

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87030; File No. SR-NASDAQ-2019-077)

September 19, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Order Routing Rule in NOM Chapter VI, Section 11

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 September 12, 2019, The Nasdaq Stock Market LLC (“Nasdaq” 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 amend The Nasdaq Options Market LLC Rules at Chapter VI, Section 11, titled “Order Routing”.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.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 NOM Chapter VI, Section 11, titled “Order Routing” to conform the rule text of NOM’s Chapter VI, Section 11, where applicable, to Nasdaq Phlx LLC (“Phlx”) Rule 1093 and Nasdaq BX, Inc. (“BX”) Chapter VI, Section 11 where the routing behavior is identical. Phlx and BX recently amended their routing rules.³ The Exchange notes that the proposed amendments to NOM Chapter VI, Section 11 reflect the current operation of the System. The Exchange proposes to provide additional scenarios and outcomes when routing on NOM.

The Exchange proposes to provide rule text within proposed NOM Chapter VI, Section 11(a)⁴ similar to Phlx Rule 1093(a) and BX Chapter VI, Section 11(a). Phlx offers FIND and SRCH routing strategies, NOM and BX offer SEEK and SRCH routing strategies.⁵ Some other

³ See Securities Exchange Act Release Nos. 85655 (April 16, 2019), 77 FR 16709 (April 22, 2019) (SR-Phlx-2019-06); and 86060 (June 6, 2019), 84 FR 27374 (June 12, 2019) (SR-BX-2019-017).

⁴ Proposed NOM Chapter VI, Section 11(a) would provide, “NOM offers two routing strategies, SEEK and SRCH. Each of these routing strategies will be explained in more detail below. An order may in the alternative be marked Do Not Route or “DNR”. The Exchange notes that for purposes of this rule the System will route SEEK and SRCH Orders with no other contingencies. The System checks the Order Book for available contracts for potential execution against the SEEK or SRCH orders. After the System checks the Order Book for available contracts, orders are sent to other available market centers for potential execution. For purposes of this rule, a Route Timer shall not exceed one second and shall begin at the time orders are accepted into the System, and the System will consider whether an order can be routed at the conclusion of each Route Timer. For purposes of this rule, NOM’s opening process is governed by Chapter VI, Section 8 and includes an opening after a trading halt (“Opening Process”).”

⁵ NOM and BX do not have a FIND routing strategy similar to Phlx.

differences among the three markets include: (1) Phlx's All-or-None⁶ Order type differs from NOM⁷; (2) unlike Phlx and BX, NOM does not have an exposure notification⁸; (3) unlike Phlx and BX where Immediate or Cancel Orders will not route, NOM Immediate or Cancel ("IOC") Orders are considered for routing and will cancel if not executed on NOM or an away market⁹ and (4) NOM defines a Public Customer at Chapter I, Section 1(a)(49) similar to BX, while Phlx defines Public Customer within Rule 1093(a).¹⁰

Further, the Exchange is amending NOM Chapter VI, Section 11 to add more clarity to the current Rule. The proposed changes will be discussed below in greater detail. The Exchange notes that the amendments to NOM Chapter VI, Section 11 reflect the current operation of the System

⁶ See Phlx Rule 1078. Phlx's All-or-None Order is non-displayed. This order type could cause Phlx's Order Book to differ from the displayed PBBO. NOM has no such non-displayed order type.

⁷ See NOM Chapter VI, Section 1(e)(10). "All-or-none" shall mean a market or limit order which is to be executed in its entirety or not at all. All-or-None Orders are treated as having a time-in-force designation of Immediate or Cancel. All-or-None Orders received prior to the opening cross or after market close will be rejected.

⁸ Both Phlx and BX offer an exposure notification during the Route Timer. This notification alerts options participants that interest is available and currently subject to a Route Timer. The notification provides information on price, size, and side of interest that is available for execution.

⁹ See NOM Chapter VI, Section 1(g)(2). "Immediate Or Cancel" or "IOC" shall mean for orders so designated, that if after entry into the System a marketable order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. IOC Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close. IOC Orders entered between the time specified by the Exchange on its website and 9:30 a.m. Eastern Time will be held within the System until 9:30 a.m. at which time the System shall determine whether such orders are marketable.

¹⁰ BX and NOM Rules at Chapter 1, Section 1(a)(49) provide, "The term "Public Customer" means a person that is not a broker or dealer in securities."

The Exchange proposes to capitalize the term “system” as that term is defined within Chapter VI, Section 1(a) throughout the rule.

Chapter VI, Section 11(a)

Current NOM Chapter VI, Section (a)(1)(C) language concerning the Route Timer is being relocated into proposed NOM Chapter VI, Section 11(a). The SEEK and SRCH routing functions describe the manner in which the Order Book is checked, this sentence is not necessary in this introductory paragraph.

