

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64822; File No. SR-Phlx-2011-91)

July 6, 2011

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Routing Priority

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 June 27, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III 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 correct Rule 1080(m) to reflect the priority of routed orders that are not executed on the destination exchange, as described further below.

The text of the proposed rule change is available on the Exchange's Website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 proposed rule change. The text of these statements may be examined at the places specified in

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to more accurately reflect the priority of routed orders in Rule 1080. Currently, Rule 1080(m) governs the routing of orders on the Exchange and describes when orders are routed. Specifically, it provides that the System will route only customer FIND and SRCH Orders with no other contingencies, that IOC Orders will be cancelled immediately if not executed and will not be routed and that eligible orders can be designated as either available for routing or not available for routing. Customer FIND and SRCH Orders, as defined in Rule 1080(m)(iv), designated as available for routing will first be checked by the System for available contracts for potential execution. After checking the System for available contracts, orders are sent to other available market centers for potential execution. When checking the book, the System will seek to execute at the price at which it would send the order to a destination market center.

In situations where the Exchange's disseminated bid or offer is inferior to the NBBO price, the System will contemporaneously: (i) route an order marked as an ISO to each away market disseminating prices better than the Exchange's price, for the lesser of: (a) the disseminated size of such away markets, or (b) the order size and, (ii) if order size remains after such routing, trade at the Exchange's disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center, except as specified in Rule 1080(m).

Because the System routes the lesser of the disseminated size of the away markets or the order size, it is possible for part of an order to be routed, with a portion of the order remaining on the Exchange. Respecting the part of an order that is routed (“routed order”), that order can either be executed in full, in part or not at all on the destination exchange.

Currently, Rule 1080(m)(i) describes the priority of routed orders as follows: orders sent to other markets do not retain time priority with respect to other orders in the System and the System shall continue to execute other orders while routed orders are away at another market center. It further provides that once routed by the System, an order becomes subject to the rules and procedures of the destination market including, but not limited to, order cancellation. If a routed order is subsequently returned, in whole or in part, that order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System.

However, there is a situation where the order does not receive a new time stamp. Specifically, as described above, a routed order can be for less than the original incoming order’s size with a portion of the order remaining on the Exchange. If a routed order is subsequently returned, in whole or in part, that routed order, or its remainder, will not receive a new time stamp reflecting the time of its return to the System if any portion of the original order remains on the System when the routed order returns to the System, in which case the routed order shall retain its timestamp and its priority; specifically, the routed order, when returned, retains the timestamp and priority of the order which remains on the Exchange. The Exchange proposes to codify this in Rule 1080(m)(i).

Where the original incoming order resides on the book when the routed order returns unexecuted or executed in part, the Exchange’s System does not treat the routed order as a new order but rather resumes treating it as part of the original incoming order, thereby retaining its

original timestamp and priority, as though the unsuccessful routing had never occurred. The Exchange does not believe that this result is problematic or raises regulatory issues. In fact, in situations where a portion of an order remains on the Exchange and a portion is routed, the Exchange routes such order so as to execute it and comply with the regulatory requirements to avoid trade-throughs and locked and crossed markets. Various market conditions determine the destination(s) to which an order is routed, the portion of the order that should be routed, and whether or not the routed order results in an execution. Accordingly, the Exchange believes that its processes to route and timestamp routed orders, which are spelled out in its rules, are intended to make clear to market participants the various outcomes that result, depending on various market conditions.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>3</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>4</sup> 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. By more accurately reflecting the priority of routed orders, the rules will be clearer; at the same time, the Exchange also believes that retaining the original timestamp on a partially routed order is designed to promote just and equitable principles of trade and protect investors and the public interest, because maintaining the original order as a single order is the simplest method of handling the order, which should help entering firms manage their order flow. Respecting routable orders, market conditions, not the entering firm,

---

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

determine whether the order is routed, and ultimately whether it is executed on the destination market, such that the Exchange believes that it is simpler and more logical to treat the unexecuted portion of a routed order together with the original order. In addition, retaining the original timestamp on a partially routed order does not disadvantage other orders on the book, because the partially routed order had time priority and is merely returning, in effect, to its original place in time priority on the book. The portion of the order that was not routed and remained on the book is available for execution; if it is executed in full before the routed portion returns to the Exchange, the returned, routed portion receives a new timestamp book.

**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.

**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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6)<sup>6</sup> thereunder.

---

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-91 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2011-91. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2011-91, 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.<sup>7</sup>

Cathy H. Ahn  
Deputy Secretary

---

<sup>7</sup> 17 CFR 200.30-3(a)(12).