

• Send an email to rule-comments@sec.gov. Please include File Number SR–NYSEARCA–2013–40 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–NYSEARCA–2013–40. This file number should be included on the subject line if email 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 Web site (<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 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 such 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 publicly available. All submissions should refer to File Number SR–NYSEARCA–2013–40 and should be submitted on or before May 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69456; File No. SR–BX–2013–031]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Rule Governing Cancellation of Orders in the Event of an Issuer Corporate Action Related to a Dividend, Payment or Distribution, and To Make Related Clarifications to Rule Text

April 25, 2013.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on April 17, 2013, NASDAQ OMX BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) a 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 adopt a rule governing cancellation of orders in the event of an issuer corporate action related to a dividend, payment or distribution, and to make related clarifications to rule text.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxbx.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 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is proposing to adopt Rule 4761 to address the treatment of quotes/orders in securities that are the subject of issuer corporate actions related to a dividend, payment or distribution (a “corporate action”). The rule will apply to any trading interest that is carried on the BX Equities Market book overnight.⁴ The proposed BX rule would provide that in the event of any corporate action, BX will cancel open quote/orders on the ex-date of the action, thereby imposing on the member that entered the order the responsibility for determining whether it wishes to reenter the order and if so, at what price and size. The cancellation would occur immediately prior to the opening of the BX Equities Market at 7 a.m. on the ex-date of the corporate action, and the member would receive a cancellation notice, so that it could, if it desired, reenter the order at the commencement of trading on the ex-date.

In addition, BX is proposing to amend Rule 4756(b) to make it clear that quotes do not necessarily remain open overnight and to address several other issues. First, BX is modifying a description of open quotes, the original intent of which is unclear and that accordingly may result in confusion.⁵ The sentence in question appears to reflect the idea that an open quote (*i.e.*, a quote designated to remain open at the end of the trading day) would be processed in the same manner as a System Hours GTC Order. While accurate, this statement does not reflect the fact that a quote may also accurately be described as an Attributable Order entered by an Equities Market Maker or Equities ECN (*i.e.*, trading interest that is identified as having been entered by a particular market participant). Moreover, although an Attributable Order may be entered with a time-in-force of good-'till-cancelled and thereby remain open overnight, such orders have not historically been used by BX

⁴ BX notes that its market participants have not historically made use of such good-'till-cancelled trading interest, but believes that a rule should be adopted to ensure that the treatment of such orders is clearly specified by its rules.

⁵ It should be noted that although BX rules permit members to register and trade as Equities Market Makers or Equities ECNs, no member is currently registered with such a status. Accordingly, the following discussion regarding the use and processing of quotes should be understood as not having a direct impact on any current BX market participants. Rather, the proposed rule change is intended to ensure that the rules that would govern such matters are clear.

market participants. Accordingly, BX believes that the focus of the current sentence on orders remaining open might imply that all quotes would remain open overnight, when as a factual matter this would be the case only to the extent a quote was designated as good-'till-cancelled. BX proposes to amend the sentence to provide that "Quotes will be processed as Attributable Orders, with such time-in-force designation as the Equities Market Maker or Equities ECN may assign." Finally, BX proposes to correct obvious inaccuracies in the rule text. First, the rule incorrectly states that Order Entry Firms (as well as Equities Market Makers and Equities ECNs) may enter quotes, a statement that is logically inconsistent with the definition in Rule 4751 of an Order Entry Firm as a member registered "for purposes of entering orders." Second, BX proposes to correct in the rule the usage of the word "or" where "of" is intended.⁶

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(5) of the Act⁸ in particular, in that the proposal is 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, in general, to protect investors and the public interest. Specifically, BX believes that the change will simplify BX's rule governing adjustment of open quotes/orders in the event of corporate actions by making it clear that all such quotes/orders will be cancelled, thereby ensuring that market participants have appropriate notice of the possibility that they may either deem it advisable not to reenter such quotes/orders, or to reenter them with such adjustments to price and/or size as the market participant deems advisable to reflect the corporate action. Thus, the change will facilitate

⁶ BX notes that The NASDAQ Stock Market LLC ("NASDAQ") is filing a similar proposed rule change to replace an existing NASDAQ rule on modification of open orders with a rule comparable to proposed BX Rule 4761, and to make amendments to NASDAQ Rule 4756 similar to those proposed with respect to BX Rule 4756. SR-NASDAQ-2013-068 (April 17, 2013).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

transactions in securities and perfect the mechanism of a free and open market by providing additional assurance that market participants carefully manage the trading interest that they enter into BX. In addition, the proposed changes to Rule 4756 are designed to improve the clarity and accuracy of that rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, BX believes that the rule change does not affect the availability or pricing of goods or services offered by the Exchange, and therefore does not impact competition between the Exchange and others. Rather, the change is designed to adopt and clarify rules to better describe the operation of the Exchange's trading systems, but in a manner that does not restrict the ability of members to enter and update trading interest in BX.