The Exchange proposes a new second paragraph at NOM Chapter VI, Section 11(a)¹¹ similar to BX Chapter VI, Section 11(a) and Phlx Rule 1093. The first sentence of current NOM Chapter VI, Section 11(a)¹² is being amended and relocated to proposed NOM Chapter VI, Section 11(a). The first sentence currently provides, “For System securities, the order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close and shall route orders as described below.” The amendment to the rule text is not substantive. The Exchange proposes to relocate the remainder of current NOM Chapter VI, Section 11(a) to the

¹¹ The second paragraph of proposed NOM Chapter VI, Section 11(a) would provide, “Routing instructions may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing instruction. The term “System routing table” refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing instructions and to modify the System routing table at any time without notice. The order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close and shall route orders as described below. Participants can designate orders as either available for routing or not available for routing. All routing of orders shall comply with Chapter XII, Options Order Protection and Locked and Crossed Market Rules.”

¹² Proposed NOM Chapter VI, Section 11(a) provides, “For System securities, the order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close and shall route orders as described below. Participants can designate orders as either available for routing or not available for routing. All routing of orders shall comply with Chapter XII, Options Order Protection and Locked and Crossed Market Rules.”

first sentence of the second paragraph of proposed NOM Chapter VI, Section 11(a). Finally, the Exchange proposes to relocate current NOM Chapter VI, Section 11(a)(1)¹³ to the second paragraph of proposed Chapter VI, Section 11(a) and amend the term “routing options” to “routing instructions.”

Proposed NOM Chapter VI, Section 11(a)(i)¹⁴ is being relocated from current NOM Chapter VI, Section 11(c)¹⁵ with some minor non-substantive changes to the rule text to conform the paragraph to Phlx Rule 1093(a)(i) and BX Chapter VI, Section 11(a)(i).

Current NOM Chapter VI, Section 11(d)¹⁶ is proposed to be relocated to proposed NOM Chapter VI, Section 11(a)(ii) with some minor non-substantive changes. The Exchange proposes to relocate NOM Chapter VI, Section 11(e) and (f) to proposed NOM Chapter VI, Section

¹³ Current NOM Chapter VI, Section 11(a)(1) provides, “The system provides a number of routing options pursuant to which orders are sent to other available market centers for potential execution, per the entering firm’s instructions. Routing options may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option. The term “System routing table” refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The system routing options are:”.

¹⁴ Current NOM Chapter VI, Section 11(b) is reserved and is being deleted.

¹⁵ Current NOM Chapter VI, Section 11(c) provides, “Priority of Routed Orders. Orders sent by the System to other markets do not retain time priority with respect to other orders in the System and the System shall continue to execute other orders while routed orders are away at another market center. Once routed by the System, an order becomes subject to the rules and procedures of the destination market including, but not limited to, order cancellation. A routed order can be for less than the original incoming order’s size. If a routed order is subsequently returned, in whole or in part, that routed order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System, unless any portion of the original order remains on the System, in which case the routed order shall retain its timestamp and its priority.”

¹⁶ Current NOM Chapter VI, Section 11(d) provides, “Options Participants whose orders are routed to away markets shall be obligated to honor such trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on NOM.”

11(a)(ii)(A)-(F). Current Chapter VI, Section 11(g), “Cancellation of Orders and Error Account” is being re-lettered from “g” to “b” with no changes to the rule text.

DNR Orders

The Exchange proposes to add a new NOM Chapter VI, Section 11(a)(iii)¹⁷ with the following text, “The following order types are available:”. The Exchange proposes to adopt a new paragraph at NOM Chapter VI, Section 11(a)(iii)(A) to describe the manner in which a DNR Order would be handled by the System. Current Chapter VI, Section 11(a) provides Participants can designate orders as either available for routing or not available for routing but offers no other detail. While the proposed new paragraph is similar to NOM and BX, the Exchange notes that unlike Phlx Rule 1093(a)(iii)(A) and BX Chapter VI, Section 11(a)(iii)(A), any references to exposure would not be included in the NOM DNR Order description as NOM does not offer an exposure notification. The Exchange notes that the NOM DNR Order description provides detail as to the manner in which DNR Orders are handled currently by the System. A DNR Order would be repriced in the case of a locked or crossed market. The Exchange displays the DNR Order at one MPV away in compliance with Regulation NMS. An order will not be executed at a price that trades through another market or displayed at a price

