

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85262; File No. SR-Phlx-2019-03)

March 7, 2019

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Option Floor Procedure Advice A-9 and Phlx Rules 1000 and 1066 and to Adopt a New Phlx Rule 1078

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 February 26, 2019, 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, 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 Option Floor Procedure Advice (“OFPA”) A-9, titled “All-or-None Options Orders,” amend Phlx Rule 1066, titled “Certain Types of Floor-Based (Non-System) Orders Defined,” and adopt a new Phlx Rule 1078, titled “All-or-None Orders.”

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in 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: (i) amend OFPA A-9, titled "All-or-None Options Orders"; (ii) amend Phlx Rule 1066, titled "Certain Types of Floor-Based (Non-System) Orders Defined"; (iii) adopt new Phlx Rule 1078, titled "All-or-None Orders;" and (iv) amend Phlx Rule 1000(b)(14) which described a professional order. Each change will be discussed in detail below.

Description of an All-or None Order

Today, Phlx Rule 1066, "Certain Types of Floor-Based (Non-System) Orders Defined," at paragraph (c)(4) describes an All-or-None Order as a market or limit order which is to be executed in its entirety or not at all. OFPA A-9, describes an all-or-none option order as a limit order which is to be executed in its entirety, or not at all. The Exchange proposes to amend Rule 1066(c)(4) and OFPA A-9 to reference new Phlx Rule 1078 for the description of an All-or-None Order, thereby creating a single description of an All-or-None Order for purposes of the Phlx Rulebook to avoid confusion.

The Exchange proposes to state within new Rule 1078 that, "An All-or-None Order is a limit order or market order that is to be executed in its entirety or not at all." This is the case today, an All-or-None Order may be either a limit order or market order, as provided for in Rule 1066(c)(4), although the current description within OFPA A-9 simply states limit order. The Exchange has noted in other rule changes that an All-or-None Order may be a limit or market

order.³ The Exchange further proposes to state within new Rule 1078 that “All-or-None Orders are non-displayed and non-routable.⁴” Also, the Exchange proposes to state that “All-or-None Orders are executed in price-time priority among all public customer⁵ Orders if the size contingency can be met.” Finally, the Exchange proposes to memorialize that, “The Acceptable Trade Range protection in Rule 1099(a) is not applied to All-or-None Orders.” The Exchange previously noted this limitation in a rule change.⁶ The Exchange does not offer the Acceptable Trade Range protection to All-or-None Orders because it is difficult to apply this feature to an all-or-none because of the contingency associated with this order type. The Exchange believes that noting this limitation within new Rule 1078 will add greater transparency to the order type.

³ See Securities Exchange Act Release No. 83141 (May 1, 2018), 83 FR 20123, 20124 at footnote 7 (May 7, 2018) (SR-Phlx-2018-32).

⁴ See Securities Exchange Act Release No. 83141 (May 1, 2018), 83 FR 20123, at 20124 (May 7, 2018) (SR-Phlx-2018-32). In this filing the Exchange also noted that an All-or-None Order is a non-displayed order type.

⁵ For purposes of this rule change, the term “public customer” shall mean a person or entity that is not a broker or dealer in securities and is not a professional as defined within Phlx Rule 1000(b)(14).

⁶ See Securities Exchange Act Release No. 69848 (June 25, 2018), 78 FR 39346, 39348 at footnote 4 (July 1, 2013) (SR-Phlx-2013-69).

Today, All-or-None Orders are available to public customers⁷ and professionals.⁸ The Exchange initially offered All-or-None Orders to professionals in 2010 at the time of the adoption of the new term “professional.”⁹ The Exchange proposes to amend its current practice and offer All-or-None Orders to public customers only.

The Exchange believes that permitting only public customers to utilize All-or-None Orders on the Order Book is consistent with the Act because unlike other market participants, public customers do not have access to the same technology as Registered Options Traders,¹⁰

⁷ See Phlx Rule 1098(b)(v), which states, “All-or-none orders - to be executed in its entirety or not at all. These orders can only be submitted for non-broker-dealer customers.” See Securities Exchange Act Release No. 76742 (December 22, 2015), 80 FR 81393 (December 29, 2015) (SR-Phlx-2015-49). Within this rule change footnote 101 provides, among other information, that these orders can only be submitted for non-broker-dealer customers. See also Securities Exchange Act Release No. 74746 (April 16, 2015), 80 FR 22569 (April 22, 2015) (SR-Phlx-2014-66) (Notice of Filing of Amendment No. 2 and Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 2, To Adopt New Exchange Rule 1081, Solicitation Mechanism, To Introduce a New Electronic Solicitation Mechanism). Footnote 39 to this rule change provides, “All-or-none orders can only be submitted for non-broker dealer customers.”

