

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83195; File No. SR-Phlx-2018-35)

May 9, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Zero-Bid Option Series

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 April 27, 2018, 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 relocate the rule text relating to zero-bid option series currently located at Rule 1080(i) to new Rule 1035 and amend the current rule text to describe the current operation of a zero bid series.

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.

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

The Exchange proposes to relocate the zero-bid options series rule text currently located in Rule 1080(i) to Rule 1035, which is currently reserved. The Exchange desires to rename Rule 1035 as “Zero-Bid Option Series.” The Exchange believes it will make it easier to locate this rule text in a separate rule. The Exchange also proposes to amend the current rule text which does not accurately describe the operation of the System.

Current Rule 1080(i) states that the System³ will convert market orders to sell a particular option series to limit orders to sell with a limit price of the minimum trading increment applicable to such series that are received when, for options listed only on the Exchange, (1) the Exchange's disseminated bid price in such option series is zero;⁴ and (2) the Exchange’s disseminated quotation in the series has a bid/ask differential less than or equal to \$0.25. For options that are listed on multiple exchanges: (1) the disseminated NBBO includes a bid price of zero in the series; and (2) the Exchange's disseminated quotation in the series has a bid/ask differential less than or equal to \$0.25. Such orders will be automatically placed on the limit order book in price-time priority.

Background

The Exchange adopted Rule 1080(i) in 2005 to permit Phlx’s former order entry system, AUTOM, to automatically convert market orders to sell when the bid price is zero to limit orders

³ The current rule refers to the “AUTOM System”. The term “AUTOM” is outdated and is being removed from the rule.

⁴ A zero bid refers to an option where the bid price is \$0.00.

to sell with a limit price of \$.05.⁵ The Adopting Filing also noted that market orders to sell, as well as limit orders to sell, would be placed on the limit order book in price-time priority in an effort to reduce the manual handling of such orders and automate the processing of market orders to sell when the Exchange's bid price is zero.⁶ The Adopting Filing noted that the provision established the time priority of market orders to sell when the bid price in the particular series is zero (and thus no execution could occur). The Adopting Filing provided that in the event that the bid price in the particular series becomes \$.05 or greater, thus establishing a bid price that makes the booked limit orders to sell marketable, such orders to sell at the \$.05 limit price or better would be executed in the order in which they were received (*i.e.*, price-time priority).

Thereafter, in 2006, Phlx amended Rule 1080(i) to limit the circumstances in which the Exchange's trading system, as it existed in 2006, would convert a market order to sell into a limit order to sell a zero-bid option at \$ 0.05.⁷ Since the Adopting Filing, the Exchange concluded that not all options with a zero bid are the same. With the adoption of zero bid, the Exchange treated options that have an offer price of a few dollars on the Exchange, as well as options that are not "zero-bid" on other exchanges, as zero-bid options. The Subsequent Filing outlined additional factors that the Exchange would consider when determining whether an option is a zero-bid option for purposes of Rule 1080(i), including the Exchange's bid/ask differential and the NBBO. The Exchange noted in the Subsequent Filing that the new criteria would clarify

⁵ See Securities Exchange Act Release No. 51352(March 9, 2005), 70 FR 12935 (March 16, 2005) (SR-Phlx-2005-03) ("Adopting Filing").

⁶ Former Phlx Rule 1080(c)(iv)(G) provided that sell orders received in a particular series in which the disseminated bid price is zero were handled manually by the specialist. The Adopting Filing was intended to eliminate the manual handling of orders by automating this process.

⁷ See Securities Exchange Act Release No. 53822 (May 17, 2006), 71 FR 29701 (May 23, 2006) (SR-Phlx-2006-32) ("Subsequent Filing").

when an option is truly a zero-bid option for which orders in that option should be subject to automated handling versus orders for non-zero-bid options that would require manual handling. The Exchange also noted in the Subsequent Filing that taking the bid/ask differential into consideration would help limit the conversion of market orders to sell to only those for true zero-bid options, because options with an offer higher than \$0.25 are likely not to be worthless options. Similarly, for options traded on more than one exchange, the NBBO is relevant for validating whether an option truly is a zero-bid option.

