

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89040; File No. SR-Phlx-2020-27)

June 10, 2020

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx Options 5, Section 4

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 May 28, 2020, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 5, Section 4, Order Routing.

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

In 2019, Phlx filed a rule proposal to define the term “Public Customer” within Rule 1000(b)(56) to provide, “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).”³ This defined term was later relocated to Options 1, Section 1(b)(46).⁴ Within the Defined Term Rule Change, the Exchange replaced the term “customer” in various rules to either the defined term “Public Customer” or both the defined terms “Public Customer” and “Professional.”⁵

While converting various terms within the Phlx Rules, the Exchange inadvertently failed to revise Phlx Options 5, Section 4(a)(iii)(C). This particular reference was not contained within the Defined Term Rule Change. The Exchange should have added “and Professional” to Options 5, Section 4(a)(iii)(C) within the Defined Term Rule Change. Both Public Customers and Professional SRCH Orders may route. The Exchange has permitted market participants to route both Public Customer and Professional SRCH Orders for some time. During the Opening

³ See Securities Exchange Act Release No. 86959 (September 13, 2019), 84 FR 49362 (September 19, 2019) (SR-Phlx-2019-33) (“Defined Term Rule Change”).

⁴ See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (“Phlx Rulebook Relocation Rule Change”).

⁵ The term “Professional” is defined within Options 1, Section 1(b)(45) as “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). Member organizations must indicate whether orders are for Professionals.”

Process, Phlx only permits Public Customer and Professional orders to route.⁶ The Exchange noted within the Defined Term Rule Change that, “the Exchange is not amending any provision of the rules, rather the Exchange is making clear where a Public Customer order is intended and where the term Professional is intended to avoid confusion.”⁷

The Exchange proposes to add the words “and Professional” within Phlx Options 5, Section 4(a)(iii)(C) to make clear that Professional SRCH Orders may route, in addition to Public Customer SRCH Orders to conform the rule text with the functionality of the System.

Finally, the Exchange proposes to correct a typo within Options 5, Section 4(a)(iii)(B)(9) to change the word “designed” to “designated.”

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, 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. The Exchange’s proposal to correct Options 5, Section 4(a)(iii)(C) to add the words “and Professional” to make clear that Public Customer and Professional SRCH Orders may route is consistent with the Act. Today, the System permits both Public Customer and Professional SRCH Orders to route. Also, the Exchange believes that it is not unfairly discriminatory to limit the routing of SRCH Orders to Public Customers and Professionals. The Exchange has traditionally routed non-broker-dealer orders because the

⁶ See Options 3, Section 8(k)(C)(6) and Options 5, Section 4(a)(iii)(B)(1).

⁷ See note 3 above.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

Exchange believes those market participants do not have the same capabilities as broker-dealers in terms of an ability to route to other options markets. Broker-dealers typically have memberships at other exchanges, unlike non-broker-dealers.

Previously, Phlx did not define the term “public customer.” The addition of the term “Public Customer” in the Rulebook, excluded professionals, which are separately defined. The Exchange’s proposal will correct its error and make clear that Professional SRCH Orders may route. For purposes of the Order Protection and Locked and Crossed Markets Plan, a “customer” is defined as an individual or organization that is not a Broker/Dealer.¹⁰ This would include a Professional. Phlx routes Public Customer and Professional SRCH Orders that are not automatically executed because there is a displayed bid or offer on another exchange trading the same options contract that is better than the best bid or offer on the Exchange. The Exchange believes that ensuring that “customer” orders, as that term is defined within Options 5, Section 1(f), are routed subject to the customer’s routing instructions, is consistent with the Exchange Act and provides for the protection of these market participants to ensure that they are executed at the best bid or offer.

The Exchange noted in the Defined Term Rule Change that, “The Exchange desires to make clear where a customer order means a Public Customer order or both a Public Customer and a Professional order. By distinguishing the use of these terms, market participants will better understand Exchange Rules.”¹¹ The Exchange has permitted market participants to route both Public Customer and Professional SRCH Orders for some time. During the Opening Process,

¹⁰ See Phlx Options 5, Section 1(f). The term “customer” as utilized within Options 5, Section 1(f) is equivalent to the combination of Phlx’s defined terms Public Customer and Professional.

¹¹ See note 3 above.

Phlx only permits Public Customer and Professional orders to route.¹² The Exchange noted within the Defined Term Rule Change that, “the Exchange is not amending any provision of the rules, rather the Exchange is making clear where a Public Customer order is intended and where the term Professional is intended to avoid confusion.”¹³

Finally, the Exchange’s proposal to correct a typo within Options 5, Section 4(a)(iii)(B)(9) to change the word “designed” to “designated” is non-substantive and will clarify the Rule.

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’s proposal to correct Options 5, Section 4(a)(iii)(C) to add the words “and Professional” to make clear that Public Customer and Professional SRCH Orders may route does not impose an undue burden on competition. Today, the System permits Public Customer and Professional SRCH Orders to route. During the Opening Process, Phlx only permits Public Customer and Professional orders to route.¹⁴ The Exchange does not believe that limiting the routing of SRCH Orders to Public Customers and Professionals imposes an undue burden on competition. The Exchange has traditionally routed non-broker-dealer orders because the Exchange believes those market participants do not have the same capabilities as broker-dealers in terms of an ability to route to other options markets. Broker-dealers typically have memberships at other exchanges, unlike non-broker-dealers.

¹² See note 5 above.

¹³ See note 3 above.

¹⁴ Id.

The addition of the words “and Professional” will bring greater transparency to the Rulebook.

The Exchange’s proposal to correct a typo within Options 5, Section 4(a)(iii)(B)(9) to change the word “designed” to “designated” is non-substantive.

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 Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ 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 waive the 30-day operative delay so that it may immediately correct an omission in its rules and

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 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.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

specify that both Public Customer and Professional SRCH Orders may route. The Exchange believes that the proposed amendment will bring greater clarity to its rules. 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 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-2020-27 on the subject line.

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).

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-2020-27. 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-2020-27 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

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).