

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71057; File No. SR-CHX-2013-21]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Reporting of Odd Lot Transactions for Inclusion on the Consolidated Tape and Clarify the Operation of the Market Order Type

December 12, 2013.

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 December 9, 2013, the Chicago Stock Exchange, Inc. (“CHX” or the “Exchange”) 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 CHX. CHX has filed this proposal pursuant to Exchange Act Rule 19b-4(f)(6)<sup>3</sup> which is effective upon filing with the Commission. 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

CHX proposes to amend Article 20, Rule 8(g) (Operation of the Matching System) to permit the reporting of odd lot transactions for inclusion on the consolidated tape, in light of the approval of an amendment to the Consolidated Tape Association Plan (“CTA Plan”) by the Securities and Exchange Commission (the “Commission”) pursuant to Rule 608 of Regulation NMS under the Act. The Exchange also proposes to amend Article 1, Rule 2(a)(3) (Order Types, Modifiers, and Related Terms) to amend the definition of “market” orders in light of the anticipated market-wide reporting of odd lot transactions.

The text of this proposed rule change is available on the Exchange’s Web site at ([www.chx.com](http://www.chx.com)) and in 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 CHX included statements concerning the purpose of and basis for the

proposed rule changes [sic] 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 CHX 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

On September 9, 2013, the Exchanges and the Financial Industry Regulatory Authority (“FINRA”) (collectively, the “Participants”) filed with the Commission an amendment to the CTA Plan proposing to permit the reporting of odd lot transactions to the consolidated tape, which was published for notice on September 17, 2013.<sup>4</sup> After receiving no comment letters in response to the Notice, the Commission approved the proposed amendment on October 31, 2013.<sup>5</sup>

In sum, the Commission approved the proposed removal of odd lot transactions from the list of transactions, under Section VI(d) of the CTA Plan, that are not to be reported for inclusion on the consolidated tape. Specifically, the Commission stated that “odd lot transactions account for a not insignificant percentage of the trading volume” and inclusion of “odd lot transactions on the consolidated tape of CTA last sale prices would add post-trade transparency to the marketplace.”<sup>6</sup> Consequently, odd lot transactions that are reported for inclusion on the consolidated tape will be included in calculations of daily consolidated volume and will be subject to the same calculations as round lot transactions are currently subject [sic] (i.e., “qualified transaction report” calculations) for the purposes of allocating trade revenue among the Participants under the CTA Plan.<sup>7</sup>

<sup>4</sup> See Securities Exchange Act Release No. 70428 (September 17, 2013), 78 FR 58362 (September 23, 2013) (SR-CTA-2013-05) (“Notice of Filing of the Eighteenth Substantive Amendment to the Second Restatement of the CTA Plan”).

<sup>5</sup> See Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR-CTA-2013-05) (“Order Approving the Eighteenth Substantive Amendment to the Second Restatement of the CTA Plan”).

<sup>6</sup> *Id.*

<sup>7</sup> Due to the lack of economic significance of many individual odd lot orders, odd lot bids and offers will not be included in the best bid and offer calculations that the Participants make available under the Consolidate Quote Plan. For the same reason, odd lot transactions will not be included in calculations of last sale price, will not be included

This amendment to the CTA Plan will be operative December 9, 2013.

##### Proposed Article 20, Rule 8(g)

The Exchange proposes to amend Article 20, Rule 8(g) to provide that the Exchange shall report each transaction that occurs within the Matching System to the appropriate consolidated reporting system.<sup>8</sup> Specifically, the Exchange proposes to remove reference to “round lot” transactions since the CTA Plan now permits the reporting of odd lot transactions. Moreover, the Exchange proposes to delete redundant language concerning the reporting of executions of resting odd lot orders that have been aggregated into round lots for display purposes.<sup>9</sup> Pursuant to the CTA Plan amendment, all executions will be reported to the tape, notwithstanding the size of the execution or the size of the resting order that was executed.

