

Section 19(b)(2) of the Act<sup>5</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 8, 2013.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the Exchange's proposal, as described above, and the comments received.

Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designates May 23, 2013, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR-NYSE-2013-07).

Committee of Broadridge, dated March 7, 2013; Jeffrey D. Morgan, President & CEO, National Investor Relations Institute, dated March 7, 2013; Kenneth Bertsch, President and CEO, Society of Corporate Secretaries & Governance Professionals, dated March 7, 2013; Niels Holch, Executive Director, Shareholder Communications Coalition, dated March 12, 2013; Geoffrey M. Dugan, General Counsel, iStar Financial Inc., dated March 13, 2013; Paul E. Martin, Chief Financial Officer, Perficient, Inc., dated March 13, 2013; John Harrington, President, Harrington Investments, Inc., dated March 14, 2013; James McRitchie, Shareowner, Corporate Governance, dated March 14, 2013; Clare A. Kretzman, General Counsel, Gartner, Inc., dated March 15, 2013; Tom Quaadman, Vice President, Center for Capital Markets Competitiveness, dated March 15, 2013; Dennis E. Nixon, President, International Bancshares Corporation, dated March 15, 2013; Argus I. Cunningham, Chief Executive Officer, Sharegate Inc., dated March 15, 2013; Laura Berry, Executive Director, Interfaith Center on Corporate Responsibility, dated March 15, 2013; Dorothy M. Donohue, Deputy General Counsel—Securities Regulation, Investment Company Institute, dated March 15, 2013; Charles V. Callan, Senior Vice President—Regulatory Affairs, Broadridge Financial Solutions, Inc., dated March 15, 2013; Brad Philips, Treasurer, Darling International Inc., dated March 15, 2013; John Endean, President, American Business Conference, dated March 18, 2013; Tom Price, Managing Director, The Securities Industry and Financial Markets Association, dated March 18, 2013; and Michael S. O'Brien, Vice President—Corporate Governance Officer, BNY Mellon, March 28, 2013.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69304; File No. SR-PHLX-2013-005]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Regarding Catastrophic Errors

April 4, 2013.

#### I. Introduction

On January 31, 2013, NASDAQ OMX PHLX LLC ("PHLX" or "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 Rule 1092, Obvious Errors and Catastrophic Errors. The proposed rule change was published for comment in the **Federal Register** on February 19, 2013.<sup>3</sup> The Commission received one comment letter on the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

#### II. Background

The Exchange proposes to amend Rule 1092(f)(ii) to permit the nullification of trades involving catastrophic errors in certain situations. Specifically, the proposed rule would enable a non-broker dealer customer<sup>5</sup> who is the contra-side to a trade that is deemed to be a catastrophic error to have the trade nullified in instances where the adjusted price would violate the customer's limit price. Trades would be adjusted in these circumstances if the customer, or his agent, affirms the customer's willingness to accept the adjusted price through the customer's limit price within 20 minutes of

notification of the catastrophic error ruling.<sup>6</sup>

Under the current rule, and under the rules of all options exchanges, all transactions that qualify as a catastrophic error are adjusted, not nullified. The purpose of the proposal is to help market participants better manage their risk by addressing the situation where, under current rules, a trade can be adjusted to a price outside of a customer's limit price, forcing the customer to spend additional money for a trade that it may not be able to afford. The Exchange notes that this proposal is a fair way to address the issue of a customer's limit price while balancing the competing interests of certainty that trades stand with the policy concerns about dealing with true errors.<sup>7</sup>

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act<sup>8</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> 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 Commission received one comment letter expressing support for the proposed rule change.<sup>11</sup> The commenter believes that the special treatment afforded by the rule change to non-broker-dealer customers is appropriate because, unlike market makers or broker-dealers, non-broker-dealer customers are less likely to be able to absorb the monetary penalty of being forced into a situation where their

<sup>6</sup> The Exchange notes that the 20 minute notification period is similar to the time period used currently with respect to triggering the obvious error review process.

<sup>7</sup> The Exchanges noted that it is focused on this particular situation because of a recent catastrophic error ruling that resulted in an appeal pursuant to Rule 1092(f)(iv).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 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).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See note 4, *supra*.

<sup>7</sup> 17 CFR 200.30-3(a)(31).

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

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

<sup>3</sup> Securities Exchange Act Release No. 68907 (February 12, 2013), 78 FR 11705 ("Notice").

