

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 92404; File No. SR-Phlx-2021-41)

July 14, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Various Phlx Rules

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 13, 2021, 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 Phlx Rules at Options 8, Section 2 (Definitions); Section 8 (Trading Floor Registration); Section 12 (Clerks); Section 22 (Execution of Options Transactions on the Trading Floor); Section 28 (Responsibilities of Floor Brokers); and Section 39 (Option Minor Rule Violations and Order and Decorum Regulations) at C-2 (Options Floor Based Management System).

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 Phlx Rules at Options 8, Section 2 (Definitions); Section 8 (Trading Floor Registration); Section 12 (Clerks); Section 22 (Execution of Options Transactions on the Trading Floor); Section 28 (Responsibilities of Floor Brokers); and Section 39 (Option Minor Rule Violations and Order and Decorum Regulations) at C-2 (Options Floor Based Management System). Each change is described below.

The Exchange also proposes a technical amendment to Options 10, Section 20 (Options Communications).

Options 8, Section 2

The Exchange proposes to amend Options 8, Section 2, Definitions, to alphabetize the existing definitions. The Exchange proposes to relocate and renumber the current definitions without change, with one exception which is described below. The Exchange proposes to amend the definition of a Presiding Exchange Official at current Options 8, Section 2(a)(4) to add “/her” next to “his” in two places. The amendment to this rule will bring greater clarity to the defined term.

The Exchange proposes to add two new definitions, “Floor Transaction” and “Remote FBMS Transaction” to Options 8, Section 2. The Exchange proposes to define “Floor

Transaction” as a transaction that is effected in open outcry on the Exchange’s Trading Floor. This term is currently defined within Phlx Options 7, Section 1 for the purposes of pricing. The Exchange also proposes to define “Remote FBMS Transaction.” The Exchange recently amended Options 8, Section 28, “Responsibilities of Floor Brokers” at subsection (g) and Section 30, “Crossing, Facilitation and Solicited Orders” at subsection (e) to permit Floor Brokers to utilize the Options Floor Based Management System (“FBMS”),³ remotely,⁴ to enter certain orders that do not require exposure in open outcry.⁵ At this time the Exchange proposes to define a “Remote FBMS Transaction” as a transaction that is effected by a Floor Broker, while not physically present on the Trading Floor, by submitting limit, market or stop orders pursuant to Options 8, Section 28(g) and Floor Qualified Contingent Cross Orders pursuant to Options 8, Section 30(e) to the electronic order book, through FBMS, pursuant to Options 8, Sections 28 and 30, respectively, in accordance with the Prior Rule Change. Further, the Exchange proposes to specify that members and member organizations must comply with certain regulatory requirements, unless the member or member organization is otherwise exempt from

³ FBMS, an order management system, is the gateway for the electronic execution of equity, equity index and U.S. dollar-settled foreign currency option orders represented by Floor Brokers on the Exchange’s Options Floor. Floor Brokers contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker to FBMS, which creates an electronic audit trail. The execution of orders to Phlx’s electronic trading system also occurs via FBMS. The FBMS application is available on hand-held tablets and stationary desktops.

⁴ Utilizing FBMS while not physically present on the Trading Floor would be considered remote access.

⁵ See Securities Exchange Act Release No. 90909 (January 13, 2021), 86 FR 6389 (January 21, 2021) (SR-Phlx-2021-02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Phlx Options 8, Section 28, “Responsibilities of Floor Brokers” and Section 30, “Crossing, Facilitation and Solicited Orders”) (“Prior Rule Change”).

the requirements in accordance with Supplementary Material .08 to Options 10, Section 6⁶ or Phlx General 4, Rule 1230.⁷ The Exchange proposes to state that in order to conduct remote FBMS transactions, unless exempt from such requirements, Floor Brokers are subject to the following regulatory requirements: (1) compliance with branch office requirements as described in Supplementary Material .08 to Options 10, Section 6, as well as supervision of such branch office as described in Phlx General 9, Section 20; and (2) compliance with applicable registration requirements described in Phlx General 4.⁸ Finally, the Exchange proposes to make clear that all uses of FBMS involving open outcry must be conducted while physically present on the Trading Floor. The proposed definition would describe and cite to the types of orders that may be submitted remotely by a Floor Broker for ease of location in the Options 8 Rules. Further, the proposed rule indicates the various existing Phlx Rules that are relevant today for regulatory compliance when transacting Remote FBMS Transactions. The last sentence of the proposed rule indicates that open outcry transactions may only be effected while physically present on the Exchange's Trading Floor and therefore uses of FBMS involving open outcry must be conducted while physically present on the Trading Floor. Today, Floor Brokers must comply with these

⁶ Supplementary Material .08(i) – (vii) to Options 10, Section 6 describe branch office exclusions.

