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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65926; File No. SR-Phlx-2011-141]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Introduce the Minimum Life Order as a New Order Type

December 9, 2011.

On October 12, 2011, NASDAQ OMX PHLX LLC ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to introduce the Minimum Life Order as new order type for use in the NASDAQ OMX PSX ("PSX") system. The proposed rule change was published for comment in the **Federal Register** on October 28, 2011.³ On October 26, 2011, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission has received one comment letter on the proposed rule change.⁵ The Exchange responded to the comment letter on November 28, 2011.⁶ This order approves the

proposed rule change, as modified by Amendment No. 1.

The Exchange proposes, by amending its rules to add Rule 3301(f)(11), to introduce the Minimum Life Order as a new order type for use on PSX. A Minimum Life Order may not be cancelled by the entering participant for 100 milliseconds following receipt by the Exchange. If a market participant entering a Minimum Life Order submits a cancel message with respect to a Minimum Life Order at the same time as the order, or at any point during the "no cancel" window, the cancel message will not be rejected, but will be effected only following the expiration of the window (assuming the order has not already been executed). All Minimum Life Orders must be designated as Displayed Orders.

The Commission received one comment letter, which was generally supportive of the proposed rule change.⁷ The commenter, however, expressed concern that predatory traders will be able to know when an order has a minimum life because there will be a new flag in the data feed.⁸ The commenter is concerned that predatory traders would be able to use such information to further model price behavior in the markets.⁹ The Exchange stated in its response to the commenter that Minimum Life Orders will not be distinguished from other Displayed Orders in any data that will be disseminated to market participants.¹⁰ The Exchange notes that the flag mentioned by the commenter will be used for order entry, but not for order display.¹¹

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act¹² and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Exchange's new Minimum Life Displayed Order type, which cannot be cancelled until after a 100 millisecond window has expired, allows market participants to elect to commit to trade for that time period and thus, according to the Exchange, is designed to encourage removers of liquidity to route orders to the Exchange in anticipation of receiving higher fill rates.¹⁵ The Commission believes that the Minimum Life Order could provide additional trading opportunities on the Exchange, consistent with just and equitable principles of trade, and is designed to encourage displayed liquidity and offer PSX market participants additional options when posting liquidity on PSX, consistent with removing impediments to and perfecting the mechanisms of a free and open market and a national market system, the protection of investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-Phlx-2011-141), as amended, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65929; File No. SR-NASDAQ-2011-171]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Post-Only Order

December 9, 2011.

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 December 6, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ")

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 65610 (October 24, 2011), 76 FR 67012 ("Notice").

⁴ Amendment No. 1 to the proposed rule change reflects the October 19, 2011 approval of the proposed rule change by the Board of Directors of Phlx. This is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the filing.

⁵ See Letter dated November 1, 2011, from Sal Arnuk and Joe Saluzzi, Themis Trading, LLC, to Elizabeth M. Murphy, Secretary, Commission.

⁶ See Letter dated November 28, 2011, from John M. Yetter, Vice President & Deputy General Counsel, NASDAQ OMX, to Elizabeth M. Murphy, Secretary, Commission ("Comment Response").

⁷ See *supra* note 5. However, the commenter does believe that, in order for the minimum order live to be truly effective, that it cannot be a voluntary order offered by just one exchange, but should apply to all orders.

⁸ *Id.*

⁹ *Id.*

¹⁰ See Comment Response, *supra* note 6.

¹¹ *Id.*

¹² 15 U.S.C. 78f.

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See Notice, *supra* note 3.

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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

NASDAQ is filing with the Securities and Exchange Commission ("Commission") a proposal for the NASDAQ Options Market ("NOM") to amend Chapter VI, Trading Systems, Section 1, Definitions, to change the definition of "Post-Only Order," as described further below, and delay its implementation until February 2012.

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at NASDAQ's principal office, 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange recently adopted a new order type called Post-Only Order,³ which is an order that will not remove liquidity from the System and is to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market.⁴ Post-

Only Orders may not have a time-in-force designation of Good Til Cancelled ("GTC").⁵

At this time, the Exchange proposes to amend the definition in Chapter VI, Section 1(e)(11), to provide that, like the time-in-force designation of GTC, a Post-Only Order cannot have a time-in-force designation of Immediate or Cancel (or IOC). Immediate or Cancel, which is described in Chapter VI, Section 1(g)(2), means for orders so designated, that if after entry into the System a marketable order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. Accordingly, IOC orders are available to trade immediately and, if not executed, are then cancelled back to the Participant.

