total percentage of investment securities held by ACS Wireless to increase to approximately 93.8% of ACS Wireless' total assets on an unconsolidated basis. Thus, as a result of the Transaction, ACS Wireless may be considered an investment company within the meaning of section 3(a)(1)(C) of the Act.

3. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C), the Commission may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities either directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. ACS Wireless requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.[2]

4. In determining whether a company is ''primarily engaged'' in a non-investment company business under section 3(b)(2), the Commission considers: (a) the company's historical development, (b) its public representations of policy, (c) the activities of its officers and directors, (d) the nature of its present assets, and (e) the sources of its present income.[3]

a. Historical Development. ACS Wireless states that it has been in the business of providing wireless telecommunications services since 1995, including providing facilities-based voice and data services to individual and business customers throughout Alaska, with roaming coverage available in the lower 48 states, Hawaii and Canada.

b. Public Representations of Policy. Applicant states that both ACS Wireless and its parent company, ACS Group, are part of a well-known communications company in Alaska and neither have ever portrayed themselves as anything other than a communications company. Through public statements, reports to shareholders, periodic filings with the Commission, public advertising and information contained on ACS Group's Web site, ACS Wireless and ACS Group have invariably represented that ACS Wireless is primarily engaged in the business of telecommunications services.

c. Activities of Officers and Directors. ACS Wireless states that the board of directors (the ''Directors'') and executive officers (the ''Officers'') of ACS Wireless are primarily engaged in managing ACS Wireless' cellular telephone business and that of its affiliates. The CFO and the Vice President of Finance of ACS Wireless spend less than 10% and 5% of their time, respectively, managing cash and cash equivalents at the holding company level.[4] Officers and Directors of ACS Wireless other than the CFO and the Vice President of Finance spend less than 5% of their time addressing such matters. Neither the Directors nor the Officers otherwise dedicate any time to investing, reinvesting, owning, holding or trading in investment securities.

d. Nature of Assets. Applicant states that, as of December 31, 2012, ACS Wireless' directly-owned assets included: (i) $20.7 million of current assets including cash, accounts receivable, material, supplies, prepayment and other current assets (''Current Assets''), and (ii) $74.2 million of property and plant and equipment (''PP&E'').[5] Applicant states that many of the assets categorized as Current Assets will remain with ACS Wireless after the Transaction and will not be contributed to AWN, as they are primarily related to ACS Wireless' retail wireless business. Certain receivables, PP&E, and certain Contributed Affiliate Assets[6] will be contributed to AWN. Applicant represents that following the Transaction, a majority of ACS Wireless' assets will be comprised of its interest in AWN, which will be a controlled company engaged in the wireless communications industry. Applicant states that, on a pro forma basis post-Transaction, its assets will consist of approximately 6.2% of directly-owned assets and approximately 93.8% of controlled company assets on an unconsolidated basis.[7]

e. Sources of Income. ACS Wireless states that it derives all of its income from its wireless businesses. For accounting purposes ACS Wireless is not a separate financial reporting segment of ACS Group and therefore ACS Group does not track ACS Wireless' expenses separately, although it does track ACS Wireless' revenue for business purposes. As noted in the application, all of ACS Wireless' revenue, as of December 31, 2012, is attributable to the directly-owned assets of its wireless telecommunications business. Dividends, interest and gains, and losses on sales of securities currently constitute no portion of the ACS Wireless' revenue. Applicant states that post-Transaction, on a pro forma basis, for the twelve months ended December 31, 2012, its revenue was $160,721,000 of which 51.6% would be attributable to directly-owned assets and 48.4% would be attributable to controlled companies.[8] Applicant also states that it will receive distributions from AWN following the Transaction which will include a preferred distribution for the first four years, intended to present a stable cash flow to ACS Wireless, and thereafter will be one-third of AWN's distributions. Distributions from AWN and revenue from operations conducted directly by ACS Wireless are anticipated to be ACS Wireless' only sources of revenue following the Transaction.

