At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: September 18, 2015.

Brent J. Fields,

Secretary.

[FDR Doc. 2015–24217 Filed 9–21–15; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations;
NASDAQ OMX PHLX LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend and Correct Rule 1080.07

September 17, 2015.

I. Introduction

On June 5, 2015, 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”) 1 and Rule 19b–4 thereunder,2 a proposed rule change to amend and correct several provisions in Phlx Rule 1080.07, “Complex Orders on Phlx XL,” which governs the trading of Complex Orders on the Phlx’s Complex Order System (“System”). The proposed rule change was published for comment in the Federal Register on June 23, 2015.3 On July 30, 2015, the Commission extended the time period for Commission action to September 21, 2015.4 The Commission received no comments regarding the proposal. This order institutes proceedings under Section 19(b)(2)(B) of the Act5 to determine whether to disapprove the proposed rule change.

II. Description of the Proposal

The Phlx proposes to make a number of changes to Phlx Rule 1080.07 to amend and correct inconsistencies in the rule and provide additional clarity regarding the trading of Complex Orders on the Exchange. The Phlx’s System for trading Complex Orders includes a Complex Order Opening Process (“COOP”); the Complex Order Live Auction (“COLA”), an automated auction for seeking liquidity and price improvement for Complex Orders; and a Complex Limit Order Book (“CBOOK”). According to the Phlx, among other things, the proposal would revise Phlx Rule 1080.07 to: (i) Accurately describe the operation of the COOP and the execution of orders at the opening, including the treatment of Immediate-or-Cancel (“IOC”) orders and Do Not Auction (“DNA”) orders at the opening; (ii) add definitions of “COOP Sweep” and “COLA Sweep,” and correct existing rule text to indicate that only Phlx XL market makers may submit COLA Sweeps; (iii) delete rule text that incorrectly states that a specialist could be entitled to receive 40% of the remainder of a COLA-eligible order, as well as rule text indicating that only a specialist’s interest at the cPBOO is aggregated for purposes of determining the specialist’s entitlement in the COLA, so that the revised rule will provide that the specialist is entitled to receive the greater of (a) the proportion of the aggregate size associated with the specialist’s COLA Sweep, SQT and RSQT COLA Sweeps, and non-SQT ROT Complex Orders on the CBOOK, or (b) the Enhanced Specialist Participation as described in Phlx Rule 1014(g)(ii); (iv) delete rule text indicating that, for allocation purposes, the size of a COLA Sweep or responsive Complex Order will be limited to the size of the COLA-eligible order, thereby clarifying that the size of a COLA Sweep or responsive Complex Order that exceeds the size of the COLA-eligible order may trade against remaining interest after the COLA-eligible order has been executed to the fullest extent possible; (v) revise rule text to indicate that other interest in a COLA may trade after a COLA-eligible order has been executed to the fullest extent possible, rather than in its entirety, and to correct the description of the execution of crossing interest after a COLA-eligible order has been executed; (vi) provide that the System will place a Complex Order received during a configurable period of time prior to the end of a trading session on the CBOOK after any marketable portion of the order has been executed; and (vii) describe the handling of all-or-none Complex Orders.6

In addition to these changes, the Phlx proposes to amend Phlx Rule 1080.07 to add a definition of “Firm.”7 Specifically, the Phlx proposes to define a “Firm” to mean “a broker-dealer trading for its own (proprietary) account that is: A member of The Options Clearing Corporation (“OCC”) or maintains a Joint Back Office (“JBO”) arrangement with an OCC member.”8 The Phlx also proposes to revise Phlx Rule 1080.07 to provide that orders from Firms, like orders from market makers, would not trigger a COLA.9 In addition, the Phlx proposes to treat Firms like market makers for purposes of determining the allocations and execution price that their trading interest will receive at the conclusion of a COLA.10

The Phlx proposes to treat Firm orders like non-Phlx market makers for purposes of these rules because the Phlx believes that the trading style and needs of Firms are more like market makers.11 The Phlx states that Firms are large, well-capitalized broker-dealers that trade for their own accounts and generally submit large orders, including orders that facilitate their clients’ orders or offset large positions taken to accommodate their customers.12 According to the Phlx, Firms must have the financial wherewithal that this role necessitates.13 Thus, the Phlx states that Firms, in general, are commonly viewed as liquidity providers, much like market makers.14 The Phlx states that Firms do not expect or need their Complex Orders to trigger a COLA, nor do they need or expect to submit Good Til Cancelled Orders, because these are features commonly associated with customers rather than liquidity providers who function to accommodate trading interest.15 The Phlx notes that both of these features involve a temporal component, and that both a delay and long-lasting interest are inconsistent