⁷ Phlx General 4 Rules are incorporated by reference to the General 4 Rules of The Nasdaq Stock Market LLC. General 4, Rule 1230 describes associated persons exempt from registration.

⁸ General 4 Rules describe registration, qualification and continuing education requirements. Phlx floor members are required to comply with Phlx General 4 Rules. If a member is no longer present on a trading floor, the member would not be subject to the exemption associated with effecting transactions on the floor of another national securities exchange. A Floor Broker conducting a Remote FBMS Transaction would therefore need to comply with General 4 registration requirements, including but not limited to, the Series 57 registration.

regulatory requirements. This proposed rule would serve as a guide for Floor Brokers conducting Remote FBMS Transactions.

Options 8, Sections 8 and 12

The Exchange proposes to update cross citations to General 4 Rules within Options 8, Section 8, Trading Floor Registration and Options 8, Section 12, Clerks to reflect The Nasdaq Stock Market LLC's ("Nasdaq") General 4 rule numbering that was amended.⁹ These amendments are non-substantive.

The Exchange proposes to amend Options 8, Section 12, Clerks, at subparagraph (c) to remove the phrase "or assigned to their employer's clearing firm." Previously, Clearing Members operated posts on the Trading Floor. Member organizations were able to assign clerks to operate from those posts. Clearing Member posts no longer exist on the Trading Floor and therefore this language is obsolete.

Options 8, Section 22

The Exchange proposes to update a citation to Options 8, Section 22(a)(3). The citation is incorrect and should instead refer to Options 8, Section 22(a)(2). There is no Options 8, Section 22(a)(3). Similar changes are also proposed for Options 8, Section 28(e)(2) and Options 8, Section 39 at C-2 to correct improper citations.

Options 8, Section 28

The Exchange proposes to amend Options 8, Section 28, Responsibilities of Floor Brokers, at subsection (g) to replace the word "limit" with "electronic" before the term "order

⁹ See Securities Exchange Act Release No. 90577 (December 7, 2020), 85 FR 80202 (December 11, 2020) (SR-NASDAQ-2020-079) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell).

book.” The term “electronic order book” makes clear the order book is being described. Also, the Exchange notes that, today, Floor Brokers may enter limit,¹⁰ market,¹¹ stop-limit or stop orders¹² into the electronic order book. Options 8, Section 28(g) only refers to limit orders when it should have also noted market, stop-limit and stop orders. With respect to remotely entering limit orders into the electronic order book through FBMS, the Prior Rule Change stated that this capability exists to enable Floor Brokers to access electronic liquidity and/or to clear priority orders on the limit order book prior to transacting an order in the trading crowd through FBMS.¹³

¹⁰ A Limit Order is an order to buy or sell a stated number of option contracts at a specified price, or better. See Options 8, Section 32(a)(2).

¹¹ A Market Order is an order to buy or sell a stated number of option contracts and is to be executed at the best price obtainable when the order reaches the post. See Options 8, Section 32(a)(1).

¹² A Stop-Limit Order is a contingency order to buy or sell at a limited price when a trade or quote on the Exchange for a particular option contract reaches a specified price. A Stop-Limit Order to buy becomes a Limit Order executable at the limit price or better when the option contract trades or is bid on the Exchange at or above the stop-limit price. A Stop-Limit Order to sell becomes a Limit Order executable at the limit price or better when the option contract trades or is offered on the Exchange at or below the stop-limit price.

A Stop Order is a contingency order to buy or sell when a trade or quote on the Exchange for a particular option contract reaches a specified price. A Stop Order to buy becomes a Market Order when the option contract trades or is bid on the Exchange at or above the stop price. A Stop Order to sell becomes a Market Order when the option contract trades or is offered on the Exchange at or below the stop price.

Notwithstanding the foregoing, a Stop or Stop-Limit Order shall not be elected by a trade that is reported late or out of sequence. See Options 8, Section 32(b)(1) and (2).

¹³ See Securities Exchange Act Release No. 68960 (February 20, 2013), 78 FR 13132, 13134 (February 26, 2013) (SR-Phlx-2013-09) (Notice of Filing of Proposed Rule Change To Enhance the Functionality Offered on Its Options Floor Broker Management System (“FBMS”) by, Among Other Things, Automating Functions Currently Performed by Floor Brokers). This filing provided the following explanation, “For example, if a Floor Broker enters a two-sided order through the new FBMS and there is an order on the book at a price that prevents the Floor Broker's order from executing, FBMS will indicate to the Floor Broker how many contracts need to be satisfied before the Floor Broker's order can execute at the agreed-upon price. If the Floor Broker agrees to satisfy that

Placing limit orders on the electronic order book does not require exposure in open outcry and allows Floor Brokers the ability to clear resting Customer orders from the limit order book for their customers in the event that a Customer order had priority on the limit order book that would otherwise prevent a Floor Qualified Contingent Cross Order from being entered in compliance with Options 8, Section 30(e).¹⁴ The Exchange notes that Floor Brokers may also utilize market, stop-limit and stop orders to clear resting Customers' orders from the electronic order book. Also, placing market, stop-limit and stop orders on the electronic order book does not require exposure in open outcry today.