5. ACS Wireless thus states that it meets the factors that the Commission considers in determining whether an issuer is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M O'Neill,

Deputy Secretary.

[FR Doc. 2013–15658 Filed 6–28–13; 8:45 am]

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[2] ACS Group's counsel has advised ACS Group that neither it nor ACS Holdings should be deemed an investment company if the requested order is granted to ACS Wireless.

[3] *See* Tonopah Mining Company of Nevada, 26 SEC 426, 427 (1947).

[4] Treasury functions related to the assets of ACS Wireless including the managing and holding of cash and cash equivalents are performed at the holding company level by ACS Holdings.

[5] PP&E includes cell towers, leases, electronic equipment, and other similar assets.

[6] ACS Group will cause certain of its other subsidiaries to transfer wireless spectrum licenses and certain network usage rights assets to ACS Wireless immediately prior to the Transaction (collectively ''Contributed Affiliate Assets'').

[7] Applicant states that the valuations have been determined in accordance with section 2(a)(41) of the Act.

[8] Applicant states that this figure represents revenue related to assets to be contributed by ACS Wireless to AWN. This figure does not include revenue related to assets to be contributed to AWN by GCI, as that revenue information is not yet available. Thus, this revenue figure also does not represent the ultimate revenue ACS Wireless will record, which will be applicant's one-third share of AWN's combined net income.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69848; File No. SR–Phlx–2013–69]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish an Acceptable Trade Range for Orders and Quotes on PHLX XL

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on June 18, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''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 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 establish an Acceptable Trade Range for orders and quotes on PHLX XL. The Acceptable Trade Range functionality is intended to dampen volatility when necessary in rare cases of unusual market conditions by allowing orders to execute within a succession of price-range steps. At the end of each price-range step, the process allows the market a brief time-period to refresh itself before moving on with the execution process, as described further below. Similar mechanisms operate on other options exchanges.

The text of the proposed rule change is below; proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

Rule 1080 Phlx XL and Phlx XL II

* * * * *

(p) Acceptable Trade Range.

(A) After the opening, the System will calculate an Acceptable Trade Range to limit the range of prices at which an order or quote (except an All-or-none order) will be allowed to execute. The Acceptable Trade Range is calculated by taking the Reference Price, plus or minus a value to be determined by the Exchange. (i.e., the Reference Price—(x) for sell orders/quotes and the Reference Price + (x) for buy orders/quotes). Upon receipt of a new order/quote, the Reference Price is the National Best Bid (''NBB'') for sell orders and the National Best Offer (''NBO'') for buy orders/quotes or the last price at which the order/quote is posted whichever is higher for a buy order/quote or lower for a sell order/quote.

(B) If an order/quote reaches the outer limit of the Acceptable Trade Range (the ''Threshold Price'') without being fully executed, it will be posted at the Threshold Price for a brief period, not to exceed one second (''Posting Period''), to allow more liquidity to be collected, unless a Quote Exhaust has occurred, in which case the Quote Exhaust process in Rule 1082(a)(ii)(B)(3) will ensue, triggering a new Reference Price. Upon posting, either the current Threshold Price of the order or an updated NBB for buy orders or the NBO for sell orders (whichever is higher for a buy order/lower for a sell order) then becomes the Reference Price for calculating a new Acceptable Trade Range. If the order/quote remains unexecuted, a New Acceptable Trade Range will be calculated and the order/quote will execute, route, or post up to the new Acceptable Trade Range Threshold Price, unless a member organization has requested that their orders be returned if posted at the outer limit of the Acceptable Trade Range (in which case, the order will be returned). This process will repeat until either i) the order/quote is executed, cancelled, or posted at its limit price or ii) the order has been subject to a configurable number of instances of the Acceptable Trade Range as determined by the Exchange (in which case it will be returned).

(C) During the Posting Period, the Exchange will disseminate as a quotation: (i) the Threshold Price for the remaining size of the order triggering the Acceptable Trade Range and (ii) on the opposite side of the market, the best price will be displayed using the ''non-firm'' indicator message in accordance with the specifications of the network processor. Following the Posting Period, the Exchange will return to a normal trading state and disseminate its best bid and offer.