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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 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.

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 email to rule-comments@sec.gov. Please include File Number SR-BX-2013-031 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-BX-2013-031. This file number should be included on the subject line if email 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 Web site (<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 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-BX-2013-031 and should be submitted on or before May 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69452; File No. SR-Phlx-2013-24]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto To Adopt a Price/Display/Time Priority Algorithm, Permit the Registration of Market Makers, and Amend the Order Types Available on PSX

April 25, 2013.

I. Introduction

On March 8, 2013, NASDAQ OMX 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 proposed rule changes to adopt a price/display/time algorithm, permit the registration of market makers, and amend the order types available on NASDAQ OMX PSX (“PSX”). Phlx filed Amendment No. 1 to the proposed rule change on March 18, 2013.³ The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on March 26, 2013.⁴ The Commission received no comment letters on the proposal. The Commission is approving the Exchange’s proposal, as modified by Amendment No. 1.

II. Background

In 2010, the Exchange launched PSX as a new platform for trading cash equity securities, establishing a price/size pro rata priority model for allocating the execution of incoming orders against orders resting on the PSX book.⁵ The Exchange had anticipated that this market model would gain traction as an alternative to the price/time priority model currently used by

other national securities exchanges. According to the Exchange, however, the price/size priority model has been only marginally successful in garnering market share, primarily due to the risk of a large execution at a stale price that a market participant would face if unable to adjust the prices of its posted orders quickly.⁶ Therefore, the Exchange proposes to adopt a price/time priority model (but with displayed orders receiving priority over non-displayed orders) for PSX. The Exchange also proposes to allow member organizations that satisfy certain criteria to register as market makers on PSX (“PSX Market Makers”). Finally, the Exchange proposes to introduce Midpoint Peg Post-Only Orders and Price to Comply Post Orders, to adjust the operation of Minimum Quantity Orders and Post-Only Orders, and to eliminate Minimum Life Orders.

III. Discussion and Commission Findings

The Commission finds that the proposed rule changes filed by the Exchange are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,⁸ 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 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. Overall, the Commission believes that approving the Exchange’s proposed rule change could benefit the public and market participants to the extent that it provides a more competitive venue for the trading of cash equity securities, resulting in better prices and executions for investors. The Commission finds that, for the reasons discussed below, the Exchange’s proposal is consistent with the Act.

A. Order Processing Algorithm

PSX currently employs a price/size pro rata execution order processing algorithm, with displayed orders receiving priority over non-displayed orders. Specifically, multiple orders

displayed on the PSX book at the best price are allocated shares of an incoming order pro rata based on the proportion of the size of the displayed order to the total size of all displayed orders at that price. Once all displayed size at any price level is exhausted, the same pro rata logic applies to non-displayed orders at that price level.⁹

Phlx proposes to amend its rules to replace its price/size pro rata order processing algorithm with a price/time priority algorithm that is substantially similar to the order processing algorithms used at the NASDAQ Stock Market (“NASDAQ”) and/or NASDAQ OMX BX, Inc. (“BX”). Specifically, PSX’s new order processing algorithm would allocate orders as follows:

(1) Price. Better priced orders would be executed first.

(2) Displayed orders. As among equally priced displayed orders, the first to arrive on the book would be executed first.

(3) Non-displayed orders and the reserve portion of quotes and reserve orders. As among equally priced non-displayed orders and the reserve portion of quotes and reserve orders, the first to arrive on the book would be executed first.¹⁰

The Commission believes that the proposed PSX execution priority rules are consistent with Section 6(b)(5) of the Act. The Commission notes that the price/time priority model is the prevailing execution algorithm for the exchange trading of cash equity securities. The Commission has previously determined price/time execution algorithms to be consistent with the Act.¹¹ Moreover, the particular price/time priority model proposed by Phlx is substantially similar to the model currently used by NASDAQ and BX and does not raise any novel issues.

B. Market Making

Phlx proposes to adopt rules to allow member organizations that are PSX participants to register and act as PSX Market Makers. Under the proposed rules, quotations and quotation sizes may be entered into PSX only by a PSX Market Maker or other entity approved by the Exchange to function in a market-making capacity.¹² A PSX participant may register as a PSX Market Maker in an issue by entering an electronic

⁹ See Rule 3307. See also PSX Approval Order, *supra* note 5.

¹⁰ See proposed Rule 3307.

¹¹ See, e.g., Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR-NASDAQ-2006-001); Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48).

¹² Proposed Rule 3212(a).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 69194 (March 20, 2013), 78 FR 18386 (March 26, 2013) (“Notice”).

⁵ See Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR-Phlx-2010-79) (“PSX Approval Order”).

⁶ See Notice, *supra* note 4, at 18386.

⁷ In approving these proposed rule changes, the Commission has considered the proposed rules’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).