

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89527; File No. SR-Phlx-2020-38)

August 12, 2020

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Memorialize Phlx's Business Continuity and Disaster Recovery for its Trading Floor

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 July 29, 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 modify Phlx Options 8, related to the Phlx Trading Floor, to memorialize its current Business Continuity and Disaster Recovery provisions.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, 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

Phlx proposes to amend its Trading Floor rules at Options 8, Section 26, Trading Halts, to memorialize its current Business Continuity and Disaster Recovery provisions.

Memorialize Business Continuity and Disaster Recovery Plan

Today, Phlx has a Business Continuity and Disaster Recovery Plan for its Trading Floor (“BCP”), which BCP provides for a back-up physical location at The Philadelphia Navy Yard, in the event that the physical Trading Floor, currently located at 2929 Walnut Street, Philadelphia, becomes unavailable. The Exchange proposes to amend Options 8, Section 26 to add a new section “g” to memorialize its current Business Continuity and Disaster Recovery plans. The Exchange proposes to amend its Rules at Options 8, Section 26 to amend the title of the Rule from “Trading Halts” To “Trading Halts, Business Continuity and Disaster Recovery.” The Exchange proposes to state within Options 8, Section 26 at new section (g) that, “The Exchange may activate its business continuity and disaster recovery plans to maintain fair and orderly markets in the event of a System failure, disaster, or other unusual circumstance that may threaten the ability to conduct business on the Exchange.” The Exchange proposes to state with new (g) that the following provisions shall apply with respect to the Exchange’s Trading Floor:

(1) *Loss of Trading Floor.* If the physical location designated as the “Trading Floor” becomes unavailable, Phlx will enact its Business Continuity Plan and designate the Philadelphia Navy Yard as its “Back-Up Trading Floor.”

(2) *Back-up Trading Floor Unavailable.* In the event that the Back-Up Trading Floor becomes inoperable, the Exchange will only operate its electronic market and will not operate a Trading Floor. The Exchange will operate only its electronic market until the Exchange’s Trading Floor facility is operational. Open outcry trading will not be

available in the interim.

(3) *Other Back-Up Trading Arrangements.* This Rule does not preclude the Exchange from conducting business, in the event the Trading Floor and Back-Up Trading Floor are rendered inoperable, pursuant to Options 4, Section 10.

These provisions above, are contemplated today by Phlx's BCP and enacted pursuant to Phlx's emergency authority within By-Law Article VII, Section 7-5.³ The Exchange is proposing to memorialize these provisions of Phlx's BCP similar to Cboe Exchange, Inc. ("Cboe") Rule 5.24.⁴

Current Phlx Rules at Options 8, Section 1(a) specify, "The Options 8 Rules shall apply to Exchange options transactions by and among members and member organizations physically located on the Exchange's options trading floor, including the trading crowds, and shall govern all activity that occurs in the physical space designated by the Exchange as "trading floor" as well as trading conducted through the Options Floor Based Management..." Pursuant to Phlx Options 8, Section 1(a) Phlx's Trading Floor is located at 2929 Walnut Street, Philadelphia, PA

³ Phlx By-Law Article VII, Section 7-5, Authority to Take Action Under Emergency or Extraordinary Market Conditions, provides, "The Board of Directors, or such person or persons or committee as may be designated by the Board of Directors, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding: (a) the trading in or operation of the national securities exchange operated by the Exchange or any other organized securities markets that may be operated by the Exchange, the operation of any automated system owned or operated by the Exchange, and the participation in any such system or any or all persons or the trading therein of any or all securities; and (b) the operation of any or all offices or systems of Members and Member Organizations, if, in the opinion of the Board of Directors or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system."

⁴ Unlike Phlx, Cboe does not list a secondary back-up trading floor, but does specify its contingency plans for its Trading Floor.

(“Trading Floor.”)⁵ Pursuant to Phlx’s BCP, The Philadelphia Navy Yard⁶ has been designated “Back-Up Trading Floor.”