⁸ The term “professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

⁹ See Securities Exchange Act Release No. 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (SR-Phlx-2010-05) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to Professional Orders) (“Professional Filing”).

¹⁰ Registered Options Traders (“ROTs”) includes Streaming Quote Traders (“SQTs”) and Remote Streaming Quote Traders (“RSQTs”). A ROT is a regular member or a foreign currency options participant of the Exchange who has received permission from the Exchange to trade in options for his own account. 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. An RSQT is an ROT that is a member affiliated with an RSQT with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations

Specialists,¹¹ professionals, firms and broker-dealers. Unlike other market participants, public customers do not have the tools to monitor trading activity throughout the trading day and react to changes in market pricing. Permitting public customers to enter All-or-None Orders with specific size limitations that rest on the Order Book would continue to allow public customers the opportunity to obtain fills for their orders when the market moves even if the All-Or-None Order was not immediately executable upon entry.

Rule 1000(b)(14)

At the time the Exchange adopted the term “professional,” the Exchange noted within Rule 1000(b)(14) the manner in which professional orders would be treated. Specifically, Phlx Rule 1014(b)(14) provides, “....[sic]A professional will be treated in the same manner as an off-floor broker-dealer_for purposes of Rules 1014(g)¹² (except with respect to All-or-None Orders, which will be treated like customer orders, except that orders submitted pursuant to Rule 1087¹³ for the beneficial account(s) of professionals with an all-or-none designation will be treated in the same manner as off-floor broker-dealer orders),1033(e),¹⁴ 1064, Commentary .02¹⁵ (except

electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Specialist upon Exchange approval. A floor market maker is known as a non-SQT ROT in Rule 1014(b)(ii)(C). A non-SQT ROT is an ROT who is neither an SQT nor an RSQT.

¹¹ A Specialist is an Exchange member who is registered as an options specialist. See Phlx Rule 1020(a).

¹² Rule 1014(g) concerns the allocation of interest on Phlx.

¹³ Rule 1087 concerns the Price Improvement XL auction.

¹⁴ Rule 1033(e) concerns Synthetic Option Orders.

¹⁵ Rule 1064 at Commentary .02 concerns the floor Firm Participation Guarantee.

professional orders will be considered customer orders subject to facilitation), 1087 and 1098,¹⁶ as well as OFPA B-6¹⁷ and F-5.”¹⁸ Further, the Professional Filing stated,

‘...In this regard, the Commission does not believe that the Act requires that the orders of a public customer or any other market participant be granted priority. Historically, in developing their trading and business models, exchanges have adopted rules, with Commission approval, that grant priority to certain participants over others, in order to attract order flow or to create more competitive markets. However, the Act does not entitle any participant to priority as a right. The requirement of section 6(b)(8) of the Act that the rules of an exchange not impose an unnecessary or inappropriate burden upon competition does not necessarily mandate that a Professional (as defined in the Phlx proposal) be granted priority at a time that a broker-dealer is not granted the same right. The Phlx proposal simply restores the treatment of persons who would be deemed Professionals to a base line where no special priority benefits are granted. Thus, the Commission believes that it is consistent with the Act for Phlx to amend its rules so that Professional orders, like the orders of broker-dealers, are not granted special priority.’ [footnotes omitted]

Unlike public customers, professionals conduct business in the same manner as an off-floor broker-dealer and therefore have the ability to react to market conditions swiftly when entering orders. The Exchange proposes to amend Rule 1000(b)(14) to remove the following text, “...(except with respect to All-or-None Orders, which will be treated like customer orders, except that orders submitted pursuant to Rule 1087 for the beneficial account(s) of professionals with an all-or-none designation will be treated in the same manner as off-floor broker-dealer orders).”

¹⁶ Rule 1098 concerns Complex Orders.

