SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59081; File No. SR-Phlx-2008-79)

December 11, 2008

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Reduction of Option Limit Order Exposure Periods from Three Seconds to One Second

I. Introduction

On November 10, 2008, NASDAQ OMX PHLX, Inc. ("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 reduce certain order exposure periods from three seconds to one second. The proposed rule change was published for comment in the Federal Register on November 25, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule change is to reduce the exposure time during which Order Entry Firms[4] may not execute as principal against orders they represent as agent from three seconds to one second. Specifically, the Exchange proposes to amend Exchange Rule 1080(c)(1), which currently provides that Order Entry Firms may not execute as principal against orders on the limit order book they represent as agent unless such agency orders are first exposed

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1 15 U.S.C. 78s(b)(l).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 58949 (November 14, 2008), 73 FR 71709 ("Notice").

4 The term "Order Entry Firm" means a member organization of the Exchange that is able to route orders to the Exchange's AUTOM system. See Exchange Rule 1080(c)(ii)(A)(1).

on the limit order book for at least three seconds, the Order Entry Firm has been bidding or offering on the Exchange for at least three seconds prior to receiving an agency order that is executable against such order, or the Order Entry Firm proceeds in accordance with the crossing rules contained in Exchange Rule 1064.[5] In addition, the Exchange proposes to amend Exchange Rule 1080(c)(2), which provides that Order Entry Firms must expose orders they represent as agent for at least three seconds before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders. Under the proposal, these three-second exposure periods would be reduced to one second.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which, among other things, requires 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 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. The Commission also finds that the proposed rule change is consistent with Section

5 Exchange Rule 1064 sets forth the procedures that must be followed before an Options Floor Broker who holds orders to buy and sell the same option series may cross such orders.

6 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).

7 15 U.S.C. 78f(b)(5).

6(b)(8) of the Act,[8] which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic environment of Phlx XL, reducing each of these exposure periods from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that Phlx members could receive, process, and communicate a response back to the Exchange within one second, the Exchange stated that it distributed a survey to its members that regularly participate in orders executed on Phlx XL that would be affected by the proposal. Phlx stated that the survey results indicated that it typically takes not more than 250 milliseconds for members to receive, process, and respond to orders exposed on the limit order book. According to Phlx, members who responded to the survey also indicated that reducing the exposure period to one second would not impair their ability to participate in orders affected by the proposal.[9] Based on Phlx's statements regarding the survey results, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within a one second exposure period. Accordingly, the Commission believes that it is consistent with the Act for Phlx to reduce the order handling and exposure times discussed herein from three seconds to one second.

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after publication for comment in the Federal Register. The Commission notes that the proposed rule change was noticed for a fifteen-day comment period, and no comments were received. The Commission believes that the Exchange has provided reasonable support for its

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8 15 U.S.C. 78f(b)(8).

9 The Phlx stated that all of the eight members that responded to the timing questions indicated that reducing the crossing exposure timer to one second would not impair their ability to participate in orders affected by this proposal. See Notice.

belief that the Exchange's market participants would continue to have an opportunity to compete for exposed bids and offers if the exposure periods were reduced to one second as proposed. Finally, the Commission also notes that the proposed rule change is similar to recently approved proposals submitted by the Chicago Board Options Exchange, Incorporated and the International Securities Exchange, LLC.[10] Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[11] to approve the proposed rule change on an accelerated basis.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR-Phlx-2008-79), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon
Acting Secretary

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10 See Securities Exchange Act Release Nos. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008)(SR-CBOE-2008-16) and 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR-ISE-2007-94).

11 15 U.S.C. 78s(b)(2).

12 15 U.S.C. 78s(b)(2).

13 17 CFR 200.30-3(a)(12).