Options 10, Section 20

The Exchange proposes to update a reference to Phx Rule 1049 within Options 10, Section 20, Options Communications. Phlx Rule 1049 was the prior reference to Options 10, Section 20.¹⁵ At this time the Exchange proposes to replace "Nasdaq PHLX Rule 1049" with "Options 10, Section 20." In addition the Exchange proposes to replace "Nasdaq PHLX" throughout this rule with "Phlx" to conform the reference to the Exchange to the remainder of the Rulebook.

order, consistent with the order placed in his care, he can cause FBMS to send a portion of one of his orders to Phlx XL to trade against the order on the book, thereby clearing it and permitting the remainder of the Floor Broker's order to trade. This functionality is optional in the sense that the Floor Broker can decide not to trade against the book, consistent with order instructions he has been given, and therefore not execute his two-sided order at that particular price." Phlx XL refers to the electronic order book.

¹⁴ See supra note 5.

¹⁵ See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Options 8, Section 2

The Exchange's proposal to alphabetize the existing definitions within Options 8, Section 2 is consistent with the Act as the definitions will become easier to locate. Amending the definition of a Presiding Exchange Official at current Options 8, Section 2(a)(4) to add “/her” next to “his” in two places is a non-substantive rule change. These amendments are intended to bring greater clarity to the Options 8 Rules.

The proposal to define “Floor Transaction” as a transaction that is effected in open outcry on the Exchange's Trading Floor is consistent with the Act. This term is currently defined within Phlx Options 7, Section 1 for the purposes of pricing. The defined term is consistent with the use of that term in the current rules. This defined term will bring greater clarity to the Options 8 Rules.

The Exchange's proposal to define “Remote FBMS Transaction” is consistent with the Act. The Exchange recently amended Options 8, Section 28, “Responsibilities of Floor Brokers” at subsection (g) and Section 30, “Crossing, Facilitation and Solicited Orders” at subsection (e) to permit Floor Brokers to utilize the FBMS remotely,¹⁸ to enter certain orders that do not require

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ See supra note 4.

exposure in open outcry.¹⁹ The proposed term “Remote FBMS Transaction” would serve to provide members and member organizations a description of the manner in which a Floor Broker may remotely transact certain orders while not physically present on the Trading Floor. This defined term provides the citations to the applicable rules and further makes clear the current regulatory requirements that apply to such remote activity. Today, Floor Brokers must comply with these regulatory requirements provided they are not exempt from those requirements pursuant to Supplementary Material .08 to Options 10, Section 6 or Phlx General 4, Rule 1230. Also, the defined term makes clear that all uses of FBMS involving open outcry must be conducted while physically present on the Trading Floor. This proposed rule would serve as a guide for Floor Brokers conducting Remote FBMS Transactions.

Options 8, Sections 8 and 12

The Exchange’s proposal to update cross citations to Nasdaq General 4 Rules within Options 8, Section 8, Trading Floor Registration and Options 8, Section 12, Clerks is consistent with the Act. These amendments are non-substantive and will clarify the rules.

The Exchange’s proposal to amend Options 8, Section 12, Clerks at subparagraph (c) to remove the phrase “or assigned to their employer’s clearing firm” is consistent with the Act. Previously, Clearing Members operated posts on the Trading Floor. Member organizations were able to assign clerks to operate from those posts. Clearing Member posts no longer exist on the Trading Floor and therefore this language is obsolete.

Options 8, Section 22

The Exchange’s proposal to update citations to Options 8, Section 22(a)(3) within Options 8, Section 22(a)(2)(E)(i), Options 8, Section 28(e)(2), and Options 8, Section 39 at C-2

¹⁹ See supra note 5.

is consistent with the Act as the rule text corrects improper citations. Citations to Options 8, Section 22(a)(3) should instead refer to Options 8, Section 22(a)(3). Options 8, Section 22(a)(3) does not exist.

Options 8, Section 28

The Exchange's proposal to amend Options 8, Section 28, Responsibilities of Floor Brokers, to replace the word "limit" with "electronic" before the term "order book" is consistent with the Act. The term "electronic order book" makes clear that specific order book being described.