¹⁷ OFPA B-6 is titled “Priority of Options Orders for Equity Options, Index Options and U.S. Dollar-Settled Foreign Currency Options by Account Type (Equity Option, Index Options and U.S. dollar-settled foreign currency option only).”

¹⁸ OFPA F-5 is titled “Changes or Corrections to Material Terms of a Matched Trade.”

Rule 1066

The Exchange's proposal to amend Phlx Rule 1066 by deleting the current description and instead indicating, "An All-or-None Order is described in Rule 1078," will bring greater consistency to the usage of the term all-or-none throughout Phlx's Rules.

OFPA A-9

The Exchange's proposal to amend OFPA A-9 to indicate that this rule applies to an All-or-None Order submitted on the trading floor will bring greater transparency to this rule. The Exchange's proposal to remove the description of an All-or-None Order from this rule and instead refer to the description in proposed new Rule 1078 will bring greater consistency to the usage of the term All-or-None Order throughout Phlx's Rules. The Exchange proposes to remove the sentence that provides, "Unlike a fill-or-kill order, an All-or-None Order is not cancelled if it is not executed as soon as it is represented in the trading crowd" because All-or-None Orders are not technically cancelled in the trading crowd, they are simply not consummated or withdrawn. The Exchange proposes to add the word "trading" before the word "crowd" for clarity. The Exchange proposes to remove the last paragraph of OFPA A-9 because priority for All-or-None Orders is described in proposed new Rule 1078 and that rule is proposed to be referenced within OFPA A-9.

Implementation

The Exchange would implement the changes proposed herein prior to May 31, 2019. The Exchange would issue an Options Trader Alert announcing the exact date of implementation in advance.¹⁹

¹⁹ See Options Trader Alert 2018-47.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ 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, by more specifically defining an All-or-None Order within the Exchange's Rules and conforming the term throughout the Phlx rules to bring greater transparency to this order type. The Exchange specifically proposes to make clear within new Rule 1078 that All-or-None Orders are non-displayed and non-routable.²² In addition, indicating that All-or-None Orders are executed in price-time priority among all public customer orders if the size contingency can be met will bring greater clarity to the Exchange's Rules. Finally, memorializing that the Acceptable Trade Range protection in Rule 1099(a) is not applied to All-or-None Orders will make clear that this limitation exists. Today, the Exchange does not offer the Acceptable Trade Range protection to All-or-None Orders because it is difficult to apply this feature to an All-or-None Order because of the contingency associated with this order type.²³ The Exchange believes that noting this limitation within new Rule 1078 will add greater transparency to the order type.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² See Securities Exchange Act Release No. 83141 (May 1, 2018), 83 FR 20123, at 20124 (May 7, 2018) (SR-Phlx-2018-32). In this filing the Exchange also noted that an All-or-None Order is a non-displayed order type.

²³ See Securities Exchange Act Release No. 69848 (June 25, 2018), 78 FR 39346, 39348 at footnote 4 (July 1, 2013) (SR-Phlx-2013-69).

The Exchange's proposal to amend the All-or-None Order type so that it would only be available to public customers, and not be available professionals,²⁴ is consistent with the Act. Today, public customers are afforded certain priorities within the Exchange's Rules that are not offered to other market participants, including professionals. Today, for example, public customers are offered priority with respect to the execution of Qualified Contingent Cross Orders. Specifically, Phlx Rule 1080(o) provides that a Phlx Order Entry Firm effectuating a trade in the System pursuant to the Regulation NMS QCT Trade Exemption to Rule 611(a) can cross the options leg of the trade on Phlx as a QCC Order immediately upon entry and without order exposure if no public customer orders²⁵ exist on the Exchange's order book at the same price.²⁶ In addition, with respect to the Exchange's allocation rule, public customer [sic] have a different priority as compared to professionals, as well as all other market participants. Orders are allocated such that the highest bid and lowest offer shall have priority, except that public customer orders have priority over non-public customer, including non-All-or-None professional orders at the same price, provided the public customer order is executable.²⁷

Phlx notes that public customer orders are a source of liquidity in the market, and exchanges have sought to attract such orders by providing public customers certain guarantees that their orders would be executed even in the face of competition from broker-dealers. Further, providing marketplace advantages to public customer orders attracts main street retail investor

²⁴ Today the All-or-None Order type is available to public customers and professionals.

