

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83547; File No. SR-Phlx-2018-48)

June 28, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Firm Participation Guarantee for a Floor Broker

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 June 14, 2018, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 amend Commentary .02 to Rule 1064.

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 amend Rule 1064 entitled “Crossing, Facilitation and Solicited Orders.” Specifically, the Exchange proposes to amend Commentary .02(ii) to Rule 1064 to amend the firm participation guarantee for a Floor Broker.

Today, Phlx offers certain firm participation guarantees to a Floor Broker who holds an equity, index or U.S. dollar-settled foreign currency option order of the eligible order size or greater (“original order”), the Floor Broker is entitled to cross a certain percentage of the original order with other orders that he is holding or in the case of a public customer order, with a facilitation order of the originating firm (i.e., the firm from which the original customer order originated). Today, the Exchange may determine, on an option by option basis, the eligible size for an order that may be transacted pursuant to this Commentary, however, the eligible order size may not be less than 500 contracts. Orders for less than 500 contracts may be crossed pursuant to Rule 1064 but are not subject to Commentary .02, subsection (iii) to Rule 1064 pertaining to participation guarantees. Similar to Cboe Exchange, Inc. (“CBOE”) the Exchange proposes to lower the eligible minimum order size from 500 to not less than 50 contracts.³ The Commission noted in an approval of the reduction from 500 to 50 for CBOE that it had already approved the facilitation mechanism of ISE, which guarantees 40% of orders to facilitating

³ See CBOE Rule 6.74(d).

firms for order sizes of 50 or more contracts.⁴ In that approval order the Exchange approved the reduction in the size requirement, from 500 to 50 contracts, because the CBOE proposal raised no new regulatory issues.⁵ The Commission noted that it will benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms under the rules of the ISE and the CBOE, and will allow the CBOE to compete without disadvantage for facilitation orders.⁶

The Exchange notes that, today, Rule 1064, Commentary .02 provides that if the same member organization is the originating firm and also the specialist for the particular class of options to which the order relates, then the specialist is not entitled to any Enhanced Specialist Participation with respect to the particular cross transaction. The Exchange notes that this limitation is not being amended with this proposal. The specialist would not be able to obtain an allocation in excess of the 40% allocation.

The Exchange believes that this reduction from 500 to 50 contracts for the firm participation guarantee will continue to incentivize floor brokers to execute crossing orders on Phlx. The Exchange continues to reward the market participant that brought together market participants and executed orders on its trading floor. Further, the reduced contract size will benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms with competing options venues. As noted in the CBOE proposal, today other competing mechanisms offer guarantees of 40% of orders to facilitating firms for order sizes of

⁴ See Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000) (SR-CBOE-99-10)(Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Participation Rights for Firms Crossing Orders.)

⁵ Id.

⁶ Id.

50 or more contracts.⁷ The Exchange believes that the ability to obtain a 40% guarantee on smaller sized orders will incentivize market participants to competitively price trades in order to execute a greater number of smaller orders. The Exchange believes that the incentive encourages competition on Phlx and in turn benefits market participants in terms of competitive pricing for those orders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ 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 eligible minimum order size within Commentary .02(ii) of Rule 1064, from 500 to not less than 50 contracts, to promote competition.

The Exchange's proposal to lower the current eligible minimum order size in Commentary .02(ii) of Rule 1064 from 500 to not less than 50 contracts is consistent with the Act as it should promote just and equitable principles of trade by allowing for substantially consistent treatment of crossing mechanisms with CBOE. Phlx market participants would be permitted to compete without disadvantage for facilitation orders with CBOE which today has the eligibility size proposed by Phlx.¹⁰

The Exchange believes that this reduction from 500 to 50 contracts for the firm participation guarantee will continue to incentivize floor brokers to execute crossing orders on Phlx. The Exchange continues to reward the market participant that brought together market

⁷ See note 4 above.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See note 4 above.

participants and executed orders on its trading floor. Further, the reduced contract size will benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms with competing options venues.

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 amendment to Commentary .02(ii) of Rule 1064 does not impose an undue burden on intra-market competition because the proposed rule change will apply uniformly to all market participants. The Exchange currently has a competitive market for orders of 500 contracts or more, notwithstanding the current 40% firm participation guarantee for these orders, and therefore believes that extending this treatment to orders of 50 contracts or more (similar to other markets) will not have a significant impact on competition. The firm participation guarantee is designed as an incentive to market participants that bring order flow to the Phlx floor and is similar to allocation entitlements that exist on other floor based and electronic markets. The Commission has consistently found that rules entitling a market participant or participants up to 40% of an order are not inconsistent with the statutory standards of competition and free and open markets, including in approving the Exchange's own firm participation guarantee.¹¹ The Exchange believes that adopting a lower size threshold for this guarantee will benefit Phlx market participants by encouraging greater order flow and therefore increased opportunities for all market participants to trade, while ensuring that the trading crowd can still compete for a large portion of such orders. Furthermore, the proposal does not create an undue burden on inter-market competition because market participants would be permitted to compete without

¹¹ See Securities Exchange Act Release No. 47819 (May 8, 2003), 68 FR 25924 (May 14, 2003) (SR-Phlx-2002-17) (Approval Order).

disadvantage for facilitation orders with CBOE. As noted in the CBOE proposal, today other competing mechanisms offer guarantees of 40% of orders to facilitating firms for order sizes of 50 or more contracts.¹² The Exchange believes the guarantee may incentivize an increase in the flow of smaller orders to the trading floor because it will encourage market participants to offer competitive pricing in order to interact with that order flow.

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 Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission

¹² See note 4 above.

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

waive the 30-day operative delay so that the proposed rule changes may become operative immediately upon filing. The Exchange believes that waiver of the operative delay would allow the Exchange to more effectively compete with CBOE by offering a firm participation allocation with the same eligibility size that CBOE currently offers. Additionally, the Commission notes that the proposed rule change is based on the current rules of CBOE¹⁷ and that it recently approved a similar rule change for the BOX Options Exchange LLC.¹⁸ As such, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁹

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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:

¹⁷ See supra note 4.

¹⁸ See Securities Exchange Act Release No. 82456 (January, 8, 2008), 83 FR 1651 (January 12, 2018) (SR-BOX-2017-33) (Approval Order).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2018-48 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-2018-48. 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-2018-48 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.²⁰

Eduardo A. Aleman
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).