The Exchange notes that the System checked the bid/ask differential less than or equal to \$0.25 as mentioned in 1080(i)(A)(2) and 1080(i)(B)(2)⁸ until such time as the Exchange eliminated Market Exhaust⁹ in connection with other enhancements to the Phlx XL automated trading system, which was adopted in 2008. The Exchange discontinued Market Exhaust in 2011.¹⁰ Once Market Exhaust was discontinued on the Exchange, Phlx noted that orders received, when there are no participant quotations in the Exchange's disseminated market for the affected series, would be handled in accordance with existing Exchange rules regarding

⁸ The Exchange notes that it provided notice to members of the manner in which the functionality operated. See Options Trader Alert 2015-38.

⁹ PHLX XL, the Exchange's INET proprietary trading system which was established in 2008, initiated Market Exhaust when there were no PHLX XL participant quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received. The system initiated a "Market Exhaust Auction" for the initiating order, and then went through a series of steps depending on the market conditions present for the affected series, including a broadcast to participants, execution of all or part of the initiating order, routing the initiating order (or remaining contracts following execution) to better priced away markets, and a "Provisional Auction," after which any unexecuted contracts from the initiating order was subject to, and not executable outside of, an Auction Quote Range. See Securities Exchange Act Release No. 66087 (January 3, 2012), 77 FR 1095 (January 9, 2012) (SR-Phlx-2011-182).

¹⁰ The Exchange determined that Market Exhaust only affected a small number of orders, given the specific set of circumstances that must occur in order for Market Exhaust to be initiated. See Securities Exchange Act Release No. 66087 (January 3, 2012), 77 FR 1095 (January 9, 2012) (SR-Phlx-2011-182).

electronic order entry, execution, routing, trade reporting, and firm quotations, which included Rule 1080(i) regarding zero bid. At that time, Phlx also amended Rule 1082(a)(ii)(B)(4) by adopting Rule 1082(a)(ii)(B)(4)(a), which provided that, if there are no offers both on the Exchange and on away markets in the affected series, market orders to buy in the affected series would be cancelled immediately, and an electronic report of such cancellation will be transmitted to the sender. The Exchange would cancel such a market order because in this rare circumstance there would be no disseminated market on the Exchange and no disseminated market on any away market against which such market order could be routed and executed, and there would be no price at which the Exchange could place such a market order on the Exchange's limit order book.¹¹ Pursuant to the 2012 rule change which eliminated Market Exhaust functionality, Rule 1082(a)(ii)(B)(4)(c) addressed the System's functionality in the circumstance where there are no bids or a zero priced bid on the Exchange and there are no bids on away markets in the affected series. In such a circumstance, the Exchange would disseminate a bid price of zero, and market orders to sell will be handled pursuant to Exchange Rule 1080(i).

At this time, the Exchange proposes to remove the bid/ask differential and NBBO checks mentioned in 1080(i)(A)(2) and 1080(i)(B)(2) and instead, where the bid price for any options series is \$0.00, convert market orders to sell to limit orders regardless of the bid/ask differential and NBBO. The Exchange no longer manually handles orders. The Exchange's System automatically handles all zero-bid options. The Exchange believes that all zero bid options should be uniformly treated in the same manner and have an equal opportunity to execute on Phlx. While options with an offer which is lower than \$0.25 continue to be likely to be worthless options, the Exchange does not believe those zero-bid options entered by market participants

¹¹ See Securities Exchange Act Release No. 66087 (January 3, 2012), 77 FR 1095 (January 9, 2012) (SR-Phlx-2011-182).

should be treated in a disparate matter as compared to those zero bid options with an offer higher than \$0.25. Further, where the disseminated NBBO includes a bid price of zero the Exchange proposes to similarly convert these market orders to limit orders as proposed. The Exchange intends to accept and convert market orders to sell allowing them an equal opportunity to trade if interest should arrive in the case of a no bid option. The Exchange notes that the orders would rest on the Order Book at the minimum price increment. The Exchange proposes to amend the rule to state, similar to Nasdaq ISE LLC's ("ISE") Rule 713, "In the case where the bid price for any options series is \$0.00, a market order accepted into the System to sell that series shall be considered a limit order to sell at a price equal to the minimum trading increment as defined in Rule 1034." Phlx is specifically utilizing the words "accepted into the System" to account for market orders that may not be accepted into the System due to Limit Up-Limit Down restrictions which may prevent the market order from being accepted. The Limit Up-Limit Down requirements must be met first before the proposed rule would apply. Only after acceptance into the System will market orders be treated as a sell limit order at a price equal to the minimum trading increment. Further, the Exchange proposes to continue to provide that orders will be automatically placed on the limit order book in price-time priority, but proposes to restate this sentence for clarity, to make clear that "Orders will be placed on the limit order book in the order in which they were received by the System."¹² The Exchange proposes to note that with respect to market orders to sell in zero bid options which are submitted prior to the Opening Process and persist after the Opening Process, those orders are posted at a price equal to the minimum trading increment as defined in Rule 1034.¹³ The Exchange notes that it has posted market orders to sell

¹² The time of receipt for an order is the time such message is processed by the System.

