

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92699; File No. SR-Phlx-2021-45)

August 18, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx Rules at Options 8, Section 34, FLEX Index, Equity, and Currency Options, to Extend the Maximum Expiration Term for FLEX Index and Equity Options

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 August 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 34, “FLEX Index, Equity and Currency Options,” to extend the expiration term for FLEX index and equity options to a maximum expiration term of 15 years.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 34, “FLEX Index, Equity, and Currency Options.” Today, Phlx permits members and member organizations to transact FLEX options on its Trading Floor. FLEX options provide investors with the ability to customize basic option features including expiration date, exercise style, and certain exercise prices. FLEX options may be FLEX index, equity, or currency options. The Exchange proposes to amend the expiration term for FLEX index and equity options to remain competitive with other options exchanges as described below in greater detail.

Currently, the expiration date for a FLEX index option is any month, business day and year within 5 years. The expiration date for FLEX equity and currency options is any month, business day and year within 3 years.³ Further, with respect to FLEX equity options, a member or member organization may request a longer term up to a maximum of five years, and upon the assessment of the Regulatory staff that sufficient liquidity exists among FLEX equity participants, such a request may be granted. Regulatory staff are Exchange employees

³ See Options 8, Section 34(b)(6)(A).

responsible for, among other things, assessing that sufficient liquidity exists among FLEX equity participants requesting a term exceeding three years to a maximum of five years.⁴

The Exchange proposes to increase the maximum term for FLEX index and equity options to 15 years similar to Cboe Exchange, Inc. (“Cboe”), NYSE Arca, Inc. (“NYSE Arca”), and NYSE American LLC (“NYSE American”). Today, Cboe, NYSE Arca, and NYSE American permit a maximum term of fifteen years for FLEX equity and index options.⁵ With this amendment, the Exchange would eliminate the requirement applicable to equity options that Regulatory staff make a liquidity assessment. The expiration date for FLEX currency options will remain within 3 years. The amendment is proposed for the below reasons.

First, the proposal is intended to simplify the process and permit Phlx members and member organizations to transact FLEX index and equity options with the same expiration terms as Cboe, NYSE Arca, and NYSE American members. This amendment would permit all FLEX equity and index options to have the same maximum 15 year term as other options markets that offer FLEX.⁶

Second, expanding the maximum expiration terms to 15 years uniformly for FLEX index and equity options will permit transactions which currently trade over-the-counter (“OTC”) to be conducted within an exchange environment. Phlx believes that expanding the eligible term for FLEX equity and index options, as proposed, is important and necessary to the Exchange’s

⁴ The Exchange may also designate other qualified Exchange employees to assist the Regulatory staff as the need arises. See Options 8, Section 34(b)(6)(B).

⁵ See Cboe Rule 4.21(b)(4). See Securities Exchange Act Release No. 58890 (October 30, 2008), 73 FR 66085 (November 6, 2008) (SR-CBOE-2008-98) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Maximum Term for FLEX Options). See also NYSE Arca 5.32-O and NYSE American Rule 903G.

⁶ See Cboe’s Rule 4.21(b)(4), NYSE Arca 5.32-O and NYSE American Rule 903G.

efforts to create products and markets that provide members, member organizations, and investors interested in FLEX-type options with an improved but comparable alternative to the OTC market in customized options, which can take on contract characteristics similar to FLEX options, but are not subject to the same maximum term restriction. By expanding the eligible term for FLEX index and equity options, market participants will now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market, similar to Cboe, NYSE Arca, and NYSE American. The Exchange believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to the following: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation (“OCC”) as issuer and guarantor of FLEX options.

Third, the Exchange believes that the proposed rule change will allow investors to use longer expiration FLEX equity and index options to hedge longer-term issuances of structured products linked to returns of an individual stock. Specifically, the proposal will allow institutions to use longer-term FLEX index options to protect portfolios from long-term market moves with a known and limited cost. The proposal will better serve the long-term hedging needs of institutional investors and provide those investors with an alternative to hedging their portfolios with off-exchange customized options and warrants.