¹⁷ Proposed NOM Chapter VI, Section 11(a)(iii)(A) provides, “A DNR Order will never be routed outside of the Exchange regardless of the prices displayed by away markets. A DNR Order may execute on the Exchange at a price equal to or better than, but not inferior to, the best away market price but, if that best away market remains, the DNR Order will remain in the Exchange book and be displayed at a price one minimum price variation (“MPV”) away from that ABBO. Any incoming order interacting with such a resting DNR Order will execute at the ABBO price, unless (1) the ABBO is improved to a price which crosses the DNR’s displayed price, in which case the incoming order will execute at the previous ABBO price; (2) the ABBO is improved to a price which locks the DNR’s displayed price, in which case the incoming order will execute at the DNR’s displayed price. Should the best away market move to an inferior price level, the DNR Order will automatically re-price from its one MPV inferior to the original away best bid/offer price to one MPV away from the new away best bid/offer price or its original limit price.”

that would lock or cross another market. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions.¹⁸ The Exchange also provides details as to the price at which a DNR Order would rest on the Order Book and/or execute. While the ABBO can improve when it crosses a DNR Order the updated ABBO cannot be utilized to execute the DNR Order. However, if the DNR order locks or crosses the BBO, the DNR order will immediately execute. This proposed new paragraph will add greater transparency as to the handling of DNR Orders. The Exchange believes that the proposed language will benefit market participants because it provides greater information. Specifically, the Exchange proposes to make clear that any incoming order interacting with such a resting DNR Order will execute at the ABBO price, unless (1) the ABBO is improved to a price which crosses the DNR's displayed price, in which case the incoming order will execute at the previous ABBO price; (2) the ABBO is improved to a price which locks the DNR's displayed price, in which case the incoming order will execute at the DNR's displayed price. This proposed rule text provides the scenarios of when the ABBO, if improved, would cause the DNR Order to execute and at what price depending on whether the ABBO was locked or crossed.

SEEK Order

The Exchange proposes to relocate SEEK Orders which are currently within NOM Chapter VI, Section 11(a)(1)(A) into proposed new NOM Chapter VI, Section 11(a)(iii)(B) similar to BX Chapter VI, Section 11(a)(1)(A).¹⁹

The first two sentences of current NOM Chapter VI, Section 11(a)(1)(A) provide, "SEEK

¹⁸ Also, an order that is designated by the member as routable will be routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions. See NOM Chapter XII.

¹⁹ As noted herein, Phlx does not have SEEK Orders.

is a routing option pursuant to which an order will first check the System for available contracts for execution. After checking the System for available contracts, orders are sent to other available market centers for potential execution, per the entering firm's instructions.” The Exchange proposes to amend and relocate this rule text into proposed NOM Chapter VI, Section 11(a)(iii)(B).²⁰ The Exchange proposes to modify the second sentence of current NOM Chapter VI, Section 11(a)(1)(A) and simply provide that the SEEK Order will be sent to other available market centers for execution.

The Exchange proposes to provide information as to the manner in which a SEEK Order will be handled by the System. The Exchange proposes to add a new proposed paragraph at NOM Chapter VI, Section 11(a)(iii)(B)(1) to provide, “If a SEEK is received during the Opening Process it may route immediately after the Opening Cross pursuant to Chapter VI, Section 8(b)(7).” This new text describes the interplay of routing at the end of the Opening Process.²¹ The Exchange utilizes the word “may” because circumstances may change during the course of the Route Timer which may prevent the SRCH Order from routing (e.g. a halt). Further, there may be other routable orders with a higher time or price priority which may cause other SRCH Orders to not route because the away market may not have enough volume to satisfy all the SRCH Orders or the away market price may become inferior. The Exchange proposes to introduce the defined term “Opening Process” within proposed NOM Chapter VI, Section

²⁰ Proposed NOM Chapter VI, Section 11(a)(iii)(B) provides, “SEEK Order. SEEK is a routing option pursuant to which an order will first check the System for available contracts for execution, and then is sent to other available market centers for potential execution.”

²¹ Proposed NOM Chapter VI, Section 11(a)(iii)(B)(1) provides, “If a SEEK is received during an Opening Process it may route as part of the Opening Cross pursuant to Chapter VI, Section 8(b)(7).”

