

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67825; SR-Phlx-2012-27; SR-Phlx-2012-54)

September 11, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Designation of Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Relating to Complex Order Fees and Rebates for Adding and Removing Liquidity in Select Symbols

On March 1, 2012 and April 23, 2012, 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 two proposed rule changes relating to the transaction fees for certain Complex Order transactions.³

In SR-Phlx-2012-27 (filed on March 1, 2012), Phlx proposed to amend the Exchange’s Fee Schedule to increase the transaction fees and rebates for certain Complex Order transactions and create a new rebate for certain Complex Orders. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁴ Notice of filing of the proposed rule change was published for comment in the Federal Register on March 15, 2012.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. A Complex Order may also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (“ETF”) coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ See Securities Exchange Act Release No. 66551 (March 9, 2012) 77 FR 15400.

In SR-Phlx-2012-54 (filed on April 23, 2012), Phlx proposed to replace a portion of SR-Phlx-2012-27 to provide additional information concerning the Directed Participant and Market Maker fees for removing liquidity in Complex orders (“Second Proposal,” and, together with SR-Phlx-2012-27, the “Phlx Proposals”). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁶ Notice of filing of the proposed rule change was published for comment in the Federal Register on May 4, 2012.⁷

The Commission received no comment letters on the Phlx Proposals.

On April 30, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule changes.⁸ Thereafter, NASDAQ OMX Group, Inc. submitted a response letter in support of the Phlx Proposals on July 26, 2012.⁹

Section 19(b)(2) of the Act¹⁰ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule changes were published for notice and comment in the Federal Register on March 15, 2012 and

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ See Securities Exchange Act Release No. 66883 (April 30, 2012) 77 FR 26591.

⁸ See Securities Exchange Act Release No. 66884, 77 FR 26595 (May 4, 2012) (“Order Instituting Proceedings”).

⁹ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ OMX Group, Inc., dated July 26, 2012.

¹⁰ 15 U.S.C. 78s(b)(2).

May 4, 2012, respectively. September 11, 2012 is 180 days from March 15, 2012 and November 10, 2012 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the Phlx Proposals so that it has sufficient time to consider the Phlx Proposals and the issues raised by those proposals, and the Exchange's response to such issues in its response letter.¹¹ The Commission also finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule changes so that it has sufficient time to consider data that has been provided by the Exchange in support of its proposals, including additional data that it anticipates will be provided by the Exchange.¹²

¹¹ For example, in the order instituting proceedings to determine whether to approve or disapprove the proposed rule changes, the Commission sought comment on whether discrimination on the basis of whether a market maker has an off-exchange arrangement to pay an order flow provider to direct its orders to that market maker is a "fair" basis for discrimination among exchange members with respect to the fees charged by the exchange. The Commission also sought comment on whether the Phlx Proposals adequately addressed the reasonableness of the proposed fees (and thus the proposed fee differential).

¹² To date, the Exchange has provided data on price improvement for directed customer complex orders, and the rates of interaction with customer complex orders by types of market participant, among other things.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹³ designates November 10, 2012, and December 30, 2012, as the respective dates by which the Commission should either approve or disapprove the proposed rule changes (SR-Phlx-2012-27 and SR-Phlx-2012-54).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(57).