* * * * *

Rule 1082 Firm Quotations

(a)(i)–(ii)(B)(3)(g)(v) No change.

(vi) If, after trading at the Phlx and/or routing, there is a remainder of the initiating order, and such remainder is still marketable, the entire process of evaluating the Best Phlx price and the ABBO will be repeated until: (A) the order size is exhausted, or (B) the order reaches its limit price. If there still remain unexecuted contracts after routing but the order has reached its limit price, the remainder will be posted at the order's limit price, except that, when the limit price crosses the Acceptable Range Price, the remainder will be posted at the Acceptable Range Price for a period of time not to exceed ten seconds [and then cancelled after such period of time has elapsed, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order]. During this up to ten second period, the Phlx XL II system will disseminate on the opposite side of the market from remaining unexecuted contracts: (i) a non-firm bid for the price and size of the next available bid(s) on the Exchange if the remaining size is a seller, or (ii) a non-firm offer for the price and size of the next available offer(s) on the Exchange if the remaining size is a buyer. *After such time period, the Acceptable Range Price becomes the Reference Price and Acceptable Trade Range (pursuant to Rule 1080(p)) is applied to the remaining size of the order.*

(4) No change.

(C) No change.

(iii)–(iv) No change.

(b)–(d) No change.

Commentary:

.01—.03 No change.

* * * * *

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

PHLX is proposing to adopt a mechanism that will prevent the PHLX trading System, Phlx XL, (''System'') from experiencing dramatic price swings. This circumstance can exist if, for example, a market order or aggressively priced limit order/quote is entered that is larger than the total volume of contracts quoted at the top-of-book across all U.S. options exchanges. Currently, without any protections in place, this could result in options executing at prices that have little or no relation to the theoretical price of the option.

For example, in a thinly traded option:

Away Exchange Quotes:

Exchange	Bid size	Bid price	Offer price	Offer size
NOM	10	$1.00	$1.05	10
NYSE Arca	10	1.00	1.05	10
NYSE MKT	10	1.00	1.10	10
BOX	10	1.00	1.15	10

PHLX Price Levels:

Exchange	Bid size	Bid price	Offer price	Offer size
PHLX orders	10	$1.00	$1.05	10
PHLX orders			1.10	10
PHLX orders			1.40	10
PHLX orders			5.00	10

If PHLX receives a routable market order to buy 80 contracts, the System will respond as described below:

—10 contracts will be executed at $1.05 against NOM
—10 contracts will be executed at $1.05 against PHLX
—10 contracts will be executed at $1.05 against NYSE Arca
—10 contracts will be executed at $1.10 against PHLX
—10 contracts will be executed at $1.10 against NYSE MKT
—10 contracts will be executed at $1.15 against BOX

After these executions, there are no other known valid away exchange quotes. The National Best Bid/Offer (''NBBO'') is therefore comprised of the remaining interest on the PHLX book, specifically 10 contracts at $1.40 and 10 contracts at $5.00. In the absence of an Acceptable Trade Range mechanism, the order would execute against the remaining interest at $1.40 and $5.00, resulting in potential harm to investors.

To bolster the normal resilience and market behavior that persistently produces robust reference prices, PHLX is proposing to create a level of protection that prevents the market from moving beyond set thresholds. The thresholds consist of a Reference Price plus (minus) set dollar amounts based on the nature of the option and the premium of the option. PHLX is not introducing a new concept. In fact, the NASDAQ Options Market and NASDAQ OMX BX, Inc.'s options market have an Acceptable Trade Range feature.[3]

System Operation. The proposed Acceptable Trade Range would work as follows: prior to executing orders received by PHLX, an Acceptable Trade Range is calculated to determine the range of prices at which orders may be executed.[4] When an order is initially received, the threshold is calculated by adding (for buy orders) or subtracting (for sell orders) a value,[5] as discussed below, to the National Best Offer for buy orders or the National Best Bid for sell orders to determine the range of prices that are valid for execution. A buy (sell) order will be allowed to execute up (down) to and including the maximum (minimum) price within the Acceptable Trade Range.

