

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65926; File No. SR-Phlx-2011-141)

December 9, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, to Introduce the Minimum Life Order as a New Order Type

On October 12, 2011, NASDAQ OMX PHLX LLC (“Exchange” or “Phlx”) 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> a proposed rule change to introduce the Minimum Life Order as new order type for use in the NASDAQ OMX PSX (“PSX”) system. The proposed rule change was published for comment in the Federal Register on October 28, 2011.<sup>3</sup> On October 26, 2011, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission has received one comment letter on the proposed rule change.<sup>5</sup> The Exchange responded to the comment letter on November 28, 2011.<sup>6</sup> This order approves the proposed rule change, as modified by Amendment No. 1.

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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 No. 65610 (October 24, 2011), 76 FR 67012 (“Notice”).

<sup>4</sup> Amendment No. 1 to the proposed rule change reflects the October 19, 2011 approval of the proposed rule change by the Board of Directors of Phlx. This is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the filing.

<sup>5</sup> See Letter dated November 1, 2011, from Sal Arnuk and Joe Saluzzi, Themis Trading, LLC, to Elizabeth M. Murphy, Secretary, Commission.

<sup>6</sup> See Letter dated November 28, 2011, from John M. Yetter, Vice President & Deputy General Counsel, NASDAQ OMX, to Elizabeth M. Murphy, Secretary, Commission (“Comment Response”).

The Exchange proposes, by amending its rules to add Rule 3301(f)(11), to introduce the Minimum Life Order as a new order type for use on PSX. A Minimum Life Order may not be cancelled by the entering participant for 100 milliseconds following receipt by the Exchange. If a market participant entering a Minimum Life Order submits a cancel message with respect to a Minimum Life Order at the same time as the order, or at any point during the “no cancel” window, the cancel message will not be rejected, but will be effected only following the expiration of the window (assuming the order has not already been executed). All Minimum Life Orders must be designated as Displayed Orders.

The Commission received one comment letter, which was generally supportive of the proposed rule change.<sup>7</sup> The commenter, however, expressed concern that predatory traders will be able to know when an order has a minimum life because there will be a new flag in the data feed.<sup>8</sup> The commenter is concerned that predatory traders would be able to use such information to further model price behavior in the markets.<sup>9</sup> The Exchange stated in its response to the commenter that Minimum Life Orders will not be distinguished from other Displayed Orders in any data that will be disseminated to market participants.<sup>10</sup> The Exchange notes that the flag mentioned by the commenter will be used for order entry, but not for order display.<sup>11</sup>

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<sup>7</sup> See supra note 5. However, the commenter does believe that, in order for the minimum order live to be truly effective, that it cannot be a voluntary order offered by just one exchange, but should apply to all orders.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> See Comment Response, supra note 6.

<sup>11</sup> Id.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>12</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the Exchange's rules be 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 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.

The Exchange's new Minimum Life Displayed Order type, which cannot be cancelled until after a 100 millisecond window has expired, allows market participants to elect to commit to trade for that time period and thus, according to the Exchange, is designed to encourage removers of liquidity to route orders to the Exchange in anticipation of receiving higher fill rates.<sup>15</sup> The Commission believes that the Minimum Life Order could provide additional trading opportunities on the Exchange, consistent with just and equitable principles of trade, and is designed to encourage displayed liquidity and offer PSX market participants additional options

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<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See Notice, supra note 3.

when posting liquidity on PSX, consistent with removing impediments to and perfecting the mechanisms of a free and open market and a national market system, the protection of investors and the public interest.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Phlx-2011-141), as amended, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>16</sup> 15 U.S.C. 78s(b)(2).

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