---

6 See Phlx Rule 1080.07(a)(x).
7 Id. Unless otherwise specified, Firms are included in the category of non-market-maker off-floor broker-dealer. Id.
8 See Phlx Rule 1080.07(e)(ii)(B)(1). Orders from non-market maker off-floor broker-dealers that are not Firms would be COLA-eligible. See Phlx Rule 1080.07(e)(ii)(B)(1) and Notice, 80 FR at 36003.
9 See Phlx Rule 1080.07(e)(viii)(C)(2) and Notice, 80 FR at 36003. Orders of non-market maker off-floor broker-dealers that are not Firms would be executed along with the orders of non-broker-dealer customers at the conclusion of the COLA. See Phlx Rule 1080.07(e)(viii)(C)(1) and Notice, 80 FR at 36003. At the same price, non-broker-dealer customer orders would be executed in time priority, while non-market-maker off-floor broker-dealer orders would be executed on a pro rata basis at each price level. See Phlx Rule 1080.07(e)(viii)(C)(1)(ii).
10 See Notice, 80 FR at 36003.
11 See Notice, 80 FR at 36003–36004.
12 See Notice, 80 FR at 36004. In addition, Firms that are OCC clearing members must comply with OCC rules regarding, among other things, net capital, risk management procedures, and margin. See id.
13 See id.
14 See Notice, 80 FR at 36005.
with the sort of accommodation that
Firms provide. The Phlx believes that
by tailoring its offerings to the needs
and trading style of Firms, Firms are
more likely to send orders to the
Exchange.

III. Proceedings To Determine Whether
To Approve or Disapprove SR–Phlx–
2015–49 and Grounds for Disapproval
Under Consideration

The Commission is instituting
proceedings pursuant to Section
19(b)(2)(B) of the Act to determine
whether the proposed rule change
should be disapproved. Institution
of such proceedings is appropriate at
this time in view of the legal and policy
issues raised by the proposed rule
change. Institution of proceedings does
not indicate that the Commission has
reached any conclusions with respect to
any of the issues involved. Rather, as
described in greater detail below, the
Commission seeks and encourages
interested persons to comment on the
proposed rule change to inform the
Commission’s analysis of whether to
approve or disapprove the proposed
rule change.

Pursuant to Section 19(b)(2)(B) of the
Act, the Commission is providing
notice of the grounds for disapproval
under consideration. The Commission
is instituting proceedings to allow for
additional analysis of, and input from
commenters with respect to, the
consistency of the proposed rule change
with Section 6(b)(5) of the Act, which
requires that the rules of a national
securities exchange be designed, among
other things, to prevent fraudulent and
manipulative acts and practices, 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.

In addition, under the Commission’s
rules of procedure, a self-regulatory
organization that proposes to amend its
rules bears the burden of demonstrating
that its proposal is consistent with the
Act. In this regard:


The description of the proposed rule change,
its purpose and operation, its effect, and a
legal analysis of its consistency with the
applicable requirements must all be
sufficiently detailed and specific to support
an affirmative Commission finding. Any
failure of the self-regulatory organization to
provide the information elicited by Form
19b–4 may result in the Commission not
having a sufficient basis to make an
affirmative finding that a proposed rule
change is consistent with the Exchange Act
and the rules and regulations thereunder
that are applicable to the self-regulation
organization.

IV. Procedure: Request for Written
Comments

The Commission requests that
interested persons provide written
submissions of their views, data, and
arguments with respect to the issues
identified above, as well as any others
they may have identified with the
proposal. In particular, the Commission
invites the written views of interested
persons concerning whether the
proposed rule change is consistent with
Section 6(b)(5) or any other provision of
the Act, or the rules and regulations
thereunder. Although there do not
appear to be any issues relevant to
approval or disapproval which would
be facilitated by an oral presentation of
views, data, and arguments, the
Commission will consider, pursuant to
Rule 19b–4, any request for an
opportunity to make an oral
presentation.

Interested persons are invited to
submit written data, views, and
arguments regarding whether the
proposed rule change should be
approved or disapproved by October 28,
2015. Any person who wishes to file a
rebuttal to any other person’s
submission must file that rebuttal by
October 28, 2015. The Commission
seeks comment on the sufficiency
of the comments more efficiently, please use
one method. The Commission will
post all comments on the Commission’s
Internet Web site. Copies of the
submissions, 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 Web site 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–
2015–49 on the subject line.


16 See supra note 3.

18 See id.


Act also provides that proceedings to determine
whether to disapprove a proposed rule change
must be concluded within 180 days of the date of
publication of notice of the filing of the proposed
rule change. The time for conclusion of the
proceedings may be extended for up to 60 days if
the Commission finds good cause for such
extension and publishes its reasons for so finding.