11(a).²²

The Exchange proposes to add a new proposed paragraph at NOM Chapter VI, Section 11(a)(iii)(B)(2) which provides, “A SEEK Order received after the Opening Process that is marketable against the ABBO will route immediately after exhausting all Exchange BBO interest at the same or better price.” Any SEEK Order received after the Opening Process, provided it is marketable against the ABBO, will immediately route after exhausting all Exchange BBO interest priced the same or better than the ABBO. The Exchange notes that during the Route Timer the SEEK Order is displayed as part of the BBO, unless it locks or crosses

The Exchange proposes a to state at NOM Chapter VI, Section 11(a)(iii)(B)(3),

If the SEEK Order still has remaining size after an initial route attempt, it may: (i) trade at the next Exchange BBO price (or prices) if the SEEK Order price is locking or crossing that price (or prices) up to the next ABBO price, and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the Exchange BBO or the ABBO, except a Price Improving SEEK Order will book at its limit price and display one MPV inferior to its limit price. If the SEEK Order trades at the next Exchange BBO price (or prices) and the SEEK Order still has remaining size after the execution, then it may start a Route Timer if the SEEK Order is locking or crossing the ABBO, provided the SEEK Order is not booked at its limit price.

The current rule provides that the order will post to the Order Book and initiate a Route Timer. The Exchange proposes to make clear that several scenarios are possible. First, the SEEK Order may trade at the next Exchange BBO price (or prices) if the SEEK Order price is locking or crossing that price (or prices) up to the next ABBO price. Second, the SEEK Order may be entered into the Order Book at its limit price if not locking or crossing the Exchange BBO or the ABBO. Third, if the SEEK Order trades at the next BBO price (or prices) and the SEEK Order still has remaining size after the execution, then it may start a Route Timer if the

²² The last sentence of the first paragraph of proposed Nasdaq Chapter VI, Section 11(a) provides, “For purposes of this rule NOM’s opening process is governed by Chapter VI, Section 8 and includes an opening after a trading halt (“Opening Process”).”

SEEK Order is locking or crossing the ABBO, provided the SEEK Order is not booked at its limit price. Current NOM Chapter VI, Section 11(a)(1)(C) provides, “If an order was routed with either the SEEK or SRCH routing option, and has size after such routing, it will execute against contra side interest in the book, post in the book, and route again pursuant to the process described above, if applicable, if the order's limit price would lock or cross another market center(s).” The proposed rule text provides more detail as to each of these outcomes.

The Exchange is adding detail about Price Improving Orders.²³ Specifically, the Exchange proposes to state that Price Improving Orders when booked at its limit price are displayed one MPV away. This is consistent with the description of the order type within NOM Chapter VI, Section 1(a)(6).

The Exchange proposes the following circumstances to inform Participants about the various possible outcomes that may occur with SEEK Orders. The proposed amendments to NOM Chapter VI, Section 11 reflect the current operation of the System. As noted herein, the BX rule text is not identical to the NOM rule text because NOM does not have exposure notifications and the Route Timers therefore initiate differently. The Exchange believes that memorializing these various outcomes will provide market participants with greater transparency as to manner in which SEEK Orders will be handled by the System.

Proposed new Chapter VI, Section 11(a)(iii)(B)(4) provides,

If during the Route Timer, the ABBO markets move such that the SEEK Order is no longer marketable against the ABBO, it may: (i) trade at the next Exchange BBO price (or prices) if the SEEK Order price is locking or crossing that price (or

²³ Price Improving Orders are orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent. Price Improving Orders that are available for display shall be displayed at the minimum price variation in that security and shall be rounded up for sell orders and rounded down for buy orders. See NOM Chapter VI, Section 1(a)(6).

prices), and/or (ii) be entered into the Order Book at its limit price (or one MPV inferior to its limit price for Price Improving Orders) if not locking or crossing the Exchange BBO. A SEEK Order will be included in the displayed Exchange BBO, unless the SEEK Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If there exists a locked ABBO when the SEEK Order is entered onto the Order Book, the SEEK Order will display at the locked ABBO price. If during the Route Timer any new interest arrives opposite the SEEK Order that is marketable against the SEEK Order, such interest will trade against the SEEK Order at the ABBO price unless the ABBO is improved to a price which crosses the SEEK Order's displayed price, in which case the incoming order will execute at the previous ABBO price. When checking the Order Book, the System will seek to execute at the price at which it would send the order to an away market. Eligible unexecuted orders will continue to be routed as described in paragraph (B)(3).

The Exchange proposes various scenarios that may occur during the Route Timer which would impact order routing. First, the Exchange addresses the scenario where the SEEK Order may not be marketable. If the SEEK Order is not marketable against the ABBO, it may: (i) trade at the next Exchange BBO price (or prices) if the SEEK Order price is locking or crossing that price (or prices), and/or (ii) be entered into the Order Book at its limit price (or an MPV inferior to its limit price for Price Improving Orders) if not locking or crossing the Exchange BBO. The Exchange believes the addition of this scenario brings more detail to the current NOM rule.

