivalent thereof) for such a security, and a security issued by such foreign issuer or a depositary receipt (or the equivalent thereof) for such a security is listed or traded on the Exchange or NYSE Amex or underlies an NYSE Amex option.

Under the proposed rule, a corporate action would be any action by an issuer of an OTC Security or a security listed or traded on the Exchange or NYSE Amex that causes a relationship between the price of the OTC Security and the price of the security that is listed or traded on the Exchange or NYSE Amex or that underlies an NYSE Amex option, such as the announcement of a merger, acquisition, joint venture, spinoff, dissolution, bankruptcy filing or other similar type of event involving the issuers.

The proposed proprietary transactions in OTC Securities would remain subject to all of the other provisions of NYSE Rule 70.40. First, a member organization would have to obtain approval from NYSE Regulation, Inc. (“NYSER”) to engage in proprietary OTC Securities trading from booth premises.<sup>9</sup> Second, all such transactions would be subject to the regulatory requirements that apply to “upstairs” trading, including registration requirements and audit trail requirements applicable to those markets and supervision requirements under NYSE Rule 342.<sup>10</sup> Finally, a member organization would be required to adopt and implement comprehensive written procedures governing the conduct and supervision of proprietary trading in OTC Securities handled through the booth and the staff responsible for such activities; such

trading privileges and thus would be considered a security traded on NYSE Amex under the proposed rule change. See Rules 500–525–NYSE Amex Equities.

<sup>8</sup> For purposes of the proposed rule, the definition of narrow-based security index would be the same as the definition in Section 3(a)(55) of the Securities Exchange Act of 1934 (the “Act”).

<sup>9</sup> NYSE Rule 70.40(1).

<sup>10</sup> NYSE Rule 70.40(4) and (5).

<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.

<sup>3</sup> See Securities Exchange Act Release No. 64522 (May 19, 2011); 76 FR 30418 (“Notice”).

<sup>4</sup> The Exchange’s affiliate, NYSE Amex LLC (“NYSE Amex”), has proposed to adopt the same rule. See SR-NYSEAmex-2011-34.