If an order reaches the outer limit of the Acceptable Trade Range (the ''Threshold Price'') without being fully executed, it will be posted at the Threshold Price for a brief period, not to exceed one second (''Posting Period''), to allow the market to refresh and to determine whether or not more liquidity will become available (on PHLX or any other exchange if the order is designated as routable), unless a Quote Exhaust has occurred, in which case the Quote Exhaust process in Rule 1082(a)(ii)(B)(3) will ensue,[6] triggering a new Reference Price.

Upon posting, either the current Threshold Price of the order or an updated NBB for buy orders or the NBO for sell orders (whichever is higher for a buy order/lower for a sell order) then becomes the Reference Price for calculating a new Acceptable Trade Range. If the order remains unexecuted, a new Acceptable Trade Range will be calculated and the order will execute, route, or post up to the new Acceptable Trade Range Threshold Price, unless a member organization has requested that their orders be returned if posted at the outer limit of the Acceptable Trade Range (in which case, the order will be returned). This process will repeat until either (i) the order/quote is executed, cancelled, or posted at its limit price or (ii) the order/quote has been subject to a configurable number of instances of the Acceptable Trade Range as determined by the Exchange.[7] Once the maximum number of instances has been reached, the order is returned.

During the Posting Period, any eligible contra-side interest that is received can trade. If, however a more aggressively-priced same side order is received during the Posting Period, the Posting Period ends, because there is no need to wait for the market to refresh and attract interest to the original order. Such new same side order indicates that the market is moving in that direction so the original order will trade at the current Acceptable Trade Range, with the Acceptable Trade Range recalculated for both orders.

During the Posting Period, PHLX will disseminate the Threshold Price on one side of the market and the best available price on the opposite side of the market using a ''non-firm'' indicator.[8] This allows the order setting the Acceptable Trade Range Threshold Price to retain priority in the PHLX book and also prevents any later-entered order from accessing liquidity ahead of it. If PHLX were to display trading interest available on the opposite side of the

[3] *See* NOM Rules, Chapter VI, Section 10(7) and BX Options Rules, Chapter VI, Section 10(7).

[4] The Acceptable Trade Range will not be available for All-or-none orders, as defined in Rule 1066(c)(4). The Exchange has determined that it would be difficult, from a technical standpoint, to apply this feature to those orders because their particular contingency makes it difficult to automate their handling. All-or-none orders are often treated differently than other orders. *See* Options Floor Procedure Advice A–9.

[5] The value that is to be added to/subtracted from the Reference Price will be set by PHLX and posted on its Web site: *http://www.nasdaqtrader.com*.

[6] The Quote Exhaust process occurs when the Exchange's disseminated market at a particular price level includes a quote, and such market is exhausted by an inbound contra-side quote or order, and following such exhaustion, contracts remain to be executed from such quote or order through the initial execution price.

[7] Member organizations can request that the Acceptable Trade Range not apply to their orders, in which case, the order would be cancelled back to the member organization.

[8] Non-firm quote indication values are described on page 18 of the specifications disseminated by the Options Price Regulatory Authority (''OPRA''). *See http://www.opradata.com/specs/participant_interface_specification.pdf*. This will be disseminated both to OPRA and over the Exchange's own data feeds.

market, that trading interest would be automatically accessible to later-entered orders during the period when the order triggering the Acceptable Trade Range is paused. Following the Posting Period, the Exchange will return to a normal trading state and disseminate its best bid and offer.

PHLX believes that disseminating a non-firm quotation message as described above is consistent with its obligations under the SEC Quote Rule.[9] The fact that PHLX is experiencing volatility that is strong enough to trigger the Acceptable Trade Range mechanism qualifies as an unusual market condition. PHLX expects such situations to be rare, and, as described below, PHLX will set the parameters of the mechanism at levels that will ensure that it is triggered quite infrequently. In addition, the Acceptable Trade Range mechanism will cause the market to pause for no more than one second, the same pause that currently exists on NOM and BX Options. Importantly, the brief pause only occurs after the Exchange has already executed transactions—potentially at multiple price levels—rather than pausing before executing any transactions in the hopes of attracting initial liquidity.

