

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99780; File No. SR-Phlx-2024-13)

March 20, 2024

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 2, Sections 13 and 14 and Options 8, Section 24

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 March 14, 2024, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, 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 amend Options 2 Rules at Sections 13, and 14 and Options 8, Section 24.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, 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, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Phlx proposes to amend its Options 2 Rules related to Options Market Participants at Sections 13, and 14, and an Options 8 Rule related to Floor Trading at Section 24. Each change will be discussed below.

Options 2, Section 13

The Exchange proposes to amend Options 2, Section 13, Affiliated Persons of Lead Market Makers, which was previously Phlx Rule 1036³ and titled “Affiliated Persons of Specialists.” SR-Phlx-2016-86⁴ noted that Rule 1036(b) provided that “no issuer, or parent or subsidiary thereof, or any officer, director or 10% stockholder thereof, may become an approved person in a specialist member organization whose members are registered in a security of that issuer.” SR-Phlx-2020-03 also amended the term “specialist” to “Lead Market Maker” in multiple places in the Rulebook including Phlx Rule 1036. The Exchange notes that the term “specialist” within prior Rule 1036, which is now Options 2, Section 13, did not refer to a Phlx participant also known as a “specialist,” rather the term referred to an individual that engages in market making pursuant to the Act. The Exchange proposes to replace the term “Lead Market Maker” with the term “specialist” which shall mean, for purposes of this rule, an individual that

³ In 2020, the Exchange relocated Rule 1036 to Options 2, Section 13. See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell) (“SR-Phlx-2020-03”).

⁴ See Securities Exchange Act Release No. 78680 (August 25, 2016), 81 FR 60110 (August 31, 2016) (SR-Phlx-2016-86) (Notice of Filing of Proposed Rule Change to Delete or Amend Outdated Rule Language) (“SR-Phlx-2016-86”).

engages in market making pursuant to the Act. The term “specialist” as utilized in the Act is broader than the term “Lead Market Maker” as described in the Exchange’s rules.⁵ This proposal reverts the rule text language back to its original term to capture the universe of market makers the rule was originally intended to capture.

Options 2, Section 14

The Exchange proposes to reserve Options 2, Section 14, Limitations on Options Market Making, which was previously Rule 175.⁶ This rule was adopted in 2008⁷ for XLE⁸ to address the same person or firm making markets in an equity security and its related option (“integrated market making”). Phlx Rule 175 was adopted to prevent the potential misuse of non-public information on XLE. The Exchange discontinued XLE on October 24, 2008.⁹ Phlx Rule 175 ceased to be operative on that date as the rule was an equity rule. The Exchange removed various XLE rules from the Rulebook and relocated other rules. Rule 175 was relocated in error into the options rules as part of a rule harmonization.¹⁰ Rule 175 should have been deleted in 2008 when XLE was discontinued.

At this time, the Exchange proposes to remove Options 2, Section 14 which is not

⁵ Pursuant to Options 1, Section 1(b)(27), a “Lead Market Maker” means a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). A Lead Market Maker includes a Remote Lead Market Maker which is defined as a Lead Market Maker in one or more classes that does not have a physical presence on the Exchange’s Trading Floor and is approved by the Exchange pursuant to Options 2, Section 11.

⁶ See SR-Phlx-2020-03 which relocated Rule 175.

⁷ See Securities Exchange Act Release No. 57683 (April 18, 2008), 73 FR 22199 (April 24, 2008) (SR-Phlx-2008-27) (Notice of Filing of Proposed Rule Change Relating to Access to XLE on Phlx’s Options Floor) (“SR-Phlx-2008-27”).

⁸ Phlx’s legacy electronic equity trading system.

⁹ See Securities Exchange Act Release No. 58613 (September 22, 2008), 73 FR 57181 (October 1, 2008) (SR-Phlx-2008-65).

¹⁰ See SR-Phlx-2020-03.

applicable to options trading.¹¹ General 9, Section 21(d) requires both options and equity members to maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information by such member with any affiliates that may act as specialist or market maker in any security underlying the options for which the Participant acts as a Market Maker.¹² With respect to equity trading, today, PSX Participants are subject to General 9, Section 21(d), which type of rule was found by the Commission to reduce the opportunity for unfair trading advantages.¹³

Options 8, Section 24

The Exchange proposes to amend Options 8, Section 24, Bids and Offers-Premium. This rule applies to the Exchange's Trading Floor. Specifically, the Exchange proposes to amend Options 8, Section 24(b) related to the solicitation of quotations. Currently, Options 8, Section 24 provides,

Solicitation of Quotations. In response to a floor broker's solicitation of a single bid or offer the members of a trading crowd (including the Lead Market Maker

¹¹ See Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (Order Approving Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Introduction of Remote Market-Makers). Cboe addressed integrated market making in a rule change offering market participants the ability to stream electronically their own firm disseminated market quotes representing their trading interest. In that filing, Cboe noted that Remote Market-Makers ("RMMs") who effect transactions in a particular option may be affiliated with market makers or specialists who trade the underlying security (i.e., integrated market making). Cboe indicated its Rule 4.18, which governed the use of material, non-public information, would apply to RMMs. Cboe represented that Rule 4.18 would require RMMs to maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information by such member with any affiliates that may act as a specialist or market maker in any security underlying the options for which the CBOE member acts as an RMM. The Commission noted in that rule change that it believed that the requirement that there be an information barrier between the RMM and its affiliates with respect to transactions in the option and the underlying security served to reduce the opportunity for unfair trading advantages or misuse of material, non-public information.