The Exchange's proposal to amend Options 8, Section 28 to provide that Floor Brokers may enter limit, market, stop-limit or stop orders into the electronic order book is consistent with the Act. Currently, Options 8, Section 28 only refers to limit orders when it should have also noted market, stop-limit and stop orders. With respect to remotely entering limit orders into the electronic order book through FBMS, the Prior Rule Change stated that this capability exists to enable Floor Brokers to access electronic liquidity and/or to clear priority orders on the limit order book prior to transacting an order in the trading crowd through FBMS.²⁰ Placing limit orders on the electronic order book does not require exposure in open outcry and allows Floor Brokers the ability to clear resting Customers orders from the limit order book for their customers in the event that a Customer order had priority on the limit order book that would otherwise prevent a Floor Qualified Contingent Cross Order from being entered in compliance with Options 8, Section 30(e).²¹ Today, Floor Brokers may also utilize market, stop-limit and stop orders to clear resting Customers orders from the electronic order book. Also, placing

²⁰ See supra note 10.

²¹ See supra note 5.

market, stop-limit and stop orders on the electronic order book does not require exposure in open outcry.

Options 10, Section 20

The Exchange proposes to update a reference to Phx Rule 1049 within Options 10, Section 20, Options Communications, and replace “Nasdaq PHLX” throughout this rule with “Phlx” are non-substantive amendments that will clarify the Rulebook.

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.

Options 8, Section 2

The Exchange’s proposal to alphabetize the existing definitions within Options 8, Section 2 does not impose an undue burden on competition as the definitions will become easier to locate. Amending the definition of a Presiding Exchange Official at current Options 8, Section 2(a)(4) to add “/her” next to “his” in two places is a non-substantive rule change. These amendments are intended to bring greater clarity to the Options 8 Rules.

The proposal to define “Floor Transaction” as a transaction that is effected in open outcry on the Exchange’s Trading Floor does not impose an undue burden on competition. This term is currently defined within Phlx Options 7, Section 1 for the purposes of pricing. The defined term is consistent with the use of that term in the current rules. This defined term will bring greater clarity to the Options 8 Rules. The Exchange’s proposal to define “Remote FBMS Transaction” does not impose an undue burden on competition. The proposed term “Remote FBMS Transaction” would serve to provide members and member organizations a description of the manner in which a Floor Broker may remotely transact certain orders while not physically present on the Trading Floor. This defined term provides the citations to the applicable rules and

further makes clear the current regulatory requirements that apply to such remote activity. Today, Floor Brokers must comply with these regulatory requirements. Also, the defined term makes clear that all uses of FBMS involving open outcry must be conducted while physically present on the Trading Floor.

Options 8, Sections 8 and 12

The Exchange's proposal to update cross citations to Nasdaq General 4 Rules within Options 8, Section 8, Trading Floor Registration and Options 8, Section 12, Clerks does not impose an undue burden on competition. These amendments are non-substantive and would clarify the current rules.

The Exchange's proposal to amend Options 8, Section 12, Clerks at subparagraph (c) to remove the phrase "or assigned to their employer's clearing firm" does not impose an undue burden on competition. Previously, Clearing Members operated posts on the Trading Floor. Member organizations were able to assign clerks to operate from those posts. Clearing Member posts no longer exist on the Trading Floor and therefore this language is obsolete.

Options 8, Section 22

The Exchange's proposal to update citations to Options 8, Section 22(a)(3) within Options 8, Section 22(a)(2)(E)(i), Options 8, Section 28(e)(2), and Options 8, Section 39 at C-2 does not impose an undue burden on competition as the rule text corrects improper citations. Citations to Options 8, Section 22(a)(3) should instead refer to Options 8, Section 22(a)(3). Options 8, Section 22(a)(3) does not exist.

Options 8, Section 28

The Exchange's proposal to amend Options 8, Section 28, Responsibilities of Floor Brokers, at subsection (g) to replace the word "limit" with "electronic" before the term "order

book” does not impose an undue burden on competition. The term “electronic order book” makes clear that specific order book being described.

The Exchange’s proposal to amend Options 8, Section 28(g) to provide that Floor Brokers may enter limit, market, stop-limit or stop orders into the electronic order book does not impose an undue burden on competition. Currently, Options 8, Section 28(g) only refers to limit orders when it should have also noted market, stop-limit and stop orders. The Exchange notes that Floor Brokers may also utilize market, stop-limit and stop orders to clear resting Customers orders from the electronic order book. Today, placing market, stop-limit and stop orders on the electronic order book does not require exposure in open outcry.

Options 10, Section 20

The Exchange proposes to update a reference to Phx Rule 1049 within Options 10, Section 20, Options Communications, and replace “Nasdaq PHLX” throughout this rule with “Phlx” are non-substantive amendments that will clarify the Rulebook.

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 Act²² and subparagraph (f)(6) of Rule 19b-4 thereunder.²³

²² 15 U.S.C. 78s(b)(3)(A)(iii).

²³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory

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-2021-41 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-2021-41. 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

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.

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-2021-41 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.²⁴

J. Matthew DeLesDernier
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).