Importantly, the Acceptable Trade Range is neutral with respect to away markets. Consistent with the routing provisions in Rule 1080(m), an order may route to other destinations to access liquidity priced within the Acceptable Trade Range provided the order is designated as routable. If the order still remains unexecuted, this process will repeat[10] until the order is executed, cancelled, or posted at its limit price, consistent with PHLX routing rules.[11]

For example, assume that the Acceptable Trade Range is set for $0.05 and the following quotations are posted in all markets:

Away Exchange Quotes:

Exchange	Bid size	Bid price	Offer price	Offer size
ISE	10	$0.75	$0.90	10
NYSE MKT	10	0.75	0.92	10
NOM	10	0.75	0.94	10

PHLX Price Levels:

Exchange	Bid size	Bid price	Offer price	Offer size
PHLX orders	10	$0.75	$0.90	10
PHLX order			0.95	10
PHLX order			0.97	10
PHLX order			1.00	20

PHLX receives a routable order to buy 70 contracts at $1.10. The Acceptable Trade Range is $0.05 and the Reference Price is the National Best Offer—$0.90. The Threshold Price is then $0.90 + $0.05 = $0.95. The order is allowed to execute up to and including $0.95. The System then pauses for a brief period not to exceed one second (the Posting Period) to allow the market (including other exchanges) to refresh and to determine whether additional liquidity will become available within the order's posted price. If additional liquidity becomes available on PHLX or any away market, that liquidity will be accessed and executed.

—10 contracts will be executed at $0.90 against PHLX
—10 contracts will be executed at $0.90 against ISE
—10 contracts will be executed at $0.92 against NYSE MKT
—10 contracts will be executed at $0.94 against NOM
—10 contracts will be executed at $0.95 against PHLX
—Then, after executing at multiple price levels, the order is posted at $0.95 for a brief period not to exceed one second to determine whether additional liquidity will become available.
—A new Acceptable Trade Range Threshold Price of $1.00 is determined (new Reference Price of $0.95 + $0.05 = $1.00)
—If, during the Posting Period, no liquidity becomes available within the order's posted price of $0.95, the System will then execute 10 contracts at $0.97, and 10 contracts at $1.00[12]

Similarly, if a new order is received when a previous order has reached the Acceptable Trade Range threshold, the Threshold Price will be used as the Reference Price for the new Acceptable Trade Range threshold. Both orders would then be allowed to execute up (down) to the new Threshold Price.

For example:

Away Exchange Quotes:

Exchange	Bid size	Bid price	Offer price	Offer size
ISE	10	$0.75	$0.90	10
NYSE MKT	10	0.75	0.92	10
NOM	10	0.75	0.94	10

[9] 17 CFR 242.602.

[10] PHLX will establish a maximum number of Acceptable Trade Range iterations, until the order is cancelled.

[11] *See* PHLX Rule 1080(m). If after an order is routed to the full size of an away exchange and additional size remains available, the remaining contracts will be posted on PHLX at a price that assumes the away market has executed the routed order. This practice of routing and then posting is consistent with the national market system plan governing trading and routing of options orders and the PHLX policies and procedures that implement that plan. *See* Options Order Protection and Locked/Crossed Markets Plan; Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009); NOM Rules Chapter VI, Section 7(b)(3)(C).

[12] The brief pause described above will not disadvantage customers seeking the best price in any market. For example, if in the example above an NYSE ARCA quote of $0.75 × $0.96 with size of 10 × 10 is received, a routable order would first route to NYSE ARCA at $0.96, then execute against PHLX at $0.97.

