

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-84672; File No. SR-Phlx-2018-75)

November 28, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 3306(c)(2)

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 16, 2018, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 allow the Exchange to aggregate Displayed odd-lot Orders across price levels for transmission to network processors as the Exchange’s best priced Order under Rule 3306(c)(2). While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative in the first quarter of 2019, and will announce the precise date by Equity Trader Alert at least thirty days prior to implementation.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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 Rule 3306 to allow the Exchange to aggregate Displayed<sup>3</sup> odd-lot Orders across price levels for transmission to network processors as the Exchange’s best ranked Displayed Order(s), which is based on how NYSE Arca, Inc. handles such orders pursuant to NYSE Arca Rule 7.36-E(b)(3).<sup>4</sup> Rule 3306 concerns entry and display of Quotes<sup>5</sup> and Orders,<sup>6</sup> and paragraph (c) thereunder provides how the System<sup>7</sup> will display

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<sup>3</sup> Display is an Order Attribute that allows the price and size of an Order to be displayed to market participants via market data feeds. Certain Order Types may be non-displayed if they are not assigned a Display Order Attribute, and all non-displayed Orders may be referred to as “Non-Displayed Orders” (See Rule 3301A(b)(3)(A)). In contrast, an Order with a Display Order Attribute may be referred to as a “Displayed Order.” See Rule 3301B(k).

<sup>4</sup> See Securities Exchange Act Release No. 74796 (April 23, 2015), 80 FR 23838 (April 29, 2015) (SR-NYSEArca-2015-08).

<sup>5</sup> The term “Quote” means a single bid or offer quotation submitted to the System by a Market Maker or Equities Electronic Communications Network and designated for display (price and size) next to the Participant’s Market Participant Identifier in the PSX Book. Quotes are entered in the form of Orders with Attribution (as defined in Rule 3301B). Accordingly, all Quotes are also Orders. See Rule 3301(d).

<sup>6</sup> The term “Order” means an instruction to trade a specified number of shares in a specified System Security submitted to the System by a Participant. An “Order Type” is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the PSX Book when submitted to the

Quotes and Orders submitted to the System. Rule 3306(c)(2), which the Exchange is proposing to amend, describes what the Exchange transmits to the network processors as the Exchange's best priced Order. Specifically, Rule 3306(c)(2) provides that, for each System Security,<sup>8</sup> the aggregate size of all Quotes and Orders at the best price to buy and sell resident in the System will be transmitted for display to the appropriate network processor, unless the aggregate size is less than one round lot, in which case the aggregate size will be displayed in the System Book Feed<sup>9</sup> but not be transmitted to a network processor.<sup>10</sup> Thus, pursuant to Rule 3306(c)(2) Orders with an aggregate size of less than one round lot at a particular price level are displayed in the System Book Feed, but are not transmitted to a network processor. For example, if the Exchange best bid is \$10.00, and there are the following three odd-lot Orders resting displayed on the PSX Book with no other interest resting on the PSX Book - 25 shares to buy at \$10.00, 25 shares to

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System. An "Order Attribute" is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the PSX Book when submitted to the System. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 3301A and 3301B. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes. See Rule 3301(e).

<sup>7</sup> The term "PSX" or "System" shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. See Rule 3301(a).

<sup>8</sup> The term "System Securities" shall mean any NMS stock, as defined in SEC Rule 600 except securities specifically excluded from trading via a list of excluded securities posted on [www.nasdaqtrader.com](http://www.nasdaqtrader.com). See Rule 3301(b).

<sup>9</sup> The term "System Book Feed" shall mean a data feed for System Securities, generally known as the PSX TotalView ITCH feed. See Rule 3301(l).

<sup>10</sup> Consequently, the Exchange currently will aggregate and transmit to the network processor odd-lot Orders at a particular price level if such Orders aggregate to at least one round lot and are priced better than the best-priced round lot interest on the PSX Book.

buy at \$9.99, and 50 shares to buy at \$9.98 - the System will not transmit any of these Orders to the appropriate processor, but rather will post them to the System Book Feed.<sup>11</sup>

