

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-78667; File Nos. SR-BX-2016-037; SR-NASDAQ-2016-067; SR-Phlx-2016-58)

August 24, 2016

Self-Regulatory Organizations; NASDAQ BX, Inc.; The Nasdaq Stock Market LLC; NASDAQ PHLX LLC; Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments No. 1, to Adopt Limit Order Protections

I. Introduction

On June 24, 2016, NASDAQ BX, Inc. (“BX”), The Nasdaq Stock Market LLC (“Nasdaq”), and NASDAQ PHLX LLC (“Phlx,” and together with BX and Nasdaq, “Exchanges”) filed with the Securities and Exchange Commission (“Commission”), 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> proposed rule changes to adopt Limit Order Protections (“LOP”). The proposed rule changes were published for comment in the Federal Register on July 13, 2016.<sup>3</sup> On July 28, 2016, each of the Exchanges filed an Amendment No. 1 to its proposed rule change (collectively “Amendments No. 1”).<sup>4</sup> The Commission received no comment letters on the proposals. The

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

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

<sup>3</sup> See Securities Exchange Act Release Nos. 78244 (July 7, 2016), 81 FR 45320 (“BX Notice”); 78246 (July 7, 2016), 81 FR 45332 (“Nasdaq Notice”); and 78245 (July 7, 2016), 81 FR 45337 (“Phlx Notice”).

<sup>4</sup> Each of the Exchanges specified in its Amendment No. 1 that LOP would not apply if there is no established LOP Reference Price, or if the National Best Bid, when used as the LOP Reference Price, is equal to or less than \$0.50. In addition, in its Amendment No. 1, Nasdaq clarified that it reserves the ability to temporarily disable LOP for certain securities in the event of extraordinary market conditions and explained the process for temporarily disabling LOP. Nasdaq also clarified that LOP would not be operational for orders designated for the re-opening cross, and further explained the existing protections for the Nasdaq opening, re-opening, and closing crosses and initial public offerings. Amendment No. 1 to the BX filing is available at <https://www.sec.gov/comments/sr-bx-2016-037/bx2016037-1.pdf>. Amendment No. 1 to the Nasdaq filing is available at

Commission is publishing this notice to solicit comments on the Exchanges' proposals, as modified by Amendments No. 1, from interested persons and is approving the Exchanges' proposals, as modified by Amendments No. 1, on an accelerated basis.

II. Description of the Proposed Rule Changes, as Modified by Amendments No. 1

Each of the Exchanges proposes to adopt LOP, which is a new mandatory feature designed to prevent certain Limit Orders at prices outside of pre-set standard limits ("LOP Limit") from being accepted by the System.<sup>5</sup>

As proposed, LOP would apply to all Quotes and Orders, including any modified Orders,<sup>6</sup> but would not apply to Market Orders, Market Maker Peg Orders, and Intermarket Sweep Orders ("ISOs").<sup>7</sup> According to the Exchanges, Market Maker Peg Orders are designed to assist Market Makers with meeting their quoting obligations, and Market Makers have more sophisticated infrastructures than other market participants and are able to manage their risk, particularly with respect to quoting, using tools that may not be available to other market participants.<sup>8</sup> Moreover, according to the Exchanges, the ISO designation on an order presumes

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<https://www.sec.gov/comments/sr-nasdaq-2016-067/nasdaq2016067-1.pdf> ("Nasdaq Amendment No. 1"). Amendment No. 1 to the Phlx filing is available at <https://www.sec.gov/comments/sr-phlx-2016-58/phlx201658-1.pdf>.

<sup>5</sup> See proposed BX Rule 4757(d); proposed Nasdaq Rule 4757(c); and proposed NASDAQ OMX PSX ("PSX") Rule 3307(f).

<sup>6</sup> The Exchanges state that if an order is modified, LOP would review the order anew and, if LOP is triggered, the modification would not take effect and the original order would be rejected. See BX Notice, *supra* note 3, at n.5; Nasdaq Notice, *supra* note 3, at n.4; and Phlx Notice, *supra* note 3, at n.4.

<sup>7</sup> See proposed BX Rule 4757(d)(i); proposed Nasdaq Rule 4757(c)(i); and proposed PSX Rule 3307(f)(i).

