

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77917; File No. 4-668]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment No. 3 to the National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail by BATS Exchange, Inc., BATS-Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

May 25, 2016.

I. Introduction

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 608 thereunder,² notice is hereby given that, on March 29, 2016, BATS Exchange, Inc., BATS-Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively, “SROs” or “Participants”), filed with the Securities and Exchange Commission (the “Commission”) a proposal to amend the Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail (the “Selection Plan”).³

The SROs propose to amend the Selection Plan to add ISE Mercury, LLC (“ISE Mercury”) as a Participant to the

Selection Plan, and replace references to “Topaz Exchange, LLC” with references to “ISE Gemini, LLC.” A copy of the proposed amendment to the Selection Plan (“Amendment No. 3”) is attached as Exhibit A hereto. The Commission is publishing this notice to solicit comments from interested persons on proposed Amendment No. 3 to the Selection Plan.

II. Description of the Plan

Set forth in this Section II is the statement of the purpose of Amendment No. 3 to the Selection Plan, along with the information required by Rule 608(a)(4) and (5) under the Exchange Act,⁴ as prepared and submitted by the SROs to the Commission.⁵

* * * * *

Background

The Selection Plan was initially filed with the Commission on September 4, 2013,⁶ approved on February 21, 2014,⁷ and subsequently amended on June 17, 2015 and September 24, 2015.⁸ The Selection Plan governs the process for how the Participants will evaluate and select a Plan Processor and develop the National Market System Plan Governing the Consolidated Audit Trail Pursuant to Rule 613 of Regulation NMS under the Exchange Act (“CAT NMS Plan”).

Requirements Pursuant to Rule 608(a)

A. Description of the Amendments to the Selection Plan

On January 29, 2016, the Commission approved ISE Mercury’s registration as a national securities exchange pursuant to Section 6 of the Exchange Act.⁹ Pursuant to Section II(B) of the Selection Plan, the Participants propose amending the Selection Plan to add ISE Mercury as a Participant thereto. Section II(B) of the Selection Plan states:

Any entity approved by the SEC as a national securities exchange or national securities association under the Exchange Act after the effectiveness of the Plan shall become a Participant by satisfying each of the following requirements: (1) Effecting an

amendment to the Plan by executing a copy of the Plan as then in effect (with the only change being the addition of the new Participant’s name in Section II of the Plan) and submitting such amendment to the SEC for approval; and (2) providing each then-current Participant with a copy of such executed Plan. The amendment shall be effective when it is approved by the SEC in accordance with SEC Rule 608 or otherwise becomes effective pursuant to SEC Rule 608.¹⁰

Accordingly, ISE Mercury has executed a copy of the Selection Plan as currently in effect, with the addition of ISE Mercury’s name to Section II of the Selection Plan, and provided each existing Participant a copy of the executed Selection Plan. With this submission, the Participants submit the executed Selection Plan to the Commission for approval on behalf of ISE Mercury. A copy of the executed version of the Selection Plan is attached hereto.¹¹

The Participants also propose to amend the Selection Plan to replace references to “Topaz Exchange, LLC” with references to “ISE Gemini, LLC.” On February 20, 2014, the Commission approved a proposed rule change that authorized Topaz Exchange, LLC to amend its Constitution, Certificate of Formation, Limited Liability Company Agreement, Rules and Schedule of Fees to change its name to “ISE Gemini, LLC.”¹²

The proposed amendments to the text of the Selection Plan are set forth in Exhibit A to this letter.¹³

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The terms of the proposed amendment will become effective upon filing pursuant to Rule 608(b)(3)(iii) of the Exchange Act because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (b)(1) of Rule 608,¹⁴ if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors

¹⁰ See Selection Plan, Section II(B), available at www.catnmsplan.com.

¹¹ See Exhibit B.

¹² See Securities Exchange Act Release No. 71586 (February 20, 2014), 79 FR 10861 (February 26, 2014).

¹³ See Exhibit A.

¹⁴ The Commission notes that if it abrogated an amendment, the Commission could require the amendment to be refiled in accordance with subparagraph (a)(1) of Rule 608. See 17 CFR 242.608(b)(3)(iii).