PHLX Price Levels:

Exchange	Bid size	Bid price	Offer price	Offer size
PHLX orders	10	$0.75	$0.90	10
PHLX order			0.95	10
PHLX order			1.05	20

—PHLX receives a routable order to buy 60 contracts at $1.10. The Acceptable Trade Range is $0.05 and the Reference Price is the National Best Offer—$0.90. The Acceptable Trade Range threshold is then $0.90 + $0.05 = $0.95. The order is allowed to execute up to and including $0.95.
—10 contracts will be executed at $0.90 against PHLX
—10 contracts will be executed at $0.90 against ISE
—10 contracts will be executed at $0.92 against NYSE MKT
—10 contracts will be executed at $0.94 against NOM
—10 contracts will be executed at $0.95 against PHLX
—Then, after executing at multiple price levels, the order is posted at $0.95 for a brief period not to exceed one second to determine whether additional liquidity will become available.
—A new Acceptable Trade Range Threshold Price of $1.00 is determined (new Reference Price of $0.95 + $0.05 = $1.00)
—If, during the brief period not to exceed one second, a second order is received to buy 10 contracts at $1.25, the two orders would then post at the new Acceptable Trade Range Threshold price of $1.00 for a brief period not to exceed one second to determine whether additional liquidity will become available.
—A new Acceptable Trade Range threshold of $1.05 will be calculated.
—If no additional liquidity becomes available within the posted price of the orders ($1.00) during the brief period not to exceed one second, the orders would execute 10 contracts each against the order on the PHLX book at $1.05

In addition, an order/quote which triggers a Quote Exhaust process, as explained above, will also be protected by the Acceptable Trade Range. When an order/quote triggers Quote Exhaust, the price at which the order/quote is posted becomes the Reference Price and the order/quote would then be allowed to execute up (down) to the new Threshold Price.

For example:

Away Exchange Quotes:

Exchange	Bid size	Bid price	Offer price	Offer size
ISE	10	$0.75	$0.90	10
NYSE MKT	10	0.75	0.98	10
NOM	10	0.75	0.98	10

PHLX Price Levels:

Exchange	Bid size	Bid price	Offer price	Offer size
PHLX MM Quote	10	$0.75	$0.92	10
PHLX order			0.99	20

—PHLX receives a routable order to buy 60 contracts at $1.10. The Acceptable Trade Range is $0.05 and the Reference Price is the National Best Offer—$0.90. The Acceptable Trade Range threshold is then $0.90 + $0.05 = $0.95. The order is allowed to execute up to and including $0.95.
—10 contracts will be executed at $0.90 against ISE
—10 contracts will be executed at $0.92 against PHLX MM Quote, triggering Quote Exhaust. At the end of the Quote Exhaust Timer, based on the Quote Exhaust Acceptable Range table, the order will be posted at a price of $0.97 (assuming a $0.05 Acceptable Range). The Acceptable Trade Range threshold becomes $0.97 + $0.05 = $1.02. The order is allowed to execute up to and including $1.02.
—10 contracts will be executed at $0.98 against NYSE Amex
—10 contracts will be executed at $0.98 against NOM
—20 contracts will be executed at $0.99 against PHLX

The Exchange is also proposing to amend Rule 1082, Firm Quotations to address that the Quote Exhaust process will culminate with the application of the Acceptable Trade Range under proposed Rule 1080(p), rather than either cancelling or re-entering the remaining size of the order. Specifically, the Exchange proposes to amend Rule 1082(a)(ii)(B)(3)(g)(vi) to provide that the Acceptable Range Price becomes the Reference Price and the Acceptable Trade Range (pursuant to Rule 1080(p)) is applied to the remaining size of the order. This would occur after the brief time period (of no more than ten seconds) when the order is posted at the Acceptable Range Price, which is part of the Quote Exhaust process. Because the Acceptable Trade Range, under this proposal, will now protect the remainder of the order, the Exchange does not believe that it needs to cancel the order or offer the alternative that member organizations provide instructions if they would prefer the remainder to be re-entered. The Exchange is not otherwise changing the Quote Exhaust process.