##### Proposed Article 1, Rule 2(a)(3)

The Exchange’s Matching System is designed to begin accepting market orders in a security once the primary market prints the first transaction in the security that is at least a round lot. Thus, current Article 1, Rule 2(a)(3) provides that the Exchange shall not accept market orders in a security until (i) the primary market in a security has opened trading in that security or (ii) two senior officers of the Exchange have determined that it is appropriate for the Exchange to accept IOC market orders. In light of the anticipated inclusion of odd lot transactions on the consolidated tape and operation of the Matching System, the Exchange proposes to amend Article 1, Rule 2(a)(3) to clarify that for the purposes of determining when to accept market orders, the primary market will be considered to have opened for trading in a security when the first trade in that security *that is at least a round lot*, occurs in that market on or after 8:30 a.m. Central

in high and low price calculations, will not be subject to Limit Up-Limit Down rules, and will not trigger short sale restrictions or trading halts. See *supra* note 5.

<sup>8</sup> The Exchange notes that with the removal of odd lot transactions from Section VI(d) of the CTA Plan, the Exchange does not execute any transactions that would not be permitted to be reported for inclusion on the consolidated tape.

<sup>9</sup> Article 20, Rule 8(d)(3) states as follows: Odd lot orders and unexecuted odd lot remainders that are unable to be immediately displayed according to Rule 8(b)(6) above (because they are at a price that is better than the current CHX quote) shall either remain in, or be rejected from, the Exchange’s Matching System according to each Participant’s instructions. Orders remaining in the Matching System will continue to be ranked at the price and time at which they were originally received. Orders that are rejected from the Matching System shall be routed away according to Rule 8(h) below or, if designated “do not route,” automatically cancelled.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

Standard Time. Given that substantial resources would have to be dedicated to make any changes to the operation of any order type, the Exchange proposes to clarify the current operation of the market order type, as opposed to modifying its operation to also consider an odd lot trade to be an opening transaction on the primary market.<sup>10</sup>

## 2. Statutory Basis

The proposed rule change to permit the reporting of odd lot transactions for inclusion on the consolidated tape is consistent with Rule 608(c) of Regulation NMS,<sup>11</sup> which requires the Exchange, as a sponsor and participant to an effective national market system plan, namely the CTA Plan, to comply with the terms of the Plan, as submitted to the Commission on September 9, 2013<sup>12</sup> and approved by the Commission on October 31, 2013,<sup>13</sup> pursuant to Rule 608(b)(2) of Regulation NMS.<sup>14</sup>

Moreover, the proposed rule changes are [sic] consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>16</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change to permit the reporting of odd lot transactions for inclusion on the consolidated tape supports the objectives of the Act by providing harmonization between CHX Rules and rules of all other organization subject to the requirements of the Plan, so as to promote uniformity across markets concerning the permissibility of reporting odd lot transactions for inclusion on the consolidated tape. Such uniformity would also result in less burdensome and more efficient regulatory compliance. Moreover, the proposed amendment to amend the definition of “market” orders also supports the objectives of the Act by clarifying the operation of the Matching System and, specifically, the conditions required for the Exchange to begin accepting market orders in a security. In addition, the Exchange submits that the

proposed rules are consistent with the protection of investors and the public interest in that the proposed rules will promote investor confidence by providing greater post-trade transparency to the market.

## 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 that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that since all plan Participants will be permitted to report odd lot transactions for inclusion on the consolidated tape, the Participants will be able to make similar amendments to their rules, pursuant to Rule 19b–4 under the Act.<sup>17</sup>

## 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b–4(f)(6) thereunder.<sup>19</sup> Because the 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.<sup>20</sup>