The Exchange further notes that a SEEK Order will be included in NOM's displayed BBO at its limit price, unless the SEEK Order locks or crosses the ABBO in which case the order will be repriced. The SEEK Order would be placed on the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If there exists a locked ABBO when the SEEK Order is entered on the Order Book, the SEEK Order will display at the locked ABBO price. The Exchange reprices orders to avoid locking or crossing an away market.

Finally, the Exchange proposes to also note that if during the Route Timer, any new interest arrives opposite the SEEK Order that is marketable against the SEEK Order, such

interest will trade against the SEEK Order at the ABBO price unless the ABBO is improved to a price which crosses the SEEK Order's displayed price. In this case the incoming order will execute at the previous ABBO price. The current NOM rule text at Chapter VI, Section 11(a)(1)(C) provides, "If, during the Route Timer, any new interest arrives opposite the order that is equal to or better than the ABBO price, the order will trade against such new interest at the ABBO price." The Exchange's proposed language considers the possibility that the ABBO may cross the SEEK Order displayed price and provides for that scenario as well. The Exchange proposes to make clear that better priced incoming interest will execute against the SEEK Order unless the ABBO crosses the SEEK Order, in which case any new interest will execute at the SEEK Order price.

The following sentence, "When checking the Order Book, the System will seek to execute at the price at which it would send the order to a destination market center" is contained within NOM Chapter VI, Section 11(a)(1)(A) and modified to state "Order Book". The current rule text at NOM Chapter VI, Section 11(a)(1)(C) provides, "Eligible unexecuted orders will be routed at the end of the Route Timer provided the order was not filled and the order's limit price would continue to lock or cross the ABBO." The Exchange proposes to refer instead back to proposed Chapter VI, Section 11(a)(iii)(B)(3) which includes the additional scenarios.

Current NOM Chapter VI, Section 11(a)(1)(A)²⁴ is relocated in part. The Exchange proposes to add detail to current rule text within proposed new Chapter VI, Section 11(a)(iii)(B)(5) which provides,

²⁴ The fifth and sixth sentence of current NOM Chapter VI, Section 11(a)(1)(A) provide, "If contracts remain un-executed after routing, they are posted on the book at its limit price. While on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center."

SEEK Orders booked at their limit price will subsequently be treated as DNR and will not be eligible for routing until the next time the option series is subject to an Opening Process pursuant to Chapter VI, Section 8.

The Exchange is retaining current language, in part, and adding rule text specifically concerning Price Improving Orders. The last sentence of current NOM Chapter VI, Section 11(a)(1)(A), provides, “SEEK Orders will not be eligible for routing until the next time the option series is subject to a new opening or reopening” will be relocated to proposed Chapter VI, Section 11(a)(iii)(B)(5) with the defined term “Opening Process” utilized to refer to the opening and reopening process. The Exchange proposes to modify current rule text to state that “SEEK Orders booked at their limit price will subsequently be treated as DNR and will not be eligible for routing until the next time the option series is subject to an Opening Process pursuant to Chapter VI, Section 8.”

The Exchange’s proposed rule text expands on this current rule text and provides for whether the order is marketable or not and whether the ABBO locks or crosses the SEEK Order. The Exchange believes that the proposed new rule text provides more context for Participants.

SRCH Order

The Exchange proposes to relocate SRCH Orders which are currently in NOM Chapter VI, Section 11(a)(1)(B) to proposed NOM Chapter VI, Section 11(a)(iii)(C). As noted herein, Phlx and NOM SRCH Orders differ. NOM SRCH Orders are similar to those of BX described within Chapter VI, Section 11(a)(1)(B).

The Exchange proposes to relocate the first two sentences of current NOM Chapter VI, Section 11(a)(1)(B) to proposed NOM Chapter VI, Section 11(a)(iii)(C).²⁵

²⁵ Proposed NOM Chapter VI, Section 11(a)(iii)(C) provides, “SRCH Order is a routing option pursuant to which an order will first check the System for available contracts for execution, and then is sent to other available market centers for potential execution.”

The Exchange proposes to state within proposed NOM Chapter VI, Section 11(a)(iii)(C)(1), “If a SRCH Order is received during an Opening Process it may route as part of the Opening Cross pursuant to Chapter VI, Section 8(b)(7).” Similar to the SEEK Order, this language will distinguish the Opening Process from intra-day

The Exchange proposes a new paragraph at proposed NOM Chapter VI, Section 11(a)(iii)(C)(2), which provides,

A SRCH Order received after the Opening Process that is marketable against the ABBO will route immediately after exhausting all Exchange BBO interest at the same or better price.

Similar to SEEK Orders, the Exchange proposes to make clear the manner in which a marketable order would route depending on the ABBO in relation to the Exchange BBO price.

