

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75293; File No. SR-Phlx-2015-29)

June 24, 2015

Self-Regulatory Organizations; NASDAQ OMX Phlx LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, to Amend and Restate Certain Rules that Govern the NASDAQ OMX PSX

I. Introduction

On March 20, 2015, NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend and restate certain Phlx rules that govern NASDAQ OMX PSX (“PSX”) in order to provide a clearer and more detailed description of certain aspects of its functionality. The proposed rule change was published for comment in the Federal Register on April 6, 2015.³ The Commission received no comment letters regarding the proposed rule change. On May 13, 2015, the Commission extended to July 5, 2015, the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.⁴ On June 22, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ This order approves the proposed rule change, as amended, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 74618 (March 31, 2015), 80 FR 18452 (“Notice”).

⁴ See Securities Exchange Act Release No. 74954, 80 FR 28739 (May 19, 2015).

⁵ In Amendment No. 1, the Exchange proposed to correct typographical errors in the original filing, further improve the clarity of certain rule language, and include additional explanation with regard to the purpose of the proposed rule change.

II. Description of the Amended Proposal

The Exchange proposes to amend and restate certain Phlx rules that govern PSX in order to provide additional detail and clarity regarding its order type functionality.⁶ This proposed rule change is a response to Chair White's request that each equities exchange conduct a comprehensive review of the operation of each of the order types that it offers to members.⁷

While the Exchange believes that its current rules and other public disclosures provide a comprehensive description of the operation of PSX and are sufficient for members and the investing public to have an accurate understanding of its market structure, it also acknowledges that a restatement of certain rules will further clarify the operation of its system.⁸ For instance, Phlx believes that adding examples of order type operation to its rules will promote greater understanding of the Exchange's market structure.⁹ In addition, Phlx asserts that certain functionality previously described as an "order type" is more precisely characterized as an attribute that may be added to a particular order.¹⁰ Accordingly, this proposed rule change distinguishes between "Order Types" and "Order Attributes," and provides descriptions of the Order Attributes that may be attached to particular Order Types.¹¹

Currently, Phlx Rule 3301 (Definitions) sets forth most of the rules governing Order Types and Order Attributes, as well as other defined terms that pertain to trading securities on

⁶ See Notice, 80 FR at 18452-53.

⁷ See id. at 18453; see also Mary Jo White, Chair, Commission, Speech at the Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370542004312>.

⁸ See Notice, 80 FR at 18453.

⁹ Id.

¹⁰ Id.

¹¹ Id.

PSX.¹² Phlx proposes to amend Rule 3301. Phlx also proposes to amend the definitions pertaining to Order Types and Order Attributes and to relocate them from Rule 3301 to new Rules 3301A (Order Types) and 3301B (Order Attributes), respectively.¹³ In addition, Phlx proposes to delete Rule 3305 as the information contained therein is superseded by proposed Rules 3301A and 3301B.¹⁴ Lastly, Phlx proposes certain conforming and technical changes to Rule 3306.¹⁵

Phlx represents that, except where specifically stated otherwise, all proposed rules are restatements of existing rules and are not intended to reflect substantive changes to rule text or the operation of PSX.¹⁶ Proposed Rule 3301A related to Order Types contains definitions and descriptions of Price to Comply Orders, Price to Display Orders (referred to as “Price to Comply Post Orders” in current Rule 3301),¹⁷ Non-Displayed Orders, Post-Only Orders, and Market Maker Peg Orders. Proposed Rule 3301B related to Order Attributes contains definitions and descriptions of time-in-force (“TIF”) modifiers, order size, order price, pegging, minimum quantity, routing, discretion, reserve size, attribution, intermarket sweep order designation, and display.¹⁸

¹² See Rule 3301.

¹³ See proposed Rules 3301A and 3301B.

¹⁴ See Rule 3305.