In the event that the Trading Floor becomes unavailable, Phlx would act under its emergency authority, within Phlx By-Law Article VII, Section 7-5, to enact its BCP. Phlx Floor Members would be notified of the enactment of a BCP with an Options Trader Alert. The Options Trader Alert would provide details regarding the relocation to the Back-Up Trading Floor, including timing and contact information for any additional questions. The Back-Up Trading Floor would have the same capability to utilize FBMS as the primary Trading Floor today. The Options 8 Trading Rules would remain in effect and surveillance staff would relocate to the Back-Up Trading Floor along with Floor Members. The Exchange would operate the Back-Up Trading Floor in the same manner as to the primary Trading Floor.

Similarly, in order to relocate back to the primary Trading Floor, Floor Members would be notified with an Options Trader Alert of the timing to relocate to the primary location.

The Exchange proposes to provide, within proposed Options 8, Section 26(g)(1), that, in the event of loss of the Trading Floor, if the physical location designated as the “Trading Floor” becomes unavailable, Phlx will enact its BCP and utilize the Philadelphia Navy Yard as its “Back-Up Trading Floor.” Further, Phlx proposes to provide within Options 8, Section 26(g)(2) in the event that the Back-Up Trading Floor becomes unavailable or inoperable, the Exchange will only operate its electronic market and will not operate a Trading Floor. The Exchange will operate only its electronic market until the Exchange’s Trading Floor facility is operational. Open outcry trading will not be available in the interim. Finally, the Exchange proposes to note

⁵ See Options Trader Alert #2017 – 18.

⁶ The Philadelphia Navy Yard is located at 4747 League Island Boulevard, Philadelphia, PA.

within Options 8, Section 26(g)(3) that this rule does not preclude the Exchange from conducting business, in the event the Trading Floor and Back-Up Trading Floor are rendered inoperable, pursuant to Options 4, Section 10. Current Options 4, Section 10, Back-Up Trading Arrangements, outlines rules applicable to hosting Phlx at another exchange in the event Phlx is disabled.

The Exchange proposes to add the aforementioned provisions, from its BCP, within proposed Options 8, Section 26(g) to make clear to its floor market participants the potential outcomes for the Trading Floor in the event of a disruption.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ 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 amend Options 8, Section 26 to adopt a new section (g) to memorialize its current BCP is consistent with the Act.

The proposal adds provisions from Phlx's current BCP to proposed Options 8, Section 26(g), to make clear to its floor market participants the potential outcomes for the Trading Floor in the event of a disruption. Today, Phlx would act under its emergency authority, within Phlx By-Law Article VII, Section 7-5, to enact its BCP. Pursuant to the BCP, Phlx could relocate to its Back-Up Trading Floor in the event the primary Trading Floor was inoperable, only operate

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

its electronic market (if the Back-Up Trading Floor were inoperable) or conduct business pursuant to Options 4, Section 10 under a Backup Trading Arrangement.

In the event that the Trading Floor becomes unavailable, Phlx would act under its emergency authority, within Phlx By-Law Article VII, Section 7-5, to enact its BCP. Phlx Floor Members would be notified of the enactment of a BCP with an Options Trader Alert. The Options Trader Alert would provide details regarding the relocation to the Back-Up Trading Floor, including timing and contact information for any additional questions. The Back-Up Trading Floor would have the same capability to utilize FBMS as the primary Trading Floor today. The Options 8 Trading Rules would remain in effect and surveillance staff would relocate to the Back-Up Trading Floor along with Floor Members. The Exchange would operate the Back-Up Trading Floor in the same manner as to the primary Trading Floor. Similarly, in order to relocate back to the primary Trading Floor, Floor Members would be notified with an Options Trader Alert of the timing to relocate to the primary location.

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 amend Options 8, Section 26 to add a new section (g) to memorialize its current Business Continuity and Disaster Recovery plans does not impose an undue burden on competition. The proposal adds provisions from the BCP to proposed Options 8, Section 26(g) to make clear to its floor market participants the potential outcomes for the Trading Floor in the event of a disruption, which exist today.

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 Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange believes that its proposal to memorialize its current BCP in its rules will make clear to floor market participants the potential outcomes for the Trading Floor in the event of a disruption. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as it will provide the Exchange's member and member organizations with greater transparency regarding its BCP. Accordingly, the

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 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.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹³

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.

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-2020-38 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2020-38. 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

¹³ For purposes 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).

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-2020-38 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.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).