

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71906; File No. SR-Phlx-2014-20)

April 8, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Emergency and Extraordinary Market Conditions

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 March 27, 2014, NASDAQ OMX 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 amend the manner in which it authorizes action in emergency and extraordinary market conditions.

The text of the proposed rule change is available on the Exchange’s website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 eliminate Rule 98, entitled “Emergency Committee,” in order to conform its process for authorizing action to make decisions in emergency and extraordinary market conditions. The Exchange proposes to utilize a By-Law to govern the process of authoring such action similar to By-Laws relied upon by The NASDAQ Stock Market LLC (“Nasdaq”) and NASDAQ OMX BX, Inc. (“BX”).³

Exchange Rule 98 provides that the Phlx Board of Directors is authorized to establish an emergency committee to determine the existence of extraordinary market conditions or other emergencies.⁴ Further, upon a determination that such an emergency condition exists, the Committee may take any action regarding the following: 1) operation of Phlx XL II, or any other Exchange quotation, transaction reporting, execution, order routing or other systems or facility; 2) operation of, and trading on, any Exchange floor; 3) trading in any securities traded on the Exchange; and 4) the operation of members’ or member organizations’ offices or systems. Any member of the Committee may request the Committee to determine whether an emergency condition exists. If the Committee determines that such an emergency exists and takes action,

³ See Nasdaq By-Law Article IX, Section 5 entitled “Authority to Take Action Under Emergency or Extraordinary Market Conditions.” See also BX By-Law Article XII, Section 12.5 entitled “Authority to Take Action Under Emergency or Extraordinary Market Conditions.”

⁴ See Rule 98.

the Committee shall prepare a report of this matter and submit it promptly to the Securities and Exchange Commission and submit it to the Board of Directors at the Board's next regular meeting.

Nasdaq and BX rely on Article IX, Section 5 of the exchanges' respective By-Laws [sic] to authorize the Board of Directors or its designee with authority to take action under emergency or extraordinary market conditions. Phlx would similarly rely on By-Law language which was adopted in 2011⁵ at By-Law Article VII, Section 7-5. Specifically, the Phlx By-Law states, that the Board of Directors, or such person or persons or committee as may be designated by the Board, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding: (a) the trading in or operation of the national securities exchange operated by the Company or any other organized securities markets that may be operated by the Company, the operation of any automated system owned or operated by the Company, and the participation in any such system or any or all persons or the trading therein of any or all securities; and (b) the operation of any or all offices or systems of members, if, in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

The Exchange is proposing to eliminate Phlx Rule 98, which provides for an Emergency

⁵ See Securities Exchange Act Release No. 63981 (February 25, 2011), 76 FR 12180 (March 4, 2011) (SR-Phlx-2011-13) (a rule proposal to, among other things, amend the Limited Liability Company Agreement and By-Laws to substantially conform to NASDAQ Stock Market's Second Amended Limited Liability Company Agreement and By-Laws).

Committee, and instead rely on the authority in existing By-Law Article VII, Section 7-5 to empower the Phlx Board of Directors or such person or persons or committee as designated by the Phlx Board of Directors to take action in the event of an emergency or extraordinary market condition. Specifically, regarding the trading in or operation of the national securities exchange operated by the Exchange or any other organized securities markets that may be operated by the Exchange, the operation of any automated system owned or operated by the Exchange, and the participation in any such system or any or all persons or the trading therein of any or all securities; and the operation of any or all offices or systems of members, if, in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system, similar to Nasdaq and BX. The Exchange's revised procedures would continue to report emergency matters to the Commission and Phlx Board of Directors of uses of such authority to the extent that the Board of Directors has delegated such authority to certain person(s) or committee. The Exchange believes that eliminating Rule 98 and utilizing existing By-Law Article VII, Section 7-5 to take action under emergency or extraordinary market conditions would conform the processes for handling such circumstances across the various NASDAQ OMX markets. This proposal does not impact the types of events that would be deemed "emergency" or "extraordinary market" conditions. The Exchange anticipates utilizing By-Law Article VII, Section 7-5 in the same manner and for the same types of emergency and extraordinary market events as Rule 98 is utilized for today.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ 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, by conforming the authority to take action under emergency or extraordinary market conditions across the NASDAQ OMX markets.

The Exchange believes that utilizing By-Law Article VII, Section 7-5 to designate authority to either the Board of Directors or its designee to take action under emergency or extraordinary market conditions instead of utilizing Rule 98, which provides for an Emergency Committee established by the Board, will conform the Exchange's process and authority pursuant to its By-Laws in these types of events to those of Nasdaq and BX. The manner in which the Exchange handles emergency or extraordinary market conditions will not otherwise be impacted, except that the Board may retain such authority or delegate the authority to a person, persons or a committee to take action in these events. The Exchange would continue to report such uses of this authority to the Commission and the Phlx Board of Directors. The Exchange believes that eliminating Rule 98 in favor of relying on Article VII, Section 7-5 will continue to ensure that the Exchange has authority to operate in times of emergency and extraordinary conditions, which will foster investor and public interest, and promote just and equitable principles of trade. Also, this proposal continues to remove possible impediments to the

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

Exchange's market that may arise due to emergency or extraordinary market conditions, thereby perfecting the mechanism of a free and open market and a national market system.

(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 believes this proposed rule change will continue to benefit investors by providing the Exchange the ability to authorize action in the event of an emergency or extraordinary market conditions.

(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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the

At any time within 60 days of the filing of such 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.

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-2014-20 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-2014-20. 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

Commission written notice of the Exchange's 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.

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; 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-2014-20 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).