The Exchange proposes to add new text at NOM Chapter VI, Section 11(a)(iii)(C)(3) which provides,

If the SRCH Order still has remaining size after an initial route attempt, it may: (i) trade at the next Exchange BBO price (or prices) if the SRCH Order price is locking or crossing that price (or prices) up to the next ABBO price, and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the Exchange BBO or the ABBO, except a Price Improving SRCH Order will book at its limit price and display one MPV inferior to its limit price. If the SRCH Order trades at the next Exchange BBO price (or prices) and the SRCH Order still has remaining size after the execution, then it may start a Route Timer if the SRCH Order is locking or crossing the ABBO.

Current NOM Chapter VI, Section 10(a)(1)(B) provide, “If contracts remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, it will re-route.” Similar to SEEK Orders, the Exchange proposes to expand on the various scenarios if the SRCH Order still has remaining size after an initial route attempt within NOM Chapter VI, Section 11(a)(iii)(C)(3). If the SRCH Order still has remaining size after an initial route attempt, it may: (i) trade at the next Exchange BBO price

if the SRCH Order price is locking or crossing that price (or prices) up to the next ABBO price, and/or be entered into the Order Book at its limit price if not locking or crossing the Exchange BBO or the ABBO, except a Price Improving SRCH Order will book at its limit price and display one MPV inferior to its limit price. The Exchange proposes these scenarios where the SRCH Order may not be marketable to bring more detail to the NOM rule. The Exchange then notes that if the SRCH Order trades at the next Exchange BBO price (or prices) and the SRCH Order still has remaining size after the execution, then it may start a Route Timer if the SRCH Order is locking or crossing the ABBO. The Exchange believes that explaining each scenario and the potential outcome will provide market participants with greater information as to the manner in which NOM's System will handle an order marked "SRCH." The proposed amendments to NOM Chapter VI, Section 11 reflect the current operation of the System.

NOM proposes to add new text at NOM Chapter VI, Section 11(a)(iii)(C)(4) which provides,

If during the Route Timer, the ABBO markets move such that the SRCH Order is no longer marketable against the ABBO, it may: (i) trade at the next Exchange BBO price (or prices) if the SRCH Order price is locking or crossing that price (or prices), and/or (ii) be entered into the Order Book at its limit price (or one MPV inferior to its limit price for Price Improving Orders) if not locking or crossing the Exchange BBO. A SRCH Order will be included in the displayed Exchange BBO, unless the SRCH Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If there exists a locked ABBO when the SRCH Order is entered onto the Order Book, the SRCH Order will display at the locked ABBO price. If during the Route Timer any new interest arrives opposite the SRCH Order that is marketable against the SRCH Order, such interest will trade against the SRCH Order at the ABBO price, unless the ABBO is improved to a price which crosses the SRCH Order's displayed price, in which case the incoming order will execute at the previous ABBO price. When checking the Order Book, the System will seek to execute at the price at which it would send the order to an away market. Eligible unexecuted orders will continue to be routed as described in paragraph (C)(3).

Similar to SEEK Orders, the Exchange proposes to describe the scenario where during the Route Timer, the ABBO moves and the SRCH Order is no longer marketable against the ABBO. In

this scenario, the SRCH Order may: (i) trade at the next Exchange BBO price (or prices) if the SRCH Order price is locking or crossing that price (or prices), and/or (ii) be entered into the Order Book at its limit price (or one MPV inferior to its limit price for Price Improving Orders) if not locking or crossing the Exchange BBO.

Similar to SEEK Orders, the Exchange notes that the SRCH Order will be included in the displayed Exchange BBO at its limit price, unless the SRCH Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If there is a locked ABBO when the SRCH Order is entered onto the Order Book, the SRCH Order will display at the locked ABBO price. This proposed rule text, similar to rule text for SEEK Orders provides market participants with information as to away bids and offers that are marketable against the SRCH Order. As stated in the DNR Order section, the Exchange would display the SRCH Order at one MPV away in compliance with Regulation NMS. An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions.²⁶

The Exchange proposes to relocate and amend current NOM Chapter VI, Section 11(a)(1)(C) provides, “If, during the Route Timer, any new interest arrives opposite the order that is equal to or better than the ABBO price, the order will trade against such new interest at the ABBO price” into proposed NOM Chapter VI, Section 11(a)(iii)(C)(4). The Exchange proposes to provide that if during the Route Timer any new interest arrives opposite the SRCH Order that is marketable against the SRCH Order, such interest will trade against the SRCH

²⁶ See NOM Chapter XII.

Order at the ABBO price. However, the Exchange also proposes to add the scenario where the ABBO is improved to a price which crosses the SRCH Order's displayed price, in which case the incoming order will execute at the previous ABBO price. Similar to SEEK Orders the Exchange is providing for a scenario where the SRCH Order is crossed.