The Exchange believes that the IOC time-in-force designation is not appropriate for Post-Only Orders, because IOC orders cannot post on the book and Post-Only Orders cannot remove liquidity, such that there would be no logical outcome for an IOC Post-Only Order. Accordingly, the Exchange is proposing to expressly state in its rules that such orders do not exist.

In addition, the Exchange proposes to delay the implementation of Post-Only Orders to take aforementioned change into account and delay implementation until February 2012. The Exchange will announce the specific date that these orders will become available to its membership via an Options Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, because it better explains an additional order type on NOM, making clear that the IOC time-in-force is not available and the order type is not available until February

best bid or offer as reflected in the protected quotation of another market center, the order will be handled pursuant to Chapter VI, Section 7(b)(3)(C).

⁵ See NOM Rules, Chapter VI, Section 1(g).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

2012, which the Exchange believes is consistent with just and equitable principles of trade. Because the Post-Only Order is designed to encourage displayed liquidity and offer NOM market participants greater flexibility to post liquidity on NOM, limiting the time-in-force is consistent with removing impediments to and perfecting the mechanisms of a free and open market and a national market system.

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 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 Act⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay in order to implement this proposal prior to December 8, 2011, because, without such a waiver, the Exchange's recent filing adopting the new Post-Only order type would become operative on December 8,

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 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.

¹⁰ 17 CFR 240.19b-4(f)(6).

³ See Securities Exchange Act Release No. 65761 (November 16, 2011), 76 FR 72230 (November 22, 2011)(SR-NASDAQ-2011-152).

⁴ Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) If a Post-Only Order would lock or cross an order on the System, the order will be re-priced to \$.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the national

2011.¹¹ The Exchange, however, will not be ready to implement the new order type until February 2012. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will allow the Exchange to immediately delay the implementation of Post-Only orders, preventing a gap between when the new order type is operative under the rules and when the new order type will be implemented and available for use in February 2012. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.¹²

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 email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2011-171 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.

All submissions should refer to File Number SR-NASDAQ-2011-171. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. 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-NASDAQ-2011-171 and should be submitted on or before January 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65927; File No. SR-OCC-2011-15]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Management of Liquidity Risk

December 9, 2011.

I. Introduction

On October 12, 2011, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2011-15 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the **Federal Register** on November 1, 2011.³ The Commission received no comment letters on the proposed rule change.

This order approves the proposed rule change.

II. Description

The purpose of the proposed rule change is to amend OCC's by-laws and rules to clarify OCC's authority to use, and the manner in which OCC may use, a defaulting clearing member's margin deposits and contributions to the clearing fund and all other clearing members' clearing fund contributions⁴ to obtain temporary liquidity for purposes of meeting liquidity needs arising from Default Obligations.⁵

An essential element of OCC's risk management regime is sound management of liquidity risk. OCC regularly examines its liquidity risk exposure to determine the optimal amount and form of available liquidity. OCC's largest potential liquidity needs are projected to occur in the case of a clearing member's default where OCC would be obligated to settle the defaulting clearing member's payment obligations with respect to option premiums, settlement of cash-settled option exercises, and mark-to-market payments. These are obligations that OCC must fund on time and potentially with only a few hours of advance notice—from notice of default until the payments are due.

One of the resources that OCC may use to meet its liquidity needs is its existing committed credit facility. The amount of funds available to OCC under the committed credit facility is limited not only by the overall size of the facility, but also by the amount of assets that OCC can pledge as collateral to lenders supporting the facility. OCC believes that, in addition to the authority it already has to pledge clearing fund assets to secure a loan to cover Default Obligations, it should also have the express power to pledge a suspended clearing member's margin deposits to secure loans for the purpose of meeting obligations arising out of the default and suspension of that clearing member or any action taken by OCC in connection therewith. OCC clearly has authority to pledge a suspended clearing member's clearing fund deposits for that

⁴ Margin deposits secure only the depositing clearing member's own obligations to OCC whereas clearing fund deposits of all clearing members may be applied by OCC not only to losses arising from the depositing clearing member's default, but also to losses resulting from defaults by other clearing members and specified other third parties such as settlement banks and other clearing organizations. See generally Article VIII, Sections 1 and 5 of OCC's by-laws and Rule 604 of OCC's rules.

⁵ The specific language of the proposed changes can be found at http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_15.pdf.

¹¹ See *supra* note 3.

¹² 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. 15 U.S.C. 78c(f).

¹³ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 65622 (October 28, 2011), 76 FR 67523.