<sup>4</sup> See Letter from Ellen Greene, Vice President, Securities Industry and Financial Markets Association to Elizabeth M. Murphy, Secretary, Commission, dated March 14, 2013.

<sup>5</sup> The Exchange notes that a professional customer is a customer for purposes of Rule 1092.

original limit price is violated.<sup>12</sup> The commenter points to other precedents in the options markets for non-broker-dealer customers getting special treatment for similar reasons to the proposed rule change, namely because they are less active in the markets and often have limited funds in their accounts.<sup>13</sup> Finally, the commenter encourages other options exchanges to adopt similar amendments to their Obvious and Catastrophic Error rules.<sup>14</sup>

The Exchange notes that the proposed rule change is not unfairly discriminatory, even though it offers non-broker dealer customers a choice not provided to other market participants. Specifically, the Exchange notes that the existing obvious error rules differentiate among market participants.<sup>15</sup> The Exchange notes further that customers often are treated specially in the options markets, recognizing that they are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.<sup>16</sup> The Exchange goes on to note that, while the proposed rule change may introduce uncertainty regarding whether a trade will be adjusted or nullified, it eliminates price uncertainty, as customer orders can be adjusted to significantly different prices than their limit prices under the rule prior to this proposed rule change. For this reason, the Exchange believes that the proposed rule change promotes just and equitable principles of trade and protects investors and the public interest.

The Commission notes that in considering the proposed rule change the Exchange has weighed the benefits of certainty to non-broker-dealer customers that their limit price will not be violated against the costs of increased uncertainty to market makers and broker-dealers that their trades may be nullified instead of adjusted depending on whether the other party to the transaction is or is not a customer.<sup>17</sup> The proposed rule change strikes a similar balance on this issue to the approach taken in the Exchange's Obvious Error Rule, whereby transactions in which an

Obvious Error occurred with at least one party as a non-specialist are nullified unless both parties agree to adjust the price of the transaction within 30 minutes of being notified of the Obvious Error.<sup>18</sup> For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-PHLX-2013-005) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69287; File No. 4-631]

**Joint Industry Plan; Order Approving the Third Amendment to the National Market System Plan to Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., 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.**

April 3, 2013.

### I. Introduction

On February 21, 2013, NYSE Euronext, on behalf of New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC ("NYSE MKT"), and NYSE Arca, Inc. ("NYSE Arca"), and the following parties to the National Market System Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the "Participants"), filed with the Securities and Exchange Commission ("Commission") pursuant to Section

11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> a proposal to amend the Plan to Address Extraordinary Market Volatility ("Plan").<sup>3</sup> The proposal represents the third amendment to the Plan ("Third Amendment"), and reflects changes unanimously approved by the Participants. The Third Amendment proposes to amend the Plan to provide that odd-lot sized transactions will not be exempt from the limitation on trades provision of Section VI.A.1 of the Plan and proposes to make a clarifying technical change to Section VIII.A.3 of the Plan. The Third Amendment was published for comment in the **Federal Register** on March 12, 2013.<sup>4</sup> The Commission received one comment letter in response to the Notice.<sup>5</sup> This order approves the Third Amendment to the Plan.

### II. Description of the Proposal

#### A. Purpose of the Plan

The Participants filed the Plan in order to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in "NMS Stocks," as defined in Rule 600(b)(47) of Regulation NMS under the Act.<sup>6</sup> The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified price bands.<sup>7</sup> These limit up-limit down requirements would be coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in Section V of the Plan, the price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock.<sup>8</sup> The price bands would be calculated by the Securities Information Processors ("SIPs" or "Processors") responsible for consolidation of information for an

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> See Letter from Janet M. McGinness, Executive Vice President & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated February 19, 2013 ("Transmittal Letter").

<sup>4</sup> See Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 ("Notice").

<sup>5</sup> See Letter from Manisha Kimmel, Executive Director, Financial Information Forum, to Elizabeth M. Murphy, Secretary, Commission, dated March 22, 2013 ("FIF Letter").

<sup>6</sup> 17 CFR 242.600(b)(47). See also Section I(H) of the Plan.

<sup>7</sup> See Section V of the Plan.

<sup>8</sup> Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> The Exchange notes, for example, that the notification period to begin the obvious error process is shorter for specialists and Registered Options Traders than it is for other market participants.

<sup>16</sup> The Exchange notes that customers often have favorable fees relative to other market participants.

<sup>17</sup> See Notice, *supra* note 3.

<sup>18</sup> Id.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).