



8011-01
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83656; File No. SR-Phlx-2018-40)

July 17, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Extend the Applicability of the Floor Broker Management System and the Snapshot Functionality to Registered Options Traders and Specialists

I. Introduction

On May 24, 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 extend the applicability of the Floor Broker Management System and the Snapshot functionality to Registered Options Traders (“ROTS”)³ and Specialists.⁴ The proposed rule change was published for comment in the Federal Register on June 4, 2018.⁵ On June 4, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.⁶ The Commission received no comment letters on the proposed rule change. This order provides notice of filing of Amendment No. 1 and approves the proposal, as modified by Amendment No. 1, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Phlx Rule 1014(b) (defining a ROT).

⁴ See Phlx Rule 1020 (describing the functions of a Specialist).

⁵ See Securities Exchange Act Release No. 83339 (May 29, 2018), 83 FR 25725 (“Notice”).

⁶ In Amendment No. 1 the Exchange: (1) re-numbered proposed Phlx Rule 1081 as proposed Phlx Rule 1085 and (2) changed the proposed cross-references in proposed Commentary .06 to Phlx Rule 1080 and in Options Floor Procedure Advices and Order & Decorum Regulations (“Floor Advice”) A-9 from Phlx Rule 1081 to Phlx Rule 1085. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-phlx-2018-40/phlx201840-3767632-162689.pdf>.

II. Description of the Proposal

Currently, ROTs and Specialists executing orders in the trading crowd are required to record such orders and related execution details on paper trading tickets.⁷ ROTS and Specialists must then provide those matched trade tickets to an Exchange Data Entry Technician (“DET”), who manually enters the information written on the trade tickets into the Exchange’s electronic trading system.⁸ In contrast, unless one of five exceptions applies, Floor Brokers are required to enter orders originating in the trading crowd using the Exchange’s electronic order entry system—the “Floor Broker Management System”⁹—and are not permitted to execute orders in the trading crowd. The Exchange proposes to change the order entry process for ROTS and Specialist by requiring them to utilize the same electronic order entry system that is currently used by Floor Brokers. To accomplish this transition, the Exchange proposes to change the name of its electronic order entry system from the “Floor Broker Management System” to the “Floor Based Management System” (“FBMS”) to reflect its expanded applicability to all members that operate on the Exchange’s trading floor—namely, Floor Brokers, ROT, and Specialists.¹⁰ In addition, the Exchange proposes to apply the same general obligations it currently imposes upon Floor Brokers regarding orders on the trading floor to ROTS and Specialists.¹¹ The Exchange also proposes to extend FBMS’ Snapshot functionality to ROTs and

⁷ See Notice, supra note 5, at 25726.

⁸ See id.

⁹ Phlx Rule 1000(f)(iii).

¹⁰ See Notice, supra note 5, at 25726.

¹¹ See id. at 25725.

Specialists.¹² To effectuate these changes, the Exchange proposes several amendments and additions to its Rules and Floor Advices.¹³

Specifically, the Exchange proposes to amend Phlx Rule 1000(f) to require ROTs and Specialists to execute orders utilizing FBMS and to prohibit ROTs and Specialists from executing orders in the Exchange's options trading crowd, unless one of five exceptions applies.¹⁴ These exceptions are listed in Phlx Rule 1000(f)(iii)(A)-(E) and would permit a Floor Broker, ROT or Specialist to execute an order in the trading crowd if: (1) there is a problem with the Exchange's systems; (2) the member is executing an order pursuant to Phlx Rule 1059 ("Accommodation Transactions") or Phlx Rule 1079 ("FLEX Index, Equity, and Currency Options"); (3) the transaction involves a multi-leg order with more than 15 legs; (4) the transaction involves certain split-price orders that, due to FBMS system limitations, require manual calculation; or (5) the member elects to use of the Snapshot functionality to provisionally execute certain designated categories of trades, as described below.¹⁵

With respect to Snapshot, the Exchange proposes to allow ROTs and Specialists, like Floor Brokers, to use Snapshot to provisionally execute, in the options trading crowd, multi-leg orders and simple orders in options on exchange-traded funds ("ETFs") that are included in the Options Penny Pilot, subject to the procedures for and the limitations to the use of Snapshot.¹⁶

¹² See id. at 25726.

¹³ A more detailed description of the proposal appears in the Notice and in Amendment No. 1.

¹⁴ See Notice, supra note 5, at 25726.

¹⁵ See id.

¹⁶ See id. These procedures and limitations regarding the use of Snapshot are currently set forth in Phlx Rule 1063(e)(v), but the Exchange proposes to move them to a new Phlx Rule 1069, where they will apply broadly to "members" rather than only to Floor Brokers.

The Exchange represents that it does not anticipate that the use of Snapshot by ROTs or Specialists will pose any increased or unique risks relative to its current use by Floor Brokers.¹⁷ Therefore, the Exchange proposes to utilize the same methods it currently uses to surveil Floor Brokers' use of Snapshot to also monitor ROTs' and Specialists' uses of the Snapshot functionality.¹⁸

To implement the renaming of FBMS and the extension of FBMS (including its Snapshot functionality) to ROTs and Specialists, the Exchange also proposes to make changes to its Rules and Floor Advices, as well as to update multiple cross-references within its Rules and Floor Advices, so that its current requirements regarding the use of FBMS will apply to ROTs and Specialists.¹⁹

The Exchange represents that it will not require ROTs or Specialists to use FBMS until one month after the date on which the Commission approves the Exchange's proposal.²⁰ The Exchange will notify Members via an Options Trader Alert, to be posted on the Exchange's website, at least seven calendar days prior to the date when FBMS will be available for use by ROTs and Specialists.²¹ The alert will also contain the mandatory start date.²²

¹⁷ See id.