The Exchange is proposing to amend Rule 3306(c)(2) to allow the Exchange to aggregate odd-lot sized Displayed Orders at multiple price points that equal at least a round lot for purposes of transmitting the Exchange's best ranked Displayed Order(s) to the appropriate processor. In assigning a price to such aggregated odd-lot Orders, the Exchange would use the highest (lowest) price to buy (sell) wherein the aggregate size of all displayed buy (sell) interest in the System greater (less) than or equal to that price is one round lot or greater. Consequently, because the aggregated Displayed odd-lot Orders represent the best price available on the Exchange, they would be transmitted to the network processor as such. Using the example above, all three odd-lot Orders resting displayed on the PSX Book would be aggregated into a round lot Order and reported to the appropriate processor for quoting at a price of \$9.98.<sup>12</sup> The Exchange is proposing to amend Rule 3306(c)(2) to add four new subparagraphs to the rule, which provide that the Exchange will transmit to the appropriate processor the highest (lowest) price to buy (sell) wherein the aggregate size of all displayed buy (sell) interest in the System greater (less) than or equal to that price is one round lot or greater, and that the aggregate size of all displayed

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<sup>11</sup> The Exchange notes that the network processors only accept quotations in round lots. As a consequence, if aggregated Orders do not equal a round lot the Exchange will round down to the nearest round lot for purposes of reporting to the appropriate network processor. This proposal does not change this process.

<sup>12</sup> The Exchange notes that it is not proposing to change how it processes Orders for execution. System Orders are executed in accordance with one of two execution algorithms: Price/Time or Pro Rata. See Rule 3307. Thus, Orders resting on the Exchange Book will be executed pursuant to the price/time execution algorithm or pro rata execution algorithm consistent with Rule 3307. Likewise, the algorithm used for execution does not affect what is provided to the network processor as the Exchange's best priced Order.

buy (sell) interest in the System greater (less) than or equal to that price will be transmitted rounded down to the nearest round lot.<sup>13</sup>

The Exchange is also proposing to make clarifying changes to Rule 3306(c)(2). Currently, the rule does not note that the obligation to report the highest (lowest) aggregate Displayed interest to buy (sell) arises from Rule 602 of Regulation NMS. The Exchange is amending the rule to affirmatively state that the transmission to the appropriate network processor is done pursuant to Rule 602 of Regulation NMS. The Exchange is also deleting the text concerning the display in the System Book Feed of all Quotes and Orders at the best price to buy and sell resident in the System that are less than one round lot. The Exchange believes that this text is redundant of paragraph (1) of Rule 3306(c) and serves no purpose under the clarified rule. The Exchange notes that the clarifying changes do not alter how it currently handles Quotes and Orders for display and trade reporting.

The Exchange plans to implement the change proposed herein in the first quarter of 2019, and will announce the precise date by Equity Trader Alert at least thirty days prior to implementation.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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, because the proposed change would remove impediments to and

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<sup>13</sup> Supra note 10 [sic].

<sup>14</sup> 15 U.S.C. 78f(b).

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

perfect the mechanism of a free and open market and a national market system by allowing the Exchange to aggregate odd lot Orders across multiple price levels for purposes of determining the Exchange's best ranked Displayed Order(s) for transmission to the appropriate network processor. The proposed change will provide market participants with greater visibility into liquidity available on the Exchange via the appropriate network processor. Because arriving marketable contra-side Orders execute in price-time priority or pro-rata priority against resting odd-lot Orders priced better than resting round-lot Orders, the Exchange believes that it is appropriate to display such odd-lot interest on the public data feeds as the Exchange's best bid or offer if in the aggregate, they equal a round lot or more. The Exchange further believes that aggregating such odd-lot Orders at the highest (lowest) price to buy (sell) wherein the aggregate size of all buy (sell) interest in the System greater (less) than or equal to that price is one round lot or greater would remove impediments to and perfect the mechanism of a free and open market because it represents the best aggregated execution price for incoming sell (buy) Orders. The Exchange notes that the incoming marketable interest would receive price improvement when executing against any odd-lot orders priced better than the aggregated displayed price. Last, the Exchange believes that the proposed clarifying changes will help promote a better understanding of the operation of the rule. As noted above, the clarifying changes do not alter how the Exchange currently handles Quotes and Orders for display and trade reporting.

**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. As noted above, the Exchange is copying functionality that is currently in use by a competitor exchange. The proposed change may increase the Exchange's position at the National Best Bid and Offer, thus allowing the Exchange to receive greater Order flow and, consequently, executions. This is

the same benefit that the competitor exchange has received since adopting the process proposed herein. Thus, the proposed change is a competitive response, but does not place any burden on competition because it is copying a process used by a competitor exchange, which was approved by the Commission.

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 Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its 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.

#### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2018-75 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-Phlx-2018-75. This file number should be included on the subject line if e-mail 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 website (<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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying



information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2018-75 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Eduardo A. Aleman  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).