

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64563; File No. SR-Phlx-2011-70)

May 27, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Functionality of NASDAQ OMX PSX's Post-Only Order

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 May 19, 2011, NASDAQ OMX PHLX LLC (the "Exchange" or "PHLX") 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 the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to modify the functionality of the Post-Only Order on NASDAQ OMX PSX ("PSX"). PHLX proposes to implement the rule change thirty days after the date of filing or as soon thereafter as practicable. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at PHLX's principal office, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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

PHLX proposes to modify the functionality associated with its existing Post-Only Order on PSX. Currently, if a Post-Only Order would lock an order on PSX at the time of entry, the order is re-priced and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or above the current best bid (for offers). Thus, if the best bid and best offer on the PSX book were \$10.00 x \$10.05, and a market participant entered a Post-Only Order to buy at \$10.05, the order would be re-priced and displayed at \$10.04. This aspect of the functionality of the order is not changing. In addition, if a Post-Only Order would cross an order on the System, the order will be repriced as described above unless the value of price improvement associated with executing against a resting order equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the book and subsequently provided liquidity, in which case the order will execute. As provided by Rule 3307, price improvement accrues to the party entering the order. Thus, if a sell order is on the book at \$10 and a Post-Only Order to buy at

\$10.01 is entered, the order will execute at \$10. This aspect of the order's functionality is also not changing.³

At present, however, the order is repriced in a similar manner if the order would lock or cross a protected quotation of another market center. Thus, if the national best offer of \$10.05 is being displayed on another market center but not on PSX, at present an order to buy at \$10.05 would be repriced and displayed at \$10.04. Under the changed functionality that PHLX is proposing, if the order locks or crosses the other market center, the order will be accepted at the locking price (i.e., the current low offer (for bids) or to the current best bid (for offers)) and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or above the current best bid (for offers). Thus, if the national best bid and offer, as displayed on another market center, was \$10 x \$10.05, an order to buy at \$10.05 or higher would be accepted at the locking price of \$10.05, but would be displayed at \$10.04. Subsequently, an incoming order to sell at \$10.05 or lower would be matched against the Post-Only buy order. In this case, the incoming sell order would receive price improvement.

³ The functionality was described in the original filing to establish a Post-Only Order on The NASDAQ Stock Market LLC ("NASDAQ") but was not fully reflected in the text of NASDAQ Rule 4751. See Securities Exchange Act Release No. 59392 (February 11, 2009), 74 FR 7943 (February 20, 2009) (SR-NASDAQ-2009-006). Subsequently, PHLX adopted identical rule text when it established PSX as its new facility for trading cash equity securities. Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR-PHLX-2010-79). Accordingly, the rule is being amended to provide a complete description of the order's current behavior when crossing an existing order on the System. PHLX also notes that NASDAQ has filed an identical proposed rule change to modify its Post-Only Order. See SR-NASDAQ-2011-070 (May 19, 2011).

As a result of the change, the order will resemble more closely PSX's Price to Comply order, which uses a similar logic of retaining a locking price but displaying at a non-locking price. The modified Post-Only Order will serve to allow the market participant entering the order to post its order at its desired price, unless the price would lock or cross the PSX book, in which case the order will execute or be repriced, as is currently the case, to avoid the internal lock/cross. The revised order type is designed to provide market participants with better control over their execution costs and to provide them with a means to offer price improvement opportunities to other market participants.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(5) of the Act,⁵ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. PHLX also believes that the modified order is consistent with Rule 610(d) under Regulation NMS.⁶ Rule 610(d) requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid “[d]isplaying quotations that lock or cross any protected quotation in an NMS stock.”

Such rules must be “reasonably designed to assure the reconciliation of locked or crossed

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 242.610(d).

quotations in an NMS stock,” and must “prohibit ... members from engaging in a pattern or practice of displaying quotations that lock or cross any quotation in an NMS stock.” Rule 600 under Regulation NMS⁷ defines a “quotation” as a “bid or offer,” and in turn defines “bid or offer” to mean “the bid price or the offer price communicated by a member ... to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security....” Thus, the hidden price of the Post-Only Order is not a quotation under Regulation NMS, and is therefore covered neither by the provisions of Rule 610 pertaining to displayed quotations nor by the provision requiring rules to assure reconciliation of locked or crossed quotations. In this respect, the order is similar to PSX’s existing Price to Comply order, which uses a hidden locking price and a displayed non-locking price to ensure compliance with this rule. It is also similar to the Post Only Order of the BATS Exchange and the BATS-Y Exchange, as described in BATS Exchange Rule 11.9(c)(4) and (6) and BATS-Y Exchange Rule 11.9(c)(4) and (6), and the Post Only Order of the EDGA Exchange and EDGX Exchange, as described in EDGA Exchange Rule 11.5(c)(4) and (5) and EDGX Exchange Rule 11.5(c)(4) and (5).

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. Rather, the change will promote greater competition by allowing PHLX to adopt functionality already in use at competing national securities exchanges.

⁷ 17 CFR 242.600.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor 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 Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

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 change 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:

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

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-2011-70 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-2011-70. 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 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 offices 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-2011-70, 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.¹⁰

Cathy Ahn
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).