<sup>8</sup> See BX Notice, *supra* note 3, at 45321; Nasdaq Notice, *supra* note 3, at 45333; and Phlx Notice, *supra* note 3, at 45338.

that the market participant has satisfied its obligation to route to all protected quotes with a price that is superior to the limit price of the ISO.<sup>9</sup>

As proposed, LOP would be operational each trading day but would not be operational during trading halts and pauses.<sup>10</sup> On Nasdaq, LOP also would not be operational for orders designated for the opening, re-opening, and closing crosses and initial public offerings.<sup>11</sup> According to Nasdaq, the opening, re-opening, closing, and initial public offering processes already have their own price protections, and these processes involve certain price discovery features that are important in arriving at the best price.<sup>12</sup>

As proposed, LOP would reject incoming Limit Orders that exceed the LOP Reference Threshold.<sup>13</sup> The LOP Reference Threshold for buy orders would be the LOP Reference Price (i.e., the current National Best Offer) plus the applicable LOP Limit and the LOP Reference Threshold for sell orders would be the LOP Reference Price (i.e., the current National Best Bid) minus the applicable LOP Limit.<sup>14</sup> The LOP Limit would be the greater of 10% of the LOP Reference Price or \$0.50 for all securities across all trading sessions.<sup>15</sup> LOP would not apply if

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<sup>9</sup> See BX Notice, supra note 3, at 45321; Nasdaq Notice, supra note 3, at 45333; and Phlx Notice, supra note 3, at 45338. See also BX Rule 4703(j); Nasdaq Rule 4703(j); and PSX Rule 3301B(j) (discussing ISOs).

<sup>10</sup> See proposed BX Rule 4757(d)(i); proposed Nasdaq Rule 4757(c)(i); and proposed PSX Rule 3307(f)(i).

<sup>11</sup> See proposed Nasdaq Rule 4757(c)(i) and Nasdaq Amendment No. 1, supra note 4.

<sup>12</sup> See Nasdaq Amendment No. 1, supra note 4.

<sup>13</sup> Specifically, a buy Limit Order would be rejected if the price of the Limit Order is greater than the LOP Reference Threshold and a sell Limit Order would be rejected if the price of the Limit Order is less than the LOP Reference Threshold. See proposed BX Rule 4757(d)(v); proposed Nasdaq Rule 4757(c)(v); and proposed PSX Rule 3307(f)(v).

<sup>14</sup> See proposed BX Rule 4757(d)(iii)-(iv); proposed Nasdaq Rule 4757(c)(iii)-(iv); and proposed PSX Rule 3307(f)(iii)-(iv).

<sup>15</sup> See proposed BX Rule 4757(d)(ii); proposed Nasdaq Rule 4757(c)(ii); and proposed PSX Rule 3307(f)(ii).

there is no established LOP Reference Price (e.g., there is a one-sided quote), or if the National Best Bid, when used as the LOP Reference Price, is equal to or less than \$0.50.<sup>16</sup>

LOP would be applicable on all protocols available on each of the Exchanges.<sup>17</sup> While each of the Exchanges intends to apply LOP system-wide, each reserves the ability to temporarily disable LOP for certain securities in the event of extraordinary market conditions in a certain symbol.<sup>18</sup>

Each of the Exchanges proposes to implement LOP within ninety days of the approval of its proposal and will issue an Equities Trader Alert in advance to inform market participants of the implementation date.<sup>19</sup>

### III. Discussion and Commission Findings

The Commission finds that the proposed rule changes, as modified by Amendments No. 1, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>20</sup> Specifically, the Commission finds that the

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<sup>16</sup> See proposed BX Rule 4757(d)(i); proposed Nasdaq Rule 4757(c)(i); and proposed PSX Rule 3307(f)(i). See also Amendments No. 1, supra note 4.

<sup>17</sup> See BX Notice, supra note 3, at 45321; Nasdaq Notice, supra note 3, at 45333; and Phlx Notice, supra note 3, at 45338.

<sup>18</sup> Each of the Exchanges states that if LOP is temporarily disabled for a particular symbol, it would immediately notify market participants by sending an Equities Trader Alert. It would re-enable LOP as soon as is reasonably practicable and send an updated alert to notify participants that LOP was enabled. See BX Notice, supra note 3, at 45321; Nasdaq Amendment No. 1, supra note 4; and Phlx Notice, supra note 3, at 45338.

