



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86844; File No. SR-Phlx-2019-31]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Manner in Which It Calculates Volume, Liquidity and Quoting Thresholds Applicable to Billing on the Exchange in Relation to a Systems Issue Experienced by SIAC on August 12, 2019

August 30, 2019

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 28, 2019, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by SIAC on August 12, 2019, which impacted trade and quote dissemination across all markets.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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

1. Purpose

The Exchange proposes to modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to the August 12, 2019 systems issue, which impacted trade and quote dissemination across all markets.³ Specifically, on August 12, 2019, SIAC⁴ determined to fail over to back up servers after receiving indications that its primary systems had become unstable, causing connectivity disruptions. The fail over to secondary systems failed to cure the problem, resulting in market-wide issues with the Consolidated Quote System and the Consolidated Tape System, including gaps in the intra-day trades, quotes, and other messages that were attempted to be sent to it. Consequently, the accuracy of the transaction and quotation data for August 12, 2019 is unknown.

As a result, the Exchange is unable to accurately calculate member transaction fees and credits, including calculations for the Exchange's incentive programs, since several of the

³ See <https://www.ctaplan.com/alerts#110000144324>.

⁴ SIAC is the operator of the Consolidated Quote System and Consolidated Tape System, which disseminate real-time trade and quote information in New York Stock Exchange LLC (Network A) and Bats, NYSE Arca, NYSE American and other regional exchange (Network B) listed securities.

Exchange's transaction fees and credits are based on trading, quoting and liquidity thresholds that members must satisfy in order to qualify for the particular rates (e.g., percentage of Consolidated Volume, Average Daily Volume, and time at the NBBO). The Exchange therefore proposes to exclude August 12, 2019 from all tier calculations described in Equity 7⁵ under the heading Order Execution and Routing in order to reasonably ensure that a member that would otherwise qualify for a particular threshold during August 2019, and the corresponding transaction rate and/or incentive, would not be negatively impacted by the August 12, 2019 systems issue.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁷ 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. In this regard, because the accuracy of the transaction and quotation data disseminated by SIAC for August 12, 2019 is unknown, the Exchange believes that it is reasonable to exclude August 12, 2019 from all tier calculations described in Equity 7, which would reasonably ensure that a member's qualification for various pricing programs would be based on the data that the Exchange believes is accurate. The Exchange also believes that the proposed rule change is reasonable because the SIAC systems issue that caused inaccurate transaction data was not within the Exchange's control nor can the Exchange correct

⁵ The Order Execution and Routing section under Equity 7 provides the schedule of fees and credits applicable to the PSX's order execution and routing services.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

or otherwise remediate the issue. Including August 12, 2019 transaction and quotation data for purposes of tier calculations described in Equity 7 under the heading Order Execution and Routing could result in inaccurate determinations for member rates based on the extent to which their transactions and quotations were impacted by the August 12, 2019 event in comparison to the overall inaccuracies in the data provided by SIAC for that date. Consequently, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would result in all market participants on the Exchange being treated equally by excluding August 12, 2019 from all tier calculations described in the Order Execution and Routing section under Equity 7. Last, excluding August 12, 2019 from all tier calculations described in the Order Execution and Routing section under Equity 7 is in the public interest because it will provide Exchange members with the closest approximation of the fees and credits that they would have been eligible for if accurate data for August 12, 2019 were available and included in the monthly calculation.

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. The proposed rule change would treat all market participants on the Exchange equally by excluding August 12, 2019 from all tier calculations described in Equity 7. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to fairly assess its members fees and to apply credits in light of systems issues that occurred, which are beyond the control of the Exchange.

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 Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange begins the calculation and billing of member fees and credits in the Order Execution and Routing section under Equity 7 at the close of each month, and an operative delay would disrupt the normal billing process, which may cause expense and potential investor confusion. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

Accordingly, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.¹²

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 change 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. Please include File Number SR-Phlx-2019-31 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 Number SR-Phlx-2019-31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹² For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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, 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. 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 Number SR-Phlx-2019-31 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.¹³

Jill M. Peterson
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).

