

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86610; File No. SR-Phlx-2019-27)

August 8, 2019

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend SCAR Credits at Equity 7, Section 3(a)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 25, 2019, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 SCAR credits at Equity 7, Section 3(a), as described further below. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 1, 2019. 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to adopt revised pricing for the recently adopted SCAR routing strategy.³ In sum, SCAR is a routing option under which orders check the System⁴ for available shares and simultaneously route to the other equity markets operated by Nasdaq, Inc., Nasdaq BX, Inc. (“BX”) and The Nasdaq Stock Market LLC (“Nasdaq”).⁵

The Exchange proposes to adopt revised credits for SCAR orders in securities listed on Nasdaq (“Tape C”), NYSE (“Tape A”), and on exchanges other than Nasdaq and NYSE (“Tape B”) (collectively, “Tapes”), which execute on BX.⁶ BX recently updated its fee schedule

³ See Rule 3315(a)(1)(A). See also Securities Exchange Act Release No. 85366 (March 20, 2019), 84 FR 11345 (March 26, 2019) (SR-Phlx-2019-04).

⁴ The term “System” shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. See Rule 3301(a).

⁵ If shares remain unexecuted after routing, they are posted on the Exchange’s book or cancelled. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. See Rule 3315(a)(1)(A)(x).

⁶ The Exchange currently provides pricing for execution on BX using SCAR that is better than a market participant would otherwise receive for removing liquidity from BX if it did not meet certain volume thresholds that would qualify them for a better rate (such as a liquidity removal credit), which is \$0.0003 per share executed for orders in any Tape securities priced at \$1 or more per share that access liquidity on the Exchange. See BX Equity 7, Section 118(a). Thus, the Exchange’s current fees are more reflective of the pricing a market participant would receive if it provided certain levels of volume. The Exchange is proposing to adjust the credit provided for BX executions to reflect recent changes to the credits provided to BX members for removing liquidity. See Securities Exchange Act Release No. 34-86447 (July 24, 2019) (SR-BX-2019-026) (awaiting publication in the Federal Register).

whereby it generally increased the credits provided for orders that access liquidity,⁷ and the Exchange is proposing to adjust its fee schedule relating to SCAR to increase credits provided for SCAR executions occurring on BX Tapes A and C securities and to decrease the credit provided for SCAR executions occurring on BX Tape B securities. Currently in securities priced at \$1 or more per share, the Exchange provides a credit of \$0.0015 per share for SCAR orders in Tapes A and C securities executed at BX, and a credit of \$0.0026 per share for SCAR orders in Tape B securities executed at Nasdaq BX.⁸ The Exchange is proposing to provide a credit of \$0.0025 per share executed for SCAR orders executed on BX in the securities of any of the Tapes priced at \$1 or more per share, which will align the credits with recent changes to the BX fee schedule.⁹

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the pricing structure proposed above for SCAR is reasonable, equitable, and not unfairly discriminatory because the new credits are generally set at a level intended to incentivize members to use this new routing strategy. The proposed \$0.0025 per

⁷ Id.

⁸ BX operates on the “taker-maker” model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity.

⁹ See supra note 6.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

share executed credit for orders in any Tape securities priced at \$1 or more per share that route to, and execute on, BX using the SCAR routing strategy is significantly higher than the current credit provided in such transactions in securities of Tapes A and C, and is a modest decrease to the credit provided for executions in such transactions in securities of Tape B. This is reflective of the Exchange's desire to increase incentives to members to use the routing strategy and its assessment of the costs incurred in providing the routing strategy. Alignment of the incentive for executions on BX will strike a balance between these factors. In this regard, the Exchange notes that if the order executed directly on BX as the home exchange, (i.e., without using SCAR) the member would be charged the standard transaction fee of \$0.0003 per share executed.¹² As such, the proposed SCAR credit is set at a rate that makes it more economical for members to use this routing strategy, especially for those members that do not already add and/or remove volume on BX directly. Last, the Exchange believes that the proposed pricing changes are equitable and not unfairly discriminatory because they will apply uniformly to all members

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. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their

¹² This fee would apply unless the member qualifies for a better rate (such as a discounted fee or credit) by meeting certain volume thresholds. See BX Equity 7, Section 118(a).

order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed pricing for SCAR orders is intended to provide incentive to members to use the Exchange's SCAR routing strategy, balanced against the need to recoup the Exchange's costs associated with providing its completely optional routing services. Because the Exchange's routing services are the subject of competition, including price competition, from other exchanges and broker-dealers that offer routing services, as well as the ability of members to use their own routing capabilities, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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)(ii) of the Act.¹³

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,

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

the Commission shall institute proceedings 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 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. Please include File Number SR-Phlx-2019-27 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-2019-27. 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-2019-27, 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.¹⁴

Jill M. Peterson
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).