

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84610; File No. SR-Phlx-2018-59)

November 16, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Approving a Proposed Rule Change to Amend Rules 1000, 1064, and 1069 to Allow for the Snapshot Functionality of the Floor-Based Management System to be Used for All Orders

I. Introduction

On September 18, 2018, Nasdaq PHLX LLC (“Phlx” or “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 allow the Snapshot functionality of the Floor-Based Management System (“FBMS”) to be used for all orders on the trading floor. The proposed rule change was published for comment in the Federal Register on October 2, 2018.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The “Snapshot” functionality of the FBMS allows a Floor Broker, Registered Options Trader (“ROT”), or Specialist to “provisionally execute”⁴ a trade in the trading crowd and capture and record the market conditions that exist at the time of the provisional execution.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 84290 (September 26, 2018), 83 FR 49596 (“Notice”).

⁴ A “provisional execution” occurs in the trading crowd when either (1) the participants to a trade reach a verbal agreement in the trading crowd as to the terms of the trade; or (ii) a member announces that he is crossing an order in accordance with Phlx Rule 1064(a). See Phlx Rule 1069(a)(i)(A). See also Notice, supra note 3, at 49596-97 n.5.

⁵ See Securities Exchange Act Release No. 81980 (October 30, 2017), 82 FR 51313 (November 3, 2017) (SR-Phlx-2017-34) (approving the Snapshot functionality as an exception to Phlx Rule 1000(f)) (“Snapshot Approval”). See also Securities Exchange

Once the member triggers the Snapshot, the member has up to 30 seconds to use the information recorded on the Snapshot for purposes of entering the terms of the provisionally-executed trade into FBMS and submitting the trade to the Trading System.⁶ Once submitted, the Trading System will only execute the trade if it is consistent with the applicable priority and trade-through rules based upon the prevailing market as reflected on the Snapshot at the time of the provisional execution. The Trading System will reject a trade that is subject to a Snapshot if it would violate trade-through or priority rules.⁷

Currently, the “Snapshot” feature of the FBMS may only be used to provisionally execute certain types of orders in the trading crowd. Specifically, Floor Brokers, Specialists, and ROTS may only use Snapshot to provisionally execute multi-leg orders and simple orders in options on Exchange Traded Funds (“ETFs”) that are included in the Options Penny Pilot.⁸ The Exchange proposes to expand the use of the Snapshot functionality to all orders on the trading floor, subject to the current procedures for and the limitations on the use of Snapshot.⁹ The Exchange believes that its proposed expansion of the use of Snapshot will make the functionality simpler, more consistent, and more useful in a greater number of circumstances than it is currently.¹⁰ To

Act Release No. 83656 (July 17, 2018), 82 FR 34899 (July 23, 2018) (SR-Phlx-2018-40) (expanding the availability of the Snapshot feature to ROTS and Specialists).

⁶ See Notice, supra note 3, at 49596-97.

⁷ See id. at 49597.

⁸ See Phlx Rule 1069(a)(i)(A).

⁹ See Notice, supra note 3, at 49596-97. The procedures and limitations regarding the current use of Snapshot are currently set forth in Phlx Rule 1069 and will continue to apply.

¹⁰ See Notice, supra note 3, at 49597.

effectuate these changes, the Exchange proposes several modifications to Phlx Rules 1000, 1064, and 1069.¹¹

The Exchange represents that it does not anticipate that the use of Snapshot to provisionally execute all orders, rather than just multi-leg or simple orders in options on ETFs that are included in the Options Penny Pilot, will materially increase the risk that Snapshot will be overused or abused relative to its current use.¹² Therefore, the Exchange proposes to utilize the same methods it currently uses to surveil its members' use of the Snapshot functionality and represents that if Surveillance detects a significant uptick in improper usage, the Exchange will evaluate whether additional controls are necessary.¹³

Finally, the Exchange notes that it expects to make Snapshot available for all orders before the end of the fourth quarter of 2018 and represents that it will notify its members via an Options Trader Alert, to be posted on the Exchange's website, at least seven calendar days prior to the date when Snapshot will be available for expanded use.¹⁴

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.¹⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁶ which requires, among other things, that the rules of

¹¹ A more detailed description of the proposal appears in the Notice.

¹² See Notice, supra note 3, at 49597.

¹³ See id.

¹⁴ See id.

¹⁵ 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).

¹⁶ 15 U.S.C. 78f(b)(5).

a national securities exchange be designed 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 and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that use of the Snapshot functionality for certain orders is one of the current exceptions set forth in Phlx Rule 1000(f), and allows Floor Brokers, ROTS, and Specialists to provisionally execute, in the options trading crowd (as opposed to through FBMS), multi-leg orders and simple orders in options on ETFs that are included in the Options Penny Pilot.¹⁷ According to the Exchange, Snapshot promotes just and equitable principles of trade and serves the interests of investors and the public by increasing the likelihood that investors will be able to execute their orders and do so in line with their expectations.¹⁸ The Exchange further represents that Snapshot is designed to mitigate the risk that the Trading System will reject a trade due to a change in market conditions that occurs between the time when the parties to a trade negotiate a valid trade on the trading floor and the time when the Trading System receives the trade. The Exchange believes that expanding the availability of Snapshot to all orders will broaden the scope of these protections to the benefit of investors and will make the exchange's trading floor more competitive with other trading venues because it will make the trading floor operate more efficiently.¹⁹

Further, the Exchange represents that the proposal is consistent with Rule 611 of Regulation NMS, which requires the Exchange to establish policies and procedures that are

¹⁷ See Phlx Rule 1000(f)(iii)(E).

¹⁸ See Notice, supra note 3, at 49597.

¹⁹ See id. at 49597-98.

reasonably designed to prevent trade-throughs of protected quotations. The Exchange notes that although the proposal will change the time of execution of a trade for purposes of verifying compliance with trade-through and priority rules, the current automated compliance verification process will continue to apply and will systematically prevent any violation of the trade-through and priority rules.²⁰ Finally, as noted above, the Exchange does not believe that the proposal will increase the risk that Snapshot will be used improperly and believes that its existing design controls are sufficient to continue to closely monitor Snapshot usage by its members.²¹

The Commission notes that, at the time Snapshot was adopted, the Exchange adopted several measures to help ensure that Snapshot operates, and is used by members, in a manner that is consistent with the Act and Phlx's rules.²² The Commission notes that these measures will continue to apply to the expanded application of Snapshot to all orders and should continue to ensure that the Snapshot functionality will be used in a manner that is consistent with the Act and Phlx's Rules. For example, Phlx Rule 1069(a)(i)(B) will continue to prohibit all members from triggering the Snapshot feature for the purpose of obtaining favorable, or avoiding unfavorable, priority or trade-through conditions. In addition, the Exchange represents that its surveillance staff will monitor the expanded use of Snapshot and will evaluate whether additional controls are needed if the Exchange detects a significant uptick in improper usage.²³

²⁰ See id. at 49598.

²¹ See id. at 49597.

²² See Snapshot Approval, supra note 5, at 51316.

²³ See Notice, supra note 3, at 49597.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²⁴ and the rules and regulations thereunder applicable to national securities exchanges.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-Phlx-2018-59) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Eduardo A. Aleman
Assistant Secretary

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR 200.30-3(a)(12).