A proposed rule change filed under Rule 19b–4(f)(6)<sup>21</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(ii),<sup>22</sup> the Commission may designate a shorter time if such action is consistent with the

protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative as of December 9, 2013, which is the current operative date of the CTA Plan amendment proposed by the Participants. According to the Exchange, encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace. The Exchange stated that it provides these services in a highly competitive market in which market participants may avail themselves of a wide variety of options offered by self-regulatory organizations, alternative trading systems and other broker-dealers. As such, the Exchange’s proposed reporting of odd lot transactions for inclusion on the consolidated tape and amendment to the definition of “market” orders does not burden competition and is consistent with the public interest because such amendments can be adopted by the other Participants pursuant to the CTA Plan amendment and it would promote order flow to the Exchange only if it offers market participants an incentive to utilize the Exchange’s services over its competitors. The Commission is waiving the 30-day operative delay so that CHX’s rules are consistent with the terms of the CTA Plan such that odd lot trades can be reported effective December 9, 2013, which is consistent with the public interest. Therefore, the Commission designates the proposal as operative upon filing.<sup>23</sup>

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>24</sup> of the Act 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 proposal is consistent with the Act. Comments may

<sup>10</sup> As of December 9, 2013, the Exchange has no NMS securities primarily listed on the Exchange.

<sup>11</sup> 17 CFR 242.608(c).

<sup>12</sup> See *supra* note 4.

<sup>13</sup> See *supra* note 5.

<sup>14</sup> 17 CFR 242.608(b)(2).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 17 CFR 240.19b–4.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change, along with a brief description and text of 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.

<sup>20</sup> 17 CFR 240.19b–4(f)(6).

<sup>21</sup> 17 CFR 240.19b–4(f)(6).

<sup>22</sup> 17 CFR 240.19b–4(f)(6)(ii).

<sup>23</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>24</sup> 15 U.S.C. 78s(b)(2)(B).

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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2013-21 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-CHX-2013-21. 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 10:00 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-CHX-2013-21 and should be submitted on or before January 8, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-71064; File No. SR-Phlx-2013-117]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Pricing Schedule**

December 12, 2013.

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 November 29, 2013, 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 the Exchange's Pricing Schedule with respect to: (i) The Customer<sup>3</sup> Rebate Program in Section B; (ii) Simple Order pricing in Section I entitled Rebates and Fees for Adding and Removing Liquidity in SPY;<sup>4</sup> (iii) certain pricing in Section II related to Multiply Listed Options Fees;<sup>5</sup> (iv) pricing in Section III entitled Singly Listed Options; (v) and pricing in Section IV, entitled "Other Transaction Fees," to amend PIXL<sup>6</sup> Pricing.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on December 2, 2013.

The text of the proposed rule change is available on the Exchange's Web site at <http://>

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

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

<sup>3</sup> The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).

<sup>4</sup> Options overlying Standard and Poor's Depository Receipts/SPDRs ("SPY") are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

<sup>5</sup> The pricing in Section II includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

<sup>6</sup> PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXL<sup>SM</sup>). See Rule 1080(n).

[nasdaqomxphlx.cchwallstreet.com/](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 is proposing to amend various sections of its Pricing Schedule. Specifically, the Exchange proposes to amend its Customer Rebate Program at Section B of the Pricing Schedule. The Exchange is amending the types of transactions in Category A and Category B which are subject to the rebate. The Exchange proposes to amend the Simple Order Fees for Removing Liquidity in Section I which are applicable to transactions overlying SPY. The Exchange proposes to amend various Options Transaction Charges in Section II in both Penny and non-Penny Pilot Options and also amend the Electronic Firm Fee Discount.<sup>7</sup> The Exchange proposes to increase the Customer Options Transaction Charge in Section III applicable to Singly Listed Options. Finally, the Exchange proposes to increase certain PIXL fees in Section IV of the Pricing Schedule related to order executions in Section II Multiply Listed Options. Each proposal is detailed below.

#### **Customer Rebate Program**

Currently, the Exchange has a Customer Rebate Program consisting of four tiers which pays Customer rebates on two Categories, A and B, of transactions.<sup>8</sup> Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options

<sup>7</sup> The Exchange assesses Firms a reduced Options Transaction Charge in Penny and non-Penny Options provided a Firm has volume greater than a certain amount of contracts in a month.

<sup>8</sup> See Section B of the Pricing Schedule.

<sup>25</sup> 17 CFR 200.30-3(a)(12).