The Exchange proposes to relocate the third sentence from current NOM Chapter VI, Section 11(a)(1)(B) and modify it to state, "When checking the Order Book, the System will seek to execute at the price at which it would send the order to a destination market center." Also, the Exchange proposes to relocate and modify the third sentence from current NOM Chapter VI, Section 11(a)(1)(C) and instead, similar to SEEK Orders, provide for eligible unexecuted orders by referring back to the proposed new rule text within NOM Chapter VI, Section 11(a)(iii)(C)(3).

The Exchange proposes new NOM Chapter VI, Section 11(a)(iii)(C)(5) which provides,

While on the Order Book at the limit price, should the SRCH Order subsequently be locked or crossed by another market center, it may attempt to route at the conclusion of the Route Timer.

Current rule text within NOM Chapter VI, Section 11(a)(1)(B) provides, "If contracts remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, it will re-route." This sentence is being modified to provide, at the end of NOM Chapter VI, Section 11(a)(iii)(C)(5), "While on the Order Book at the limit price, should the SRCH Order subsequently be locked or crossed by another market center, it may attempt to route at the conclusion of the Route Timer." The addition of "while on the Order Book at its limit price" provides some context to the scenario that is being described.

The Exchange proposes all of the following circumstances to inform Participants about the various possible outcomes that may occur with SRCH Orders. The proposed amendments to NOM Chapter VI, Section 11 reflect the current operation of the System. The Exchange believes that memorializing these various outcomes will provide market participants with greater transparency as to manner in which SRCH Orders will be handled by the System.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁸ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest because the Exchange is adding more detail to its routing rule to provide market participants with greater transparency. The Exchange believes the added scenarios will provide more context to routing in general and for the specific routing strategies for the benefit of investors and the public interest. Also, in defining terms and utilizing consistent language throughout the rule, the Exchange believes the proposed rule will provide transparency with respect to the manner in which NOM routes orders. The Exchange continues to offer various choices to its market participants with respect to routing. The Exchange notes that the proposed amendments to NOM Chapter VI, Section 11 reflect the current operation of the System.

Chapter VI, Section 11

The Exchange's proposal to utilize the term "System" will conform this rule to other NOM rules that utilize that term. Explaining the Route Timer at the beginning of this proposed rule will provide context to use of the term throughout the rule and avoid repetitiveness.

Defining minimum price variation and Opening Process will bring greater transparency to

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

proposed Chapter IV, Section 11. The Exchange believes that it is consistent with the Act to refer to the Opening Process within Chapter VI, Section 8 when referring to routing during the Opening Process to avoid confusion with respect to governing rules. The Exchange's proposal to add the concept of DNR at the beginning of the rule to make clear up-front that this option is available when selecting a routing strategy is a structural non-substantive change intended to bring greater clarity to the rule. The remainder of the rule changes in the introduction are non-substantive rule changes that simply seek to reorganize and add transparency to the current rule text.

Proposed NOM Chapter VI, Section 11(a)(i) is being relocated from current NOM Chapter VI, Section 11(c) with some minor non-substantive changes to the rule text to conform the paragraph to Phlx Rule 1093(a)(i) and BX Chapter VI, Section 11(a)(i). Relocating NOM Chapter VI, Section 11(d)-(f) are non-substantive changes. The Exchange believes that these amendments are consistent with the Act because they will bring greater clarity to NOM Chapter VI, Section 11.

DNR Orders

The Exchange's proposal to add a new NOM Chapter VI, Section 11(a)(iii)(A) to describe the handling of DNR Orders on NOM will bring greater transparency to the Rule. Current Chapter VI, Section 11(a) provides Participants can designate orders as either available for routing or not available for routing but offers no other detail. The new paragraph would be similar to Phlx Rule 1093(a)(iii)(A) and BX Chapter VI, Section 11(a)(iii)(A). The Exchange notes that unlike Phlx Rule 1093(a)(iii)(A) and BX Chapter VI, Section 11(a)(iii)(A), any references to exposure would not be included in the NOM DNR Order description as NOM does not offer an exposure notification. The Exchange believes that providing detail as to the manner

in which a DNR Order would be repriced in the case of a locked or crossed market is consistent with the Act. The Exchange displays the DNR Order at one MPV away in compliance with Regulation NMS. An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions.²⁹ The Exchange also provides details as to the price at which a DNR Order would rest on the Order Book and/or execute. While the ABBO can improve when it crosses the DNR Order the updated ABBO cannot be utilized to execute the DNR Order. However, if the DNR order locks or crosses the BBO, the DNR order will immediately execute. This proposed new paragraph will add greater transparency as to the handling of DNR Orders. The Exchange believes that the proposed language is consistent with the Act and will benefit market participants by providing greater information regarding DNR Orders.