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ In this filing, the SROs withdrew the amendment to the Selection Plan filed with the Commission on March 11, 2016. See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated March 11, 2016.

⁴ See 17 CFR 242.608(a)(4) and (a)(5).

⁵ See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated March 29, 2016.

⁶ See Securities Exchange Act Release No. 70892 (November 15, 2013), 78 FR 69910 (November 21, 2013) (Notice of the Selection Plan).

⁷ See Securities Exchange Act Release No. 71596 (February 21, 2014), 79 FR 11152 (February 27, 2014) (Order Approving Selection Plan).

⁸ See Securities Exchange Act Release No. 75192 (June 17, 2015), 80 FR 36028 (June 23, 2015); Securities Exchange Act Release No. 75980 (September 24, 2015), 80 FR 58796 (September 30, 2015).

⁹ See Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016).

or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Exchange Act.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

Not applicable.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Statement That the Amendments Have Been Approved by the Plan Sponsors

The Selection Plan provides that, except with respect to the addition of new Participants, amendments to the Selection Plan shall be effected by means of a written amendment that: (1) Sets forth the change, addition, or deletion; (2) is executed by over two-thirds of the Participants; and (3) is approved by the SEC pursuant to Rule 608, or otherwise becomes effective under Rule 608.¹⁵ The proposed amendment has been executed by all of the Participants and has consequently been approved by the SROs.

With respect to new Participants, an amendment to the Selection Plan may be effected by the new national securities exchange or national securities association in accordance with Section II of the Selection Plan. As discussed above, ISE Mercury has executed the existing version of the Selection Plan, with ISE Mercury's name added to Section II, provided each existing Participant a copy of the executed Selection Plan, and is providing the Commission with a copy of the executed version with this submission.

H. Terms and Conditions of Access

Not applicable.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendment No. 3 to the Selection Plan 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. Please include File Number 4-668 on the subject line.

Paper Comments

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

All submissions should refer to File Number 4-668. 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 Amendment to the Plan that are filed with the Commission, and all written communications relating to the Amendment to the Plan 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 10:00 a.m. and 3:00 p.m. Copies of the submission will also be available for inspection and copying at the Participants' principal offices. 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 4-668 and should be submitted on or before June 22, 2016.

By the Commission.

Brent J. Fields,
Secretary.

EXHIBIT A

Additions italicized; deletions bracketed

Plan Processor Evaluation and Selection Plan

II. Participants

(A) List of Participants

The Participants are as follows:

- (1) BATS Exchange, Inc.
- (2) BATS Y-Exchange, Inc.
- (3) BOX Options Exchange LLC
- (4) C2 Options Exchange, Incorporated
- (5) Chicago Board Options Exchange, Incorporated
- (6) Chicago Stock Exchange, Inc.
- (7) EDGA Exchange, Inc.
- (8) EDGX Exchange, Inc.
- (9) Financial Industry Regulatory Authority, Inc.
- (10) International Securities Exchange, LLC
- (11) ISE Gemini, LLC
- (12) ISE Mercury, LLC
- (11)(13) Miami International Securities Exchange LLC
- (12)(14) NASDAQ OMX BX, Inc.
- (13)(15) NASDAQ OMX PHLX LLC
- (14)(16) The Nasdaq Stock Market LLC
- (15)(17) National Stock Exchange, Inc.
- (16)(18) New York Stock Exchange LLC
- (17)(19) NYSE MKT LLC
- (18)(20) NYSE Arca, Inc.
- (19) Topaz Exchange, LLC]

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BATS EXCHANGE, INC.

BY: _____

BATS Y-EXCHANGE, INC.

BY: _____

BOX OPTIONS EXCHANGE LLC

BY: _____

C2 OPTIONS EXCHANGE, INCORPORATED

BY: _____

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

BY: _____

CHICAGO STOCK EXCHANGE, INC.

BY: _____

EDGA EXCHANGE, INC.

BY: _____

EDGX EXCHANGE, INC.

BY: _____

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

BY: _____

INTERNATIONAL SECURITIES EXCHANGE, LLC

BY: _____

ISE GEMINI, LLC

BY: _____

ISE MERCURY, LLC

BY: _____

MIAMI INTERNATIONAL SECURITIES EXCHANGE LLC

BY: _____

NASDAQ OMX BX, INC.