¹² See also Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (SR-PCX-2002-36) (Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Exchange's New Trading Platform for Options, PCX Plus). PCX addressed the Commission's concerns about integrated market making by adopting a rule that governed the use of material, non-public information that was applicable to members trading on PCX Plus.

¹³ See General 9, Section 21.

and Floor Market Makers) may discuss, negotiate and agree upon the price or prices at which an order of a size greater than the Exchange's disseminated size can be executed at that time, or the number of contracts that could be executed at a given price or prices, subject to the provisions of the Options Order Protection and Locked/Crossed Market Plan and the Exchange's Rules respecting Trade-Throughs. Notwithstanding the foregoing, a single crowd participant may voice a bid or offer independently from, and differently from, the members of a trading crowd (including the Lead Market Maker and Floor Market Makers).

The Exchange proposes to amend Options 8, Section 24(b) to make clear that when a Floor Broker¹⁴ enters a trading crowd for the purpose of soliciting a bid or offer, the Floor Broker must clearly and audibly indicate they are soliciting interest for the purposes of price discovery and not otherwise requesting a firm bid or offer which would then be executed. The Exchange believes that this amendment will make clear that a Floor Broker must distinguish a solicitation of interest in the trading crowd so that a Floor Market Maker understands the response is in connection with a solicitation and would not result in a trade. The Exchange believes that the addition of this language will make clear to members on the trading floor the need to specify their intent when soliciting interest or they will otherwise be required to execute the trade.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ 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.

¹⁴ The term "Floor Broker" means an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders. See Options 8, Section 2(a)(2).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

Options 2, Section 13

The Exchange's proposal to amend Options 2, Section 13 to revert the term "Lead Market Maker" to "specialist" is consistent with the Act and promotes just and equitable principles of trade because the intended term "specialist" pursuant to the Act is broader than the term "Lead Market Maker" and was intended to capture a broader array of market participants. This amendment will make clear that specialists must comply with the rule.

Options 2, Section 14

The Exchange's proposal to reserve Options 2, Section 14, Limitations on Options Market Making, is consistent with the Act and removes impediments to and perfect the mechanism of a free and open market because the rule is not applicable to options trading.¹⁷ General 9, Section 21(d) requires both options and equity members to maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information by such member with any affiliates that may act as specialist or market maker in any security underlying the options for which the Participant acts as a Market Maker.¹⁸ With respect to

¹⁷ See Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (Order Approving Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Introduction of Remote Market-Makers). Cboe addressed integrated market making in a rule change offering market participants the ability to stream electronically their own firm disseminated market quotes representing their trading interest. In that filing, Cboe noted that Remote Market-Makers ("RMMs") who effect transactions in a particular option may be affiliated with market makers or specialists who trade the underlying security (i.e., integrated market making). Cboe indicated its Rule 4.18, which governed the use of material, non-public information, would apply to RMMs. Cboe represented that Rule 4.18 would require RMMs to maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information by such member with any affiliates that may act as a specialist or market maker in any security underlying the options for which the CBOE member acts as an RMM. The Commission noted in that rule change that it believed that the requirement that there be an information barrier between the RMM and its affiliates with respect to transactions in the option and the underlying security served to reduce the opportunity for unfair trading advantages or misuse of material, non-public information.

¹⁸ See also Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (SR-PCX-2002-36) (Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Exchange's New Trading Platform for Options, PCX Plus). PCX addressed the Commission's concerns about integrated market making by adopting a rule that governed the use of material, non-public information that was applicable to members trading on PCX Plus.

equity trading, today, PSX Participants are subject to General 9, Section 21(d), which type of rule was found by the Commission to reduce the opportunity for unfair trading advantages.¹⁹

Options 8, Section 24

The Exchange's proposal to amend Options 8, Section 24, Bids and Offers-Premium, is consistent with the Act as it clarifies the current rule text by requiring a Floor Broker to clearly and audibly indicate they are soliciting interest for the purpose of price discovery and not otherwise requesting a firm bid or offer. The amendment protects investors and the general public by requiring a Floor Broker to distinguish a solicitation of interest in the trading crowd so that a Floor Market Maker understands the response is in connection with a solicitation and would not result in a trade. The Exchange believes that the addition of this language will make clear to members on the trading floor the need to specify their intent when soliciting interest or they will otherwise be required to execute the trade.

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.

Options 2, Section 13

The Exchange's proposal to amend Options 2, Section 13 to revert the term "Lead Market Maker" to "specialist" does not impose an undue burden on competition, rather the term makes clear that the rule was intended to apply to a "specialist" pursuant to the Act and not a "Lead Market Maker" as that term is described in the Exchange's rules. The term would apply uniformly to all specialists.

Options 2, Section 14

¹⁹ See General 9, Section 21.

The Exchange's proposal to reserve Options 2, Section 14, Limitations on Options Market Making, does not impose an undue burden on competition because the rule would uniformly not apply to any member or member organization that transacts options or equities on the Exchange.

Options 8, Section 24

The Exchange's proposal to amend Options 8, Section 24, Bids and Offers-Premium, does not impose an undue burden on competition because it clarifies the current rule text by requiring all Floor Brokers to distinguish a solicitation of interest in the trading crowd so that a Floor Market Maker understands the response is in connection with a solicitation for purposes of price discovery and would not result in a trade.

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)(iii) of the Act²⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.²¹

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

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

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 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2024-13 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-2024-13. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2024-13 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,

Assistant Secretary.

²² 17 CFR 200.30-3(a)(12).