Setting Acceptable Trade Range Values. The options premium will be the dominant factor in determining the Acceptable Trade Range. Generally, options with lower premiums tend to be more liquid and have tighter bid/ask spreads; options with higher premiums have wider spreads and less liquidity. Accordingly, a table consisting of several steps based on the premium of the option will be used to determine how far the market for a given option will be allowed to move. This table or tables would be listed on the NASDAQTrader.com Web site and any periodic updates to the table would be announced via an Options Trader Alert.

For example, looking at some SPY May 2013 Call options on May 1st of 2013:

Bid/Offer of SPY May 160 Call (at or near-the-money): $1.23 × $1.24 (several hundred contracts on bid and offer)

Bid/Offer of SPY May 105 Call (deep in-the-money): $54.10 × $54.26 (11 contracts on each side)

The deep in-the-money calls (May 105 calls) have a wider spread ($54.10 − $54.26 = $0.16) compared to a spread of $0.01 for the at-the-money calls (May 160 calls). Therefore, it is appropriate to have different thresholds for the two options. For instance, it may make sense to have a $0.05 threshold for the at-the-money strikes (Premium < $2) and a $0.50 threshold for the deep in-the-money strikes (Premium > $10).

To consider another example, the May 2013 ORCL put options on May 1st of 2013:

Bid/Offer of ORCL 33 May Put (at or near-the-money): $0.33 × $0.34 (100 × 500)

Bid/Offer of ORCL 44 May Put (deep in-the-money): $10.40 × $10.55 (50 × 200)

Even though ORCL has a much lower share price than SPY, and is a different type of security (it is a common stock of a technology company whereas SPY is an ETF based on the S&P 500 Index), the pattern is the same. The option with the lower premium has a very narrow spread of $0.01 with significant size displayed whereas the higher premium option has a wide spread ($0.15) and less size displayed.

The Acceptable Trade Range settings will be tied to the option premium. However, other factors will be considered when determining the exact settings. For example, Acceptable Ranges may change if market-wide volatility is as high as it was during the financial crisis in 2008 and 2009, or if overall liquidity is low based on historical trends. These different market conditions may present the need to adjust the threshold amounts from time to time to ensure a well-functioning market. Without adjustments, the market may become too constrained or conversely, prone to wide price swings. As stated above, the Exchange would publish the Acceptable Trade Range table or tables on the NASDAQTrader.com Web site. The Exchange does not foresee updating the table(s) often or intraday, although the exchange may determine to do so in extreme circumstances. The Exchange will provide sufficient advanced notice of changes to the Acceptable Trade Range table, generally the prior day, to its membership via Options Trader Alerts.

The Acceptable Trade Range settings would generally be the same across all options traded on PHLX, although PHLX proposes to maintain flexibility to set them separately based on characteristics of the underlying security. For instance, Google is a stock with a high share price ($824.57 closing price on April 30th). Google options therefore may require special settings due to the risk involved in actively quoting options on such a high-priced stock. Option spreads on Google are wider and the size available at the best bid and offer is smaller. Google could potentially need a wider threshold setting compared to other lower-priced stocks. There are other options that fit into this category (e.g. AAPL) which makes it necessary to have threshold settings that have flexibility based on the underlying security. Additionally, it is generally observed that options subject to the Penny Pilot program quote with tighter spreads than options not subject to the Penny Pilot. Currently, PHLX expects to set Acceptable Trade Ranges for three categories of options: Standard Penny Pilot, Special Penny Pilot (IWM, QQQQ, SPY), and Non-Penny Pilot.[13]

2. Statutory Basis

PHLX believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general and with Section 6(b)(5) of the Act,[15] in particular, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is consistent with these requirements in that it will reduce the negative impacts of sudden, unanticipated volatility in individual PHLX options, and serve to preserve an orderly market in a transparent and uniform manner, enhance the price-discovery process, increase overall market confidence, and promote fair and orderly markets and the protection of investors. Specifically, the Exchange believes that the NBBO is a fair representation of then-available prices and accordingly the proposal helps to avoid executions at prices that are significantly worse than the NBBO. Also, this proposal is consistent with existing rules that allow, when the underlying security is subject to a ''Limit State'' or ''Straddle State,'' as defined in the Limit Up-Limit Down Plan, for the breaking of options trades meeting the definition of an obvious error as well as rejecting market orders.[16]

