

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81826; File No. SR-Phlx-2017-67]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Order Approving a Proposed Rule Change Relating to Quarterly Trading Requirements

October 5, 2017.

#### I. Introduction

On August 3, 2017, NASDAQ PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (“Act”), <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> a proposed rule change regarding quarterly trading requirements applicable to Registered Options Traders (“ROT”). The proposed rule change was published for comment in the **Federal Register** on August 22, 2017. <sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes two amendments to a quarterly trading requirement applicable to certain ROTs. ROTs can be either Streaming Quote Traders <sup>5</sup> (“SQTs”), Remote SQTs <sup>6</sup> (“RSQTs”) or non-SQT ROTs. <sup>7</sup> Currently, Phlx Rule 1014, Commentary .01 requires SQTs and non-SQT ROTs, but not RSQTs, to trade 1,000 contracts and 300 transactions on the Exchange each quarter (excluding transactions executed in the trading crowd where the

contra-side is an ROT). The Exchange proposes to: (1) Apply the quarterly trading requirement only to non-SQT ROTs (and no longer to SQTs); and (2) add a new alternative standard to meet this requirement. Specifically, the Exchange proposes to amend Phlx Rule 1014, Commentary .01 to require only a non-SQT ROT to trade *either* (a) 1,000 contracts and 300 transactions (the “1000/300 Alternative,” which is the current requirement) or (b) 10,000 contracts and 100 transactions (the “New Alternative”), on the Exchange each quarter. <sup>8</sup> The Exchange notes that, similar to the current 1000/300 Alternative, the New Alternative is a pure trading requirement, not limited, like other trading requirements, to assigned options <sup>9</sup> and in person trading. <sup>10</sup> Accordingly, the Exchange proposes that the New Alternative requirement can be fulfilled with trades and contracts that are not in assigned options and not executed in person, although the existing trading requirements respecting “in assigned” options and “in person” trading must still be met. <sup>11</sup> In addition, the Exchange proposes that limit orders can continue to be counted toward either minimum trading requirement. <sup>12</sup>

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act <sup>13</sup> and the rules and regulations thereunder applicable to the Exchange. <sup>14</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, <sup>15</sup> which requires, among other things, that the rules of an 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the Exchange’s proposal to apply the quarterly trading requirement only to non-SQT ROTs is consistent with the Act. The Exchange has noted that SQTs are subject to continuous quoting requirements when trading electronically in their assigned series. <sup>16</sup> In contrast, the Exchange represents that non-SQT ROTs are not similarly subject to continuous quoting obligations as they do not electronically stream quotes into the Exchange and may only quote verbally in response to Floor Brokers representing orders in the trading crowd or submit limit orders electronically. <sup>17</sup> Accordingly, the Exchange believes that, because SQTs are already subject to continuous quoting obligations, it is appropriate to exclude them from the quarterly trading requirement and to impose obligations in a manner consistent with their business model. <sup>18</sup> The Commission therefore believes that this aspect of the proposal is reasonably designed to preserve the market making function performed by ROTs and to ensure that ROTs continue to provide adequate liquidity to the Exchange, while applying standards that reflect the differing operating models of SQTs and non-SQT ROTs. Accordingly, the Commission believes that the Exchange’s proposal to amend Phlx Rule 1014, Commentary .01 to apply the quarterly trading requirement only to non-SQT ROTs is consistent with Section 6(b)(5) of the Act in that it is reasonably designed to help promote just and equitable principles of trade, and to protect investors and the public interest, and is not designed to permit unfair discrimination.

The Commission also believes that the Exchange’s proposed amendment to create the New Alternative quarterly trading requirement is consistent with the Act. The Exchange represents that in recent years it has observed lower trading volumes on its floor, as well as increased use of mechanisms such as the Qualified Contingent Cross (“QCC”) mechanism for larger orders, in which non-SQT ROTs may not submit responses. <sup>19</sup> The Exchange notes that it has also become difficult for non-SQT ROTs to meet the 1000/300 Alternative because non-SQT ROTs do not stream quotes electronically, but instead quote verbally in response to Floor Brokers representing orders in the trading

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 81409 (August 16, 2017), 82 FR 39925 (“Notice”).

<sup>5</sup> An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. An SQT may only trade in a market making capacity in classes of options in which the SQT is assigned. See Phlx Rule 1014(b)(ii)(A).

<sup>6</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Specialist upon Exchange approval. See Phlx Rule 1014(b)(ii)(B).