¹⁵ Phlx states that, in subsequent proposed rule changes, it plans to restate the remainder of its Rules numbered 3302 through 3316 so that they appear sequentially following Rule 3301B.

¹⁶ See Notice, 80 FR at 18453.

¹⁷ See Notice, 80 FR at 18456 n.29.

¹⁸ The Notice contains additional details related to proposed Rules 3301A and 3301B. See Notice, 80 FR at 18452-70.

In Amendment No. 1, the Exchange proposes to add language further explaining the operation of the following order types: Post-Only Orders, orders with a TIF of IOC, including Routable Orders and Post-Only Orders; Market Maker Peg Orders; orders with Midpoint Pegging, Primary Pegging or Market Pegging; and orders designated with both Pegging and Routing attributes.¹⁹ For example, the Exchange states that for Order Types that list both Pegging and Routing as possible Order Attributes, the two Order Attributes may be combined since Pegging serves to establish the price of the order, while Routing establishes the market center(s) to which the system's routing functionality may direct a routed order if liquidity is available at that price.²⁰ The Exchange also proposes to add further specification regarding the availability of certain order types only through certain communication protocols by stating that a Post-Only Order with a TIF of IOC may not be entered through the RASH or FIX protocols.²¹ In addition, the Exchange proposes to add language stating that one or more Order Attributes may be assigned to a single order, but if the use of multiple Order Attributes would result in contradictory instructions, the system will reject the order or remove non-conforming Order Attributes.²²

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²³ In particular, the Commission finds that the proposed rule change is

¹⁹ See Amendment No. 1.

²⁰ Id.

²¹ Id.

²² Id.

²³ 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).

consistent with Section 6(b)(5) of the Act,²⁴ 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 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act because the reorganized and enhanced descriptions of its Order Types, Order Attributes, and related System functionality should promote just and equitable principles of trade and perfect the mechanisms of a free and open market and the national market system by providing greater clarity concerning certain aspects of the System's operations.²⁵ In addition, the Commission notes that Phlx believes that the proposed rule change should contribute to the protection of investors and the public interest by making Phlx's rules easier to understand.²⁶ Further, Phlx believes that additional specificity in its rules will promote a better understanding of the Exchange's operation, thereby facilitating fair competition among brokers and dealers and among markets.²⁷

The Commission notes that, according to the Exchange, the proposal does not add any new functionality but instead re-organizes the Exchange's order type rules and provides additional detail regarding the order type functionality currently offered by the Exchange. Based

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ See Notice, 80 FR at 18467.

²⁶ Id.

²⁷ Id.

on the Exchange's representation, the Commission believes that the proposed rule change does not raise any novel regulatory considerations and should provide greater specificity, clarity and transparency with respect to the order type functionality available on the Exchange. In addition, the Commission notes that the Exchange's proposed rule changes provide additional detail related to functionality for certain order types and the handling of orders during initial entry and after posting to the PSX Book. Accordingly, the Commission believes that this proposed rule change should provide greater transparency with respect to the Exchange's order type functionality. For these reasons, the Commission believes that the proposal should help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Commission finds good cause to approve the filing, as amended by Amendment No. 1 to the proposed rule change, prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The proposed amendments should further increase the Exchange's transparency with respect to the operation of various order types and modifiers, and serve to enhance investors' understanding of the tools available with respect to the handling of their orders. Accelerated approval would allow the Exchange to update its rule text immediately, thus providing users with greater clarity with respect to the use and potential use of functionality offered by the Exchange. In addition, the initial proposal was open for comment for twenty-one days after publication and generated no comment. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act,²⁸ to approve the filing, as amended by Amendment No. 1 to the proposed rule change, on an accelerated basis.

²⁸ 15 U.S.C. 78f(b)(5); 15 U.S.C. 78s(b).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2015-029 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-2015-029. 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; 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-2015-029 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-Phlx-2015-29) be, and it hereby is, approved on an accelerated basis, as amended.

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

Robert W. Errett
Deputy Secretary

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).