21 See id.

22 15 U.S.C. 78s(b)(2)(B) of the Act, as amended by the
Securities Acts Amendments of 1975, Public Law
94–29, 89 Stat. 97 (1975), grants the Commission
flexibility to determine what type of proceeding—
either oral or notice and opportunity for written
comments—is appropriate for consideration of a
particular proposal by a self-regulatory
organization. See Securities Acts Amendments of
1975, Report of the Senate Committee on Banking,
Housing, and Urban Affairs to Accompany S. 249,

23 See supra note 3.
I. Introduction

On July 16, 2015, New York Stock Exchange LLC (“NYSE”) and NYSE MKT LLC (“NYSE MKT”) (collectively, the “Exchanges”) separately 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 proposed rule changes to amend, respectively, the NYSE Trades market data product offering and the NYSE MKT Trades market data product offering. The proposed rule changes were published for comment in the Federal Register on August 5, 2015.3 The Commission has received two comments on the proposals.4 This order institutes proceedings under Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)5 and Rule 19b–4 thereunder,6 and after notice and public hearing,7 would disapprove the proposed rule changes.

II. Description of the Proposals

The Trades Feeds currently provides subscribers and users with a real-time basis with the same last-sale information that each Exchange reports to the Consolidated Tape Association (“CTA”) for inclusion in the CTA Plan’s consolidated data streams. Specifically, each Exchange’s Trades Feeds includes, for each security traded on the Exchange, the real-time last-sale price, time and size information, bid/ask quotations, and a stock summary message. The stock summary message updates every minute and includes the offering Exchange’s opening price, high price, low price, closing price, and cumulative volume for the security.7

Each Exchange currently reports to the CTA and distributes on a real-time basis via the Trades Feeds its market’s last-sale information based on the completed execution of an arriving order. For example, currently, if an arriving order of 1,000 shares trades with five resting orders of 200 shares on NYSE, NYSE would bundle the executions and report a single completed trade of 1,000 shares to both the CTA and through NYSE Trades. NYSE MKT Trades operates in the same way.

Each Exchange now proposes to distribute its last-sale information on its respective Trades Feed in a different manner than it distributes last-sale information to the CTA. Each Exchange would continue to distribute last-sale information to the CTA as described above, but last-sale information distributed via the Exchange’s Trades Feed would be based on the individual last-sale information of five executions of 200 shares each, but would report to CTA a single completed trade of 1,000 shares.

The Exchanges have represented that they would continue to make their last-sale information immediately available to their subscribers who desire it, thus removing impediments to competition and innovation. Each Exchange has also proposed to remove the last-sale data from its Trades Feed. Each Exchange currently has a data feed—the NYSE BBO data feed and the NYSE MKT BBO data feed—that includes the same bid/ask data currently included in the Exchange’s Trades Feed, and each Exchange has represented that its respective BBO feed would continue to include the best bids and offers for all securities that are traded on its facilities and for which it reports quotes to the Consolidated Quotation Association (“CQA”) under the Consolidated Quotation Plan (“CQP”) Plan for inclusion in the CQA Plan’s consolidated quotation information data stream.8 Each Exchange has stated that removing the last-sale data feed would remove impediments to competition and innovation.9

The Commission has received two comment letters on the proposals.11 Both commenters are opposed to the proposed rule changes. The commenters note that the NYSE and its affiliated exchanges are the only national securities exchanges that report their last-sale data products offered by The Nasdaq Stock Market, LLC and BATS, Inc. See NASDAQ Rule 7039 (Nasdaq Last Sale) and BATS Rule 11.22(g) (BATS Last Sale).

Exchanges have argued that reporting last-sale information in an unbundled format, based on execution of the individual resting orders, rather than in a bundled format based on the completed execution of an incoming order would remove impediments to and perfect the mechanism of a free and open market by providing more granular trade information to vendors and subscribers who desire it, thus promoting competition and innovation.

III. Comment Letters

The Commission has received two comment letters on the proposals.11 Both commenters are opposed to the proposals. The commenters note that the NYSE and its affiliated exchanges are the only national securities exchanges that report their last-sale information to the securities information processor (“SIP”) in a

---

6 NYSE Trades is an NYSE-only last-sale market data feed and NYSE MKT Trades is a NYSE MKT-only last-sale market data feed.
9 As examples, the Exchanges cited to the last-sale data products offered by The Nasdaq Stock Market, LLC and BATS, Inc. See NASDAQ Rule 7039 (Nasdaq Last Sale) and BATS Rule 11.22(g) (BATS Last Sale).
10 See supra note 4.

---