SEEK and SRCH Order

The Exchange is relocating SEEK Orders, currently within NOM Chapter VI, Section 11(a)(1)(A), into proposed new NOM Chapter VI, Section 11(a)(iii)(B) and amending the rule text to simply note the manner in which a SEEK Order routes and include other information into proposed Chapter VI, Section 11(a)(iii)(B)(1)-(5). The Exchange is similarly relocating SRCH Orders which are currently in NOM Chapter VI, Section 11(a)(1)(B) to proposed NOM Chapter VI, Section 11(a)(iii)(C).

The Exchange's proposal to delete the second sentence of current NOM Chapter VI, Section 11(a)(i)(B) which states, " After checking the System for available contracts, orders are

²⁹ See NOM Chapter XII.

sent to other available market centers for potential execution, per the entering firm's instructions” is consistent with the Act because this sentence is unnecessary and does not provide additional information as to how a SEEK Order is routed. The Exchange’s proposed new rule text provides information as to the manner in which an SEEK Order will be handled by the System in various situations. The Exchange’s proposal to add proposed Chapter VI, Section 11(a)(iii)(B) will clarify that a marketable SEEK Order would immediately route, if the ABBO is better priced than the BX BBO. The Exchange proposes the same sentence for SRCH Orders at Chapter VI, Section 11(a)(iii)(C)(1). The Exchange makes clear that an order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions.³⁰ The Exchange proposes to add new text at NOM Chapter VI, Section 11(a)(iii)(B)(1) to describe the interplay of routing at the end of the Opening Process. The Exchange proposes to add the same sentence for SRCH Orders at NOM Chapter VI, Section 11(a)(iii)(C)(1). The Exchange’s proposal to replace the remainder of the rule text within current NOM Chapter VI, Section 11(a)(1)(A) with new rule text that provides greater detail is consistent with the Act because the new text will provide greater transparency to the current handling of SEEK Orders.

The Exchange proposes for both SEEK and SRCH Orders to provide for all scenarios when the SEEK or SRCH Order has remaining size and provides for remaining size when the ABBO is locked or crossed.³¹ The Exchange also accounts for ABBO movement during the Route Timer such that the SEEK or SRCH Order is no longer marketable against the ABBO and

³⁰ See NOM Chapter XII.

³¹ See proposed NOM Chapter VI, Section 11(a)(iii)(B)(3) and (C)(3).

provides the potential scenarios.³² The Exchange notes if a locked ABBO existed when the SEEK Order was entered onto the Order Book, the price at which the order would display. The rule text also makes clear that better priced incoming interest will execute against the SEEK or SRCH Order unless the ABBO crosses the SEEK or SRCH Order and then new interest will execute at the previous ABBO price.³³

The Exchange's proposal to provide for additional scenarios within the current rule text for both SEEK and SRCH Orders is consistent with the Act because Participants will be informed about various potential outcomes when marking their orders as SEEK or SRCH. The Exchange's proposal would continue to allow such orders to trade when marketable, but would not permit trade-throughs. The rule text brings greater transparency to the rule by proposing various routing scenarios. The Exchange believes that memorializing these various outcomes will provide market participants with greater transparency as to manner in which SEEK and SRCH Orders will be handled by the System.

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 proposed routing rules apply to all market participants including routing during an Opening Process. The Exchange believes that adding greater detail to its rules does not impose an undue burden on competition, rather it provides greater transparency as to the potential outcomes when utilizing different routing strategies. Further, the Exchange notes that market participants may elect not to route their orders. The Exchange continues to offer various options to its market participants

³² See proposed NOM Chapter VI, Section 11(a)(iii)(B)(4) and (C)(4).

³³ Id.

with respect to routing. The Exchange notes that the amendments to NOM Chapter VI, Section 11 reflect the current operation of 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 Act³⁴ and Rule 19b-4(f)(6) thereunder.³⁵

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act³⁶ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)³⁷ 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 Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the Exchange to immediately provide members with greater information and transparency on potential order routing strategies

³⁴ 15 U.S.C. 78s(b)(3)(A).

³⁵ 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.

³⁶ 17 CFR 240.19b-4(f)(6).

³⁷ 17 CFR 240.19b-4(f)(6)(iii).

available on the Exchange. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.³⁸

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 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-NASDAQ-2019-077 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-NASDAQ-2019-077. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

³⁸ 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).

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-NASDAQ-2019-077, 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.³⁹

Jill M. Peterson
Assistant Secretary

³⁹ 17 CFR 200.30-3(a)(12).