

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-86191; File No. SR-Phlx-2019-20)

June 24, 2019

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Granting Approval of Proposed Rule Change Relating to the Allocation and Prioritization of Automatically Executed Trades

I. Introduction

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> notice is hereby given that on May 15, 2019, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change relating to the allocation and prioritization of automatically executed trades. The proposed rule change was published for comment in the Federal Register on May 22, 2019.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt new Rule 1089 to describe in greater detail the manner in which Phlx will process, prioritize and allocate transactions. The current Phlx rule, Rule 1014(g)(vii) and (viii), describes the allocation process generally and relies on a calculation to describe how different market participants may be allocated. The Exchange now proposes to sequentially describe the manner in which an order would be allocated, including the allocation method, rounding and all potential allocation

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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. 85876 (May 16, 2019), 84 FR 23595 (“Notice”).

scenarios. The proposal generally codifies the Exchange's current practices while adding more explicit language to the rule text. In addition, the Exchange proposes to codify its round robin allocation of odd lots that is not set forth in its current rules.

The Exchange proposes to retain its existing allocation methodology and priorities in the new rule. For example, Public Customer orders will continue to have priority over non-Public Customer interest at the same price, provided the Public Customer order is an executable order. Generally, the Specialist and/or Directed Registered Option Trader ("DROT") priority is then applied, before the ROT priority<sup>4</sup> and remaining interest. The proposed rule also codifies the manner in which rounding will be handled and makes conforming changes to the Exchange's rules.

In its proposal, the Exchange proposes one change to its existing allocation scheme. Specifically, the Exchange proposes to amend the current allocation a Specialist is entitled to receive when a Specialist is also the DROT, and the order is directed to a particular market maker (a "Directed Order") for 5 contracts or fewer. Today, a Specialist is entitled to the allocation of orders of 5 contracts or fewer only when such order is either not a Directed Order or is a Directed order for 5 contracts or fewer, but the DROT is not quoting at the inside price. If the order for 5 contracts or fewer is a Directed Order and the DROT is also the Specialist, then the Specialist currently is entitled to receive only the DROT allocation of 40% of the order, rather than the full size of the allocation of the order for 5 contracts or fewer.

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<sup>4</sup> After the DROT Priority is applied, the System excludes the Specialist/DROT from the total number of contracts that is utilized (denominator) in calculating the ROT Priority in proposed Rule 1089(a)(1)(E).

The Exchange proposes that, assuming there is no Public Customer interest present at the same price, the Specialist would be entitled to the entire allocation of the order of 5 contracts or fewer where the Specialist is also the DROT and the Specialist receives the Directed Order and has a quote at the best price when the Directed Order is received. This specialist entitlement for orders of 5 contracts or fewer would apply only after the Opening Process and would not apply to auctions.

### III. Discussion and Commission Findings

After careful review of the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.<sup>5</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

The Commission notes that the Exchange proposes to revise its rules governing how it processes, prioritizes, and allocates transactions, including by codifying practices that were not set forth in the Exchange's rules, by deleting its existing rules and adopting

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<sup>5</sup> In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

a new rule. The Commission believes that the Exchange's proposal protects investors and the public interest because it enhances the transparency of its transaction allocation process for market participants using its facilities. Therefore, the Commission finds that this enhanced transparency is consistent with the Act.

With respect to the Exchange's proposal to modify the specialist allocation to provide the Directed Specialist with the entire allocation of a Directed Order where the order is for 5 contracts or fewer, the Commission notes that the Directed Specialist will not be entitled to this allocation when there is a Public Customer present at the same price or when the Specialist is not quoting at the inside when the order is received. The Commission further notes that the modified specialist entitlement is identical to the existing specialist allocation of orders of 5 contracts or fewer where the order is not a Directed Order, which is provided to specialists in recognition of the specialists' affirmative market making obligations. The Commission finds that the proposed specialist allocation for Directed Orders of 5 contracts or fewer is consistent with the Act in that the proposal should promote just and equitable principles of trade.

IV. Conclusion

IT IS THEREFORE ORDERED THAT, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> the proposed rule change (SR-Phlx-2019-20) be approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).