¹⁸ See id. at 25726-27.

¹⁹ See id. at 25726-28; Amendment No. 1, supra note 6. The Exchange is proposing minor alterations to its Rules that presently govern the use of FBMS by Floor Brokers to, among other things, account for the fact that ROTs and Specialists negotiate orders on the floor for their own account and do not represent orders on behalf of others. See Notice, supra note 5, at 25728. In addition, the Exchange is proposing several changes to remove obsolete language from its Rules and make conforming changes to its Rules.

²⁰ See Notice, supra note 5, at 25728. See also Amendment No. 1, supra note 6.

²¹ See id.

²² See id.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁴ which requires, among other things, that the rules of 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 the Exchange's rules currently require Floor Brokers to execute transactions through FBMS and prohibit Floor Brokers from executing orders in the trading crowd unless an exception applies.²⁵ The Commission also notes that use of the Snapshot functionality is one of the current exceptions set forth in Phlx Rule 1000(f), which allows Floor Brokers 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.²⁶

According to the Exchange, the manual order entry process that ROTs and Specialists currently use has become outmoded in comparison to its electronic order entry process.²⁷

²³ 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).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ See Phlx Rule 1000(f).

²⁶ See Phlx Rule 1000(f)(iii)(E).

²⁷ See Notice, supra note 5, at 25726.

Specifically, the Exchange represents that because the manual process is less efficient, manual trades are often reported with a “Late” or “Out of Sequence” trade condition.²⁸ The Exchange further represents that, compared to FBMS, the current manual process is more prone to human error and it does not establish an immediate audit trail for orders.²⁹ The Exchange notes that its proposed extension of FBMS to ROTs and Specialists is intended to address these inefficiencies, mitigate risks, and improve the Exchange’s compliance record by establishing an immediately available audit trail.³⁰ Moreover, the Exchange believes that requiring all members to use the same electronic order entry system (and to do so subject to the same general conditions, requirements, and exceptions) will help ensure fair and equal treatment for all members that operate on the trading floor.³¹ Further, the Exchange represents that it does not anticipate any unique risks associated with ROTs and Specialists use of FBMS and therefore believes that the current exceptions and conditions set forth in Phlx Rule 1000(f) should apply without modification to ROTs and Specialists.

For example, according to the Exchange, FBMS’ Snapshot functionality was designed to mitigate the risk that, when engaging in floor-based trading, the market for multi-leg orders and simple orders in options on ETFs that are included in the Options Penny Pilot may move faster than a Floor Broker would be able to manually enter and submit a paper trade ticket on a trade consummated in the trading crowd.³² According to the Exchange, ROTs and Specialists are subject to this same risk and the Exchange does not perceive any unique risks or concerns

²⁸ See id.

²⁹ See id.

³⁰ See id. at 25726 and 25728.

³¹ See id. at 25728.

³² See id. at 25726.

associated with the use of Snapshot by ROTs and Specialists that would necessitate changes to, or restrictions on, market makers' use of the Snapshot functionality.³³ Therefore, the Exchange believes the Snapshot functionality is appropriate for use by ROTs and Specialists, notwithstanding the fact that ROTs and Specialists trade on a proprietary basis, rather than an agency basis like Floor Brokers.³⁴ The Exchange represents that it will monitor ROTs' and Specialists' use of the Snapshot feature using the same methods that it currently uses to surveil Floor Brokers' use of Snapshot.³⁵

The Commission notes that proposed Phlx Rule 1069(a)(i)(B) will 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 ROTs and Specialists to determine whether they exhibit patterns of using Snapshot excessively, including in circumstances where the nature of the orders or movements in the markets for such orders do not reasonably warrant the use of Snapshot or the full extent of its use.³⁶ The Exchange will compare the times of provisional executions in the crowd that Snapshot captures with the records of such times that Options Exchange Officials capture to ensure accuracy.³⁷ The Exchange will also surveil for patterns of orders subject to Snapshots that ROTs and Specialists abandon without submitting them to the Trading System for final execution.³⁸ The Commission notes that these measures were designed to ensure that Snapshot operates, and is used by Floor Brokers, in a manner that is consistent with the Act and

³³ See id. at 25726 and 25729.

³⁴ See id. at 25726.

³⁵ See id. at 25726-27.

³⁶ See id. at 25727 n.7.

³⁷ See id.

³⁸ See id.

Phlx's Rules and notes that these measuer should similarly ensure that ROTs and Specialists electing to use the Snapshot functionality will do so in a manner that is consistent with the Act and Phlx's Rules.³⁹

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act and the rules and regulations thereunder applicable to national securities exchanges.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 to 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. Please include File No. SR-Phlx-2018-40 on the subject line.

Paper comments:

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

All submissions should refer to File No. SR-Phlx-2018-40. 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,

³⁹ 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)).

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, 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-Phlx-2018-40 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended proposal in the Federal Register. As described above, in Amendment No. 1, the Exchange (a) re-numbered proposed Phlx Rule 1081 as proposed Phlx Rule 1085 and (b) changed the proposed cross-references in proposed Commentary .06 to Phlx Rule 1080 and in Floor Advice A-9 from Phlx Rule 1081 to Phlx Rule 1085.⁴⁰ The Commission believes that Amendment No. 1 simply modified certain proposed rule numbering and cross-referencing and does not raise novel regulatory issues. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2)

⁴⁰ See Amendment No. 1, supra note 6.

of the Act,⁴¹ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁴² that the proposed rule change (SR-Phlx-2018-40), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴³

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⁴¹ 15 U.S.C. 78s(b)(2).

⁴² Id.

⁴³ 17 CFR 200.30-3(a)(12).

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