<sup>7</sup> A non-SQT ROT is an ROT who is neither an SQT nor an RSQT. See Phlx Rule 1014(b)(ii)(C). The Exchange notes that by definition, non-SQT ROTs do not “stream” quotes, meaning send quotes electronically to the Exchange; instead, pursuant to Commentary .18 of Phlx Rule 1014, they submit limit orders electronically and respond to Floor Brokers verbally. See Notice, *supra* note 4, at 39926.

<sup>8</sup> Transactions executed in the trading crowd where the contra-side is an ROT would continue to be ineligible to satisfy this quarterly trading requirement. See Notice, *supra* note 4, at 39927.

<sup>9</sup> See Phlx Rule 1014.03.

<sup>10</sup> See Phlx Rule 1014.01.

<sup>11</sup> See Notice, *supra* note 4, at 39927.

<sup>12</sup> See *id.* The Exchange states that it is not seeking to burden these market participants by limiting the type of qualifying transactions eligible to meet the requirement. See *id.*

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 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).

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

<sup>16</sup> See Notice, *supra* note 4, at 39927.

<sup>17</sup> See *id.* at 39926 and 39928.

<sup>18</sup> See *id.* at 39928.

<sup>19</sup> See *id.* at 39927 and 39928.

crowd, where they cannot control the size or frequency of trading interest.<sup>20</sup> The Exchange asserts that the New Alternative serves as a reasonable standard by which to assess the level of liquidity provided by non-SQT ROTs, albeit with a focus on an additional liquidity metric of fewer trades that are larger in size.<sup>21</sup> The Exchange states that, since 100 transactions is only 33% of the current requirement, it proposes to increase the total number of executed contracts requirement in the New Alternative by 900 percent to 10,000 contracts, so as not to dilute the overall trading requirement.<sup>22</sup> The Commission therefore believes that the Exchange's proposal should continue to encourage active market making and thereby promote the provision of liquidity to the market. The Commission also notes that non-SQT ROTs continue to have the option of complying with the current requirement (*i.e.*, the 1000/300 Alternative) if they so choose. Accordingly, the Commission believes that the Exchange's proposed amendments to create the New Alternative standard to satisfy the quarterly trading requirement is reasonably designed to preserve the market making function performed by non-SQT ROTs and thereby serves to maintain a fair and orderly market and should remove impediments to and perfect the mechanism of a free and open market and a national market system and help protect investors and the public interest, consistent with Section 6(b)(5) of the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>23</sup> that the proposed rule change (SR-Phlx-2017-67), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81824; File No. SR-FINRA-2017-031]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 6121 To Reflect Recent Amendments to the Regulation NMS Plan To Address Extraordinary Market Volatility

October 5, 2017.

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 September 29, 2017, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to amend FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) to reflect recent amendments to the Regulation NMS Plan to Address Extraordinary Volatility ("Plan") regarding the resumption of trading in a security subject to the Plan.<sup>4</sup>

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA Rule 6121.01 (Resumption of Trading in Securities Subject to the Regulation NMS Plan to Address Extraordinary Market Volatility) ("Rule") addresses the circumstances under which a member may resume trading otherwise than on an exchange following a Trading Pause or Regulatory Halt in an NMS Stock that is subject to the Plan.

The Rule currently provides that, following a Trading Pause or Regulatory Halt in an NMS Stock that is subject to the Plan, a member may resume trading otherwise than on an exchange if trading has commenced on the Primary Listing Exchange (or on another national securities exchange in the case of the resumption of trading following a ten-minute Trading Pause) and either: (1) The member has received the Price Bands from the Processor; or (2) if immediately following a Trading Pause or Regulatory Halt the member has not yet received the Price Bands from the Processor, the member has calculated an upper price band and lower price band consistent with the methodology provided for in Section V of the Plan and ensures that any transactions prior to the receipt of the Price Bands from the Processor are within the ranges provided for pursuant to the Plan. In addition, the Rule provides that, where the Primary Listing Exchange does not reopen for trading at the end of a ten-minute Trading Pause (and has issued notice that it cannot resume trading for a reason other than a significant imbalance), a member may resume trading otherwise than on an exchange if trading has commenced in such NMS Stock on at least one other national securities exchange.

On January 19, 2017, the Commission approved the Twelfth Amendment to the Plan, which provides, among other things, that a Trading Pause will continue until the Primary Listing Exchange has reopened trading using its established reopening procedures, even if such reopening is more than 10 minutes after the beginning of a Trading

<sup>20</sup> See *id.* at 39928.

<sup>21</sup> See *id.* at 39927 and 39928.

<sup>22</sup> See *id.* at 39927.

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> Unless otherwise specified, the capitalized terms used herein have the same meanings as set forth in the Plan.