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

PHLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to the orders and quotes of all Options Participants. Nor will the proposal impose a burden on competition among the options exchanges, because of the vigorous competition for order flow among the options exchanges. PHLX competes with many other options exchanges, all of which offer electronic trading of options and certain routing services. In this highly competitive market, market participants can easily and readily direct order flow to competing venues.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)[18] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the

[13] The Acceptable Range Test in Rule 1082(a)(ii)(B)(3)(f) currently provides for this flexibility, in addition to the comparable provisions in NOM and BX Options rules. *See* NOM Rules, Chapter VI, Section 10(7) and BX Options Rules, Chapter VI, Section 10(7).

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

[16] *See* PHLX Rule 1047(f).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

protection of investors and the public interest.[19]

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.[20]

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–Phlx–2013–69 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–2013–69. 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 such 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–2013–69 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

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[19] 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.

[20] 15 U.S.C. 78s(b)(3)(C).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69850; File No. SR–NYSEArca–2013–62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in Which Its Indirect Parent, NYSE Euronext, Will Become a Wholly Owned Subsidiary of IntercontinentalExchange Group, Inc.

June 25, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act'' or the ''Act'')[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on June 14, 2013, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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

A. Overview of the Proposed Merger

NYSE Arca, a Delaware corporation, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the ''Proposed Rule Change'') to the U.S. Securities and Exchange Commission in connection with the proposed business combination (the ''Merger'') of NYSE Euronext (''NYSE Euronext'') and IntercontinentalExchange, Inc. (''ICE''), both Delaware corporations. NYSE Euronext has entered into an Agreement and Plan of Merger, dated as of December 20, 2012, as amended and restated as of March 19, 2013, by and among NYSE Euronext, ICE, IntercontinentalExchange Group, Inc. (''ICE Group''), Braves Merger Sub, Inc. (''ICE Merger Sub'') and Baseball Merger Sub, LLC (''NYSE Euronext Merger Sub'') (as it may be further amended from time to time, the ''Merger Agreement''), whereby NYSE Euronext and ICE would each become subsidiaries of ICE Group.

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (''NYSE Group''), which in turn directly or indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the ''NYSE Exchanges'')—the New York Stock Exchange, LLC (the ''Exchange''), NYSE Arca and NYSE MKT LLC (''NYSE MKT'')—and (2) 100% of the equity interest of NYSE Market (DE), Inc. (''NYSE Market''), NYSE Regulation, Inc. (''NYSE Regulation''), NYSE Arca L.L.C., NYSE Arca Equities, Inc. (''NYSE Arca Equities'') and NYSE Amex Options LLC (''NYSE Amex Options'') (the NYSE Exchanges, together with (x) NYSE Market, NYSE Regulation, NYSE Arca L.L.C., NYSE Arca Equities and NYSE Amex Options and (y) any similar U.S. regulated entity acquired, owned or created after the date hereof, the ''U.S. Regulated Subsidiaries'' and each, a ''U.S. Regulated Subsidiary''). Each of the Exchange and NYSE MKT will be separately filing a proposed rule change in connection with the Merger that will be substantially the same as the Proposed Rule Change.

ICE is a leading operator of regulated exchanges and clearing houses serving the risk management needs of global markets for agricultural, credit, currency, emissions, energy and equity index products. ICE directly and indirectly owns ICE Futures Europe, ICE Futures U.S., Inc., ICE Futures Canada, Inc., ICE U.S. OTC Commodity Markets, LLC, and five central counterparty clearing houses, including ICE Clear Europe Limited and ICE Clear Credit LLC, each of which is registered as a clearing agency under Section 17A of the Exchange Act,[4] ICE Clear U.S., Inc., ICE Clear Canada, Inc., and The Clearing Corporation, and owns 100% of the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78qA [sic].