BY: _____

NASDAQ OMX PHLX LLC

BY: _____

THE NASDAQ STOCK MARKET LLC

BY: _____

NATIONAL STOCK EXCHANGE, INC.

¹⁵ See Notice of Selection Plan, *supra* note 5.

BY: _____
 NEW YORK STOCK EXCHANGE LLC
 BY: _____
 NYSE ARCA, INC.
 BY: _____
 NYSE MKT LLC
 BY: _____
 [TOPAZ EXCHANGE, LLC
 BY: _____]
 [FR Doc. 2016-12779 Filed 5-31-16; 8:45 am]
 BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77916; File No. SR-Phlx-2016-38]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 900.1, 910, and 921

May 25, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on May 12, 2016, NASDAQ 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 amend the following Rules: 900.1, General Powers and Duties of Membership Department; 910, Qualifications [sic] as Member Organization; and 921, Qualifications [sic]; Designation of Executive Representative.

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 Exchange proposes to modify certain Phlx membership rules in order to harmonize them with Nasdaq and BX rules and to modernize the Exchange’s Rulebook. Specifically, Exchange proposes to amend Rule 900.1 entitled, “General Powers and Duties of Membership Department” by eliminating sections (b) and (d) which are the provisions regarding partnerships as distinct membership classifications. The exchange also proposes to eliminate the provisions regarding partnerships from Rule 910(j), Qualifications [sic] as Member Organization. The Exchange will reserve those sections of the rules in order to allow for future membership needs. Sections of each of these Rules were more relevant to the Phlx membership review process prior to demutualization in 2004 and specifically related to the review of partnerships and no longer reflect the information needed as part of the membership review. These provisions were retained following changes to the Exchange Bylaws in 2009, yet no longer were relevant to the regulatory needs of the Exchange. The proposed changes related to ownership structures of partnerships that the Exchange no longer needs as discussed in greater detail below. An additional amendment relates to the organizational changes that occurred following demutualization such that responsibilities that formerly were handled by the Board of Directors are now a responsibility of the Membership Department. The final change to Rule 921 entitled, “Qualification; Designation of Executive Representative” is proposed to align Phlx rules with existing NASDAQ and BX rule 1150.

The membership distinctions in Rule 900.1(b) and (d) and Rule 910(j) were applicable when Phlx offered seats to its members, prior to demutualization, yet remained in the rules after this was concluded in 2004. Before demutualization, Phlx seats conveyed ownership of the Exchange, in addition to access, which created a greater

obligation on Phlx to gather information on the members’ legal business structure. Specifically, Phlx was obligated to maintain a heightened vigilance on the structure, ownership, and change of control in a partnership in order to ensure the financial integrity of its ownership and members ability to honor their trades and obligations. Rule 900.1(b) and 900.1(d) articulates obligations of partners and general partners as they relate to the Exchange that are no longer relevant as the partnership no longer conveys specific obligations that are distinct from any other member organization. Rule 910(j) relates to liabilities that were unique to the partnership, as a member, which are no longer applicable today.

Today, permits are issued to Exchange members and member organizations. The Exchange no longer needs to differentiate among types of entities because the permit structure conveys no ownership to the member. These membership rules related to partnerships are no longer applicable today. The distinctions regarding the admission of a member or member organization as a partnership, as compared to another ownership structure, are no longer relevant.

The Exchange also proposes to replace the references to the “Board of Directors” with the “Membership Department” as part of Rule 910(h). The responsibilities of the Board of Directors have changed. Consequently, the Board of Directors is no longer actively involved in the membership process, which is now operated in the same way as Nasdaq’s and BX’s and the review of the qualifications of Member Organizations is handled by the Membership Department, as defined in Rule 1(p). This rule has become outdated and no longer reflects current business practices.

The final change relates to Rule 921(b); Phlx seeks to harmonize 921(b) with the existing Nasdaq and BX Rule 1150 by not requiring an executive representative to provide evidence of their acceptance of designation in writing. The membership form will continue to require the designation of the Executive Representative, but will no longer require the designated person to provide their signature. The elimination of the evidence of acceptance provision of 921(b) does not impose any burden on competition rather it aligns the requirements of PHLX with that of Nasdaq and BX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.