¹³ Phlx Rule 1034, entitled "Minimum Increments" provides for the minimum increments of trading.

in zero bid options which are submitted prior to the Opening Process and persist after the Opening Process in this fashion since the Exchange introduced the Opening Process. This detail was not included in the rule. The Exchange proposes to add this detail to provide market participants with greater insight into the handling of orders where there is a zero bid. The Exchange believes that this proposed amendment will accurately describe the manner in which a zero-bid options series operates within the System both before and after the Opening Process.¹⁴

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 and to protect investors and the public interest by amending the text of zero-bid options series to accurately describe the manner in which the System handles these types of orders.

The Exchange believes that eliminating the System check for bid/ask differentials less than or equal to \$0.25 and NBBO as mentioned in 1080(i)(A)(2) and 1080(i)(B)(2), is consistent with the Act because the Exchange is treating all market orders to sell in zero bid options, regardless of the bid/ask differential, in the same fashion by converting all those orders, provided that the Exchange's disseminated bid price in such option is zero for an option listed only on the Exchange or, for an option listed on multiple exchanges and the disseminated NBBO includes a bid price of zero in the series. The Exchange no longer handles orders manually. All orders are automatically handled by the Exchange's System. The proposed Phlx rule text proposes to continue to provide that such orders will be automatically placed on the limit order book in price-

¹⁴ The Exchange's Opening Process is described in Rule 1017.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

time priority but restates this language to make clear that the market orders to sell in zero bid options will be placed on the limit order book in the order in which they were received by the System. While the Exchange notes that offers higher than \$0.25 are likely not to be worthless options, nonetheless the Exchange would permit the order to rest on the Order Book at the minimum price increment and permit that market order to have the same opportunities for execution as offers lower than \$0.25. The Exchange desires to prevent members from submitting market orders to sell in no bid series, which would execute at a price of \$0.00. The Exchange believes that the proposed rule will achieve this objective and continue to permit the Exchange to execute orders within its System at prices which reflect some value. The Exchange believes that its proposal is consistent with the Act because it is in the interest of market participants to have these order executed regardless of the bid/ask differential or NBBO, provided that the Exchange's disseminated bid price in such option is zero for any option, regardless of where the option is listed.

The Exchange's proposal to add rule text regarding market orders to sell in zero bid options submitted prior to the Opening Process and persisting after the Opening Process is consistent with the Act because it provides more transparency as to the operation of this rule and as to how those market orders to sell in zero bid options will be handled by the System. Further, the Exchange believes that memorializing its current practice within the rule text will bring more clarity to the manner in which the zero bid rule operates to the benefits of all market participants.

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 Exchange believes that the proposed amendments do not impose an undue burden on

competition because the proposed rule change will continue to apply uniformly for all market participants who enter market orders to sell into the System when there is a zero-bid.

Sell market orders in zero bid options will continue to be placed on the limit order book in price-time priority. The Exchange does not believe that no longer considering the bid/ask differential and the NBBO when determining when to convert sell market orders in zero bid options to limit orders and instead convert all sell market orders in zero bid options will impose an undue burden on competition because the Exchange will treat all sell market orders in zero bid options in a uniform fashion. The proposed rule will permit market orders to sell in zero bid options to have the same opportunities for execution as offers with lower than \$0.25 and regardless of the NBBO. The Exchange's proposal to add rule text regarding market orders to sell submitted prior to the Opening Process and persisting after the Opening Process does not impose an undue burden on competition, rather this proposal provides more transparency as to the operation of this rule and as to how those market orders to sell in zero bid options will be handled by the System.

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 Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁰ 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 so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would allow the Exchange to update its rules to immediately reflect the correct operation of zero-bid series on Phlx. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.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 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

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 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.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ 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).

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-2018-35 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-2018-35. 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, 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-2018-35, 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.²²

Eduardo A. Aleman
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).