

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80226; File No. SR-Phlx-2017-22)

March 13, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Data Collection Requirements in Rule 3317

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 February 28, 2017, NASDAQ 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 Rule 3317 to modify the date of Appendix B website data publication pursuant to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”).

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.cchwallstreet.com/>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 3317(b) (Compliance with Data Collection Requirements)³ implements the data collection and website publication requirements of the Plan.⁴ Commentary .08 to Rule 3317 provides, among other things, that the requirement that the Exchange make certain data publicly available on the Exchange website pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period,⁵ and that Phlx shall make data for the Pre-Pilot Period publicly available on the Exchange website pursuant to Appendix B and C to the Plan by February 28, 2017.⁶

³ See Rule 3317(b). See also Securities Exchange Act Release No. 77458 (March 28, 2016), 81 FR 18919 (April 1, 2016) (SR-Phlx-2016-39).

⁴ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014. See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014 (“SRO Tick Size Plan Proposal”). See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014); see also Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015).

⁵ Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in Rule 3317.

⁶ On November 30, 2016, the SEC granted exemptive relief to the Participants to, among other things, delay the publication of website data pursuant to Appendices B and C to the Plan until February 28, 2017, and to delay the ongoing website publication by ninety days such that data would be published within 120 calendar days following the end of the month. See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated November 30, 2016; see also Securities Exchange Act Release No. 79545 (December 14, 2016), 81 FR 92916 (December 20, 2016) (SR-Phlx-2016-118).

Phlx is proposing amendments to Commentary .08 to Rule 3317 to delay the date by which Pre-Pilot and Pilot Appendix B data is to be made publicly available on the Exchange's website from February 28, 2017, until April 28, 2017. Appendix C data for the Pre-Pilot Period through the month of January 2017 will be published on the Exchange's website on February 28, 2017, and, thereafter, on the original 30-day schedule.⁷ As some of the data reporting requirements set forth in Rule 3317 require members to report data to their Designated Examining Authority ("DEA"), which may not be Phlx, the Exchange is also proposing to add references in Commentary .08 to reflect the fact that the Exchange or the DEA may be publishing such data.

In the SRO Tick Size Plan Proposal, the Participants stated that the public data will be made available for free "on a disaggregated basis by trading center" on the websites of the Participants and the Designated Examining Authorities.⁸ However, market participants have expressed confidentiality concerns regarding this approach for over-the-counter ("OTC") data.⁹ Thus, Phlx is filing the instant proposed rule change to provide additional time to assess a means of addressing the confidentiality concerns raised in connection with the publication of Appendix

⁷ Since, under Rule 3317(b)(4), Phlx is not independently publishing Market Maker profitability data collected pursuant to Item I of Appendix C of the Plan, no corresponding change to the language of Rule 3317(b)(4) relating to the timing of the publication of Appendix C data for the Pilot Period is needed.

⁸ See Securities Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (November 7, 2014) (Notice of Filing of Proposed National Market System Plan to Implement a Tick Size Pilot Program on a One-Year Pilot Basis, File No. 4-657) ("Tick Size Plan Proposal").

⁹ See letters from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, to Brent J. Fields, Secretary, Commission, dated December 21, 2016 ("Citadel letter"); and William Hebert, Managing Director, Financial Information Forum, to Robert W. Errett, Deputy Secretary, Commission, dated December 21, 2016 ("FIF letter").

B data related to OTC activity in furtherance of the objectives of the Plan.¹⁰ Pursuant to this amendment, Appendix B data publication will be delayed until April 28, 2017. The Participants anticipate filing additional proposed rule changes to address Appendix B data publication.

Phlx has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² 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. Phlx also believes that the proposal is consistent with Section 6(b)(8) of the Act,¹³ which requires that Exchange rules not impose any burden on competition that is not necessary or appropriate.

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Phlx believes that this proposal is consistent with the Act because it is in furtherance of the objectives of Section VII(A) of the Plan in that it is designed to provide the Exchange with additional time to assess a means of addressing the

¹⁰ In connection with its filing to implement a similar change in its rules, the Financial Industry Regulatory Authority, Inc. is also submitting an exemptive request to the SEC on behalf of all Plan Participants requesting relief from the relevant requirements of the Plan.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(8).

confidentiality concerns raised in connection with the publication of Appendix B data, to comply with the Plan's requirements that the data made publicly available will not identify the trading center that generated the data.

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 proposed rule change implements the provisions of the Plan.

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

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 Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

proposed rule change not become operative for 30 days after the date of the filing so that it may become operative on February 28, 2017.

The Exchange notes that the proposed rule change is intended to address confidentiality concerns raised in connection with the publication of OTC Appendix B data by permitting the Exchange to delay website publication of its Appendix B data from February 28, 2017 to April 28, 2017.¹⁶ The Exchange notes that the delay would provide additional time to assess a means of addressing the confidentiality concerns. The Exchange notes that it expects Participants to file proposed rule changes related to publishing Appendix B data.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to delay publication of its Appendix B data until April 28, 2017. As noted above, commenters continue to raise concerns about the publication of OTC Appendix B data.¹⁷ Delaying publication of Exchange's Appendix B data¹⁸ will prevent the publication of partial (i.e., Exchange-only) Appendix B data required under the Plan. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on February 28, 2017.¹⁹

¹⁶ See supra note 9. The Commission notes that FINRA has submitted a proposed rule change to delay the publication of OTC Appendix B data. See SR-FINRA-2017-005.

¹⁷ The Commission notes that FINRA has filed a proposed rule change that is intended to mitigate confidentiality concerns raised by commenters regarding the publication of OTC Appendix B data. See SR-FINRA-2017-006.

¹⁸ The Commission notes that other Participants have proposed to delay the publication of their Appendix B data until April 28, 2017. See SR-BatsBYX-2017-05; SR-BatsBZX-2017-15; SR-BatsEDGA-2017-05; SR-BatsEDGX-2017-13; SR-BX-2017-016; SR-CHX-2017-05; SR-FINRA-2017-005; SR-IEX-2017-07; SR-NASDAQ-2017-024; SR-NYSE-2017-10; SR-NYSEArca-2017-19; SR-NYSEMKT-2017-11.

¹⁹ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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:

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-2017-22 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-2017-22. 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-2017-22, 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.²⁰

Eduardo A. Aleman
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).