²⁵ Phlx will reject a QCC Order that attempts to execute when any Customer orders are resting on the Exchange limit order book at the same price.

²⁶ See Phlx Rule 1080(o).

²⁷ If there are two or more public customer orders for the same options series at the same price, priority shall be afforded to such public customer orders in the sequence in which an order is received by the System.

order flow to the Exchange by leveling the playing field for retail investors over market professionals and providing competitive pricing.

Today, the Exchange offers the All-or-None Order type to public customers to permit the entry of smaller-sized contingency orders. Professionals, while offered All-or-None Orders, rarely submit such orders. The Exchange believes that offering All-or-None Orders solely to public customers is appropriate. Unlike ROTs, Specialists, professionals, firms and broker-dealers, public customers do not have access to information and technology that enables them to trade listed options in the same manner as a broker or dealer in securities. Professionals, for example, have the same technological and informational advantages as broker-dealers trading for their own accounts, which enables professional account holders to compete effectively with broker-dealer orders and market maker quotes for execution opportunities. ROTs, Specialists, firms and broker-dealers also have tools and infrastructure which monitor the marketplace in real-time. These non-public customer market participants have the ability to react to changes in the market and effectuate trades in a way that public customers may not have with respect to entering specialized orders that have a size contingency in order to effectuate a hedge.

The Exchange believes that it is consistent with fair competition to offer the All-or-None Order type solely to public customers in order to permit these main street retail investors to have advantages over broker-dealers trading on the Phlx. Further, broker dealers cannot use the All-or-None Order type today. Professionals are treated in the same manner as a broker dealer for purposes of Exchange rules. The Exchange believes that Professionals would be aligned with broker dealers with respect to not being offered the All-or-None Order type.

Rule 1000(b)(14)

The Exchange's proposal to amend Rule 1000(b)(14) by removing text related to All-or-None Orders executed by professionals that interact on the Order Book would align this rule with this proposal.

Rule 1066

The Exchange's proposal to amend Rule 1066 by deleting the current description and instead indicating, "An All-or-None Order is described in Rule 1078" will bring greater consistency to the usage of the term all-or-none throughout Phlx's Rules.

OPFA A-9

The Exchange's proposal to amend OPFA A-9 to indicate that this rule applies to an All-or-None Order submitted on the trading floor will bring greater transparency to this rule. The Exchange's proposal to remove the description from this rule and instead refer to the description in Rule 1078 will bring greater consistency to the usage of the term all-or-none throughout Phlx's Rules. Finally removing language that is not relevant to the trading floor will bring clarity to the rule as modified.

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 notes that adopting a new Rule 1078 and memorializing the All-or-None Order type with greater detail will bring greater transparency to the order type to the benefit of all market participants.

Not offering the All-or-None Order type to professionals does not create an undue burden on competition because unlike professionals, public customers do not have access to information and technology that enables them to trade listed options in the same manner as a broker or dealer

in securities. Professionals on the other hand have the same technological and informational advantages as broker-dealers trading for their own accounts, which enables professional account holders to compete effectively with broker-dealer orders and market maker quotes for execution opportunities. ROTs, Specialists, firms and broker-dealers all have tools and infrastructure which monitor the marketplace in real-time. These non-public customer market participants have the ability to react to changes in the market and effectuate trades in a way that public customers may not have with respect entering specialized orders that have a size contingency in order to effectuate a hedge.

The Exchange believes that it is consistent with fair competition to offer the All-or-None Order type solely to public customers in order to permit these main street retail investors to have advantages over broker-dealers trading on the Phlx. Also, the Exchange notes that it is rare for Professionals to utilize the All-or-None Order type. Broker dealers cannot use the All-or-None Order type today. Professionals are treated in the same manner as a broker dealer for purposes of Exchange rules. The Exchange believes that Professionals would be aligned with broker dealers with respect to not being offered the All-or-None Order type.

Further, as compared to all other market participants, public customer orders are a source of liquidity in the market. Providing marketplace advantages to public customer orders attracts retail investor order flow to the Exchange by leveling the playing field for main street retail investors over market professionals and providing competitive pricing.

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 Act²⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁹

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 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2019-03 on the subject line.

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 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 a 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.

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-2019-03. 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-2019-03 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.³⁰

Eduardo A. Aleman
Deputy Secretary

³⁰ 17 CFR 200.30-3(a)(12).