<sup>19</sup> See BX Notice, supra note 3, at 45321; Nasdaq Notice, supra note 3, at 45333; and Phlx Notice, supra note 3, at 45338. For a more detailed description of the proposed rule changes, see BX Notice, Nasdaq Notice, and Phlx Notice, supra note 3 and Amendments No. 1, supra note 4. See also proposed BX Rule 4757(d); proposed Nasdaq Rule 4757(c); and proposed PSX Rule 3307(f).

<sup>20</sup> In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

proposals are consistent with Section 6(b)(5) of the Act,<sup>21</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

The Commission believes that the LOP mechanism will help the Exchanges to identify and reject mispriced Limit Orders, which will help prevent the execution of Limit Orders at unintended and potentially erroneous prices. The Commission also believes that the LOP mechanism will be specifically tailored to address the Limit Orders are not already subject to price protection mechanisms or other risk mitigation mechanisms.<sup>22</sup>

For the foregoing reasons, the Commission finds that the proposed rule changes, as modified by Amendments No. 1, are consistent with Section 6(b)(5) of the Act<sup>23</sup> and the rules and regulations thereunder applicable to national securities exchanges.

#### IV. Solicitation of Comments on Amendments No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendments No. 1 are 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

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<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> For example, as noted above, Market Makers on the Exchanges have tools to manage their risks with respect to quoting, and Nasdaq's opening, re-opening, closing, and initial public offering processes already have their own price protections. See supra notes 8 and 12 and accompanying text.

<sup>23</sup> 15 U.S.C. 78f(b)(5).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Numbers SR-BX-2016-037, SR-NASDAQ-2016-067, and SR-Phlx-2016-58 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 Numbers SR-BX-2016-037, SR-NASDAQ-2016-067, and SR-Phlx-2016-58. These file numbers 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings also will be available for inspection and copying at the principal offices of the Exchanges. 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 Numbers SR-BX-2016-037, SR-NASDAQ-2016-067, and SR-Phlx-2016-58 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Changes, as Modified by Amendments No. 1

The Commission finds good cause to approve the proposed rule changes, as modified by Amendments No. 1, prior to the thirtieth day after the date of publication of Amendments No. 1 in the Federal Register. As described above,<sup>24</sup> the amendments provided more clarity to the proposals by stating that LOP would not apply if the National Best Bid, when used as the LOP Reference Price, is equal to or less than \$0.50.<sup>25</sup> In addition, Nasdaq specified that its LOP would not be operational for orders designated for the re-opening cross,<sup>26</sup> and provided additional information regarding the existing protections for the Nasdaq opening, re-opening, and closing crosses and initial public offerings. Finally, Nasdaq clarified that, same as BX and Phlx, it would have the ability to temporarily disable LOP under certain circumstances.<sup>27</sup> The Commission believes that the amendments provided additional specificity and clarity, and provided consistency between the three proposals. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> to approve the proposed rule changes, as modified by Amendments No. 1, on an accelerated basis.

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<sup>24</sup> See supra note 4.

<sup>25</sup> The Commission notes that, in the original filings, each of the Exchanges stated that LOP would not apply “if the LOP Reference Price is less than the greater of 10% or \$0.50.” See BX Notice, supra note 3, at n.8; Nasdaq Notice, supra note 3, at n.8; and Phlx Notice, supra note 3, at n.7.

<sup>26</sup> The Commission notes that Nasdaq’s original filing stated that LOP is not operational during trading halts or pauses. See proposed Nasdaq Rule 4757(c)(i).

<sup>27</sup> BX’s and Phlx’s ability to temporarily disable LOP and their processes for temporarily disabling LOP were described in their original filings. See BX Notice, supra note 3, at 45321 and Phlx Notice, supra note 3, at 45338.

<sup>28</sup> 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule changes (SR-BX-2016-037; SR-NASDAQ-2016-067; SR-Phlx-2016-58), as modified by Amendments No. 1, be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

Robert W. Errett  
Deputy Secretary

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<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> 17 CFR 200.30-3(a)(12).