Fourth, the Exchange proposes to eliminate rule text that describes Regulatory staff’s discretionary authority to extend the maximum term of FLEX options that expire within three years pursuant to Options 8, Section 34(b)(6)(B) after having performed a liquidity assessment, and also renumber current Options 8, Section 34(b)(6)(C) to new “B” because the process by

which FLEX options are transacted already requires floor members to seek liquidity in open outcry. Today, FLEX options transactions are exposed in open outcry on the Trading Floor similar to other options. Specifically, today, a Requesting Member⁷ initiates a Request-For-Quote (“RFQ”)⁸ by announcing certain contracts terms⁹ in open outcry and submitting an RFQ ticket, which includes the open outcry BBO as identified in accordance with the price and time priority principles set forth by the Exchange, to the Market Operations post on the Trading Floor. On receipt of an RFQ in proper form, Market Operations disseminates the terms of the RFQ along with the open outcry BBO as an administrative message through the Options Price Reporting Authority (“OPRA”).¹⁰ At the expiration of the Request Response Time, the Requesting Member may re-enter the trading crowd and proceed with announcing his FLEX order and negotiating the terms of the execution in open outcry. Once the FLEX order is executed in open outcry, the FLEX trade is disseminated to OPRA by the Exchange.¹¹

⁷ A Requesting Member is a member of the Exchange qualified to trade FLEX options pursuant to Options 3, Section 34(d) who initiates an RFQ for a FLEX option. See Options 3, Section 34(b)(11).

⁸ The term “Request for Quotes” means the initial request supplied by a Requesting Member to initiate FLEX bidding and offering. See Options 3, Section 34(b)(10).

⁹ A Request Member must announce: (1) underlying index, security or foreign currency; (2) type, size, and crossing intention; (3) in the case of FLEX index options and FLEX equity options, exercise style; (4) expiration date; (5) exercise price; and (6) respecting index options, the settlement value. See Options 8, Section 34(c)(1). See Options 3, Section 34(c)(1).

¹⁰ FLEX Quotes must be entered during the Request Response Time of 15 seconds. All FLEX Quotes may be entered, modified or withdrawn at any point during the request response time. See Options 8, Section 34(c)(2).

¹¹ If the Requesting Member has not indicated an intention to cross or act as principal with respect to any part of the FLEX trade, the member shall promptly accept or reject the displayed BBO: provided, however, that if such a Requesting Member either rejects the BBO or is given a BBO for less than the entire size requested, all FLEX participating members other than the Requesting Member will have an opportunity during the BBO Improvement Interval in which to match, or improve, (as applicable), the BBO. At the

Requesting Members may indicate an intention to cross,¹² permitting participation with all other FLEX-participating members in attempting to improve or match the BBO during the BBO Improvement Interval.¹³ At expiration of the BBO Improvement Interval, the Requesting Member must promptly accept or reject the BBO(s); the Requesting Member has no obligation to accept any FLEX bid or offer.¹⁴ RFQs, responsive quotes and completed trades are promptly reported to OPRA and disseminated as an administrative message by the Exchange. As the foregoing process demonstrates, Phlx seeks to maintain a competitive Trading Floor through the administration of its rules which contain processes to ensure that options transactions are exposed in such a way as to permit other floor members an opportunity to participate in price discovery by requiring floor members to seek liquidity in open outcry. For example, the Options 8 rules require one Floor Market Maker to be present in the trading crowd prior to representing

expiration of any such BBO Improvement Interval, the Requesting Member must promptly accept or reject the BBO(s). See Options 8, Section 34(c)(3).

¹² If the Requesting Member has indicated an intention to cross or act as principal with respect to any part of the FLEX trade, acceptance of the displayed BBO shall be automatically delayed until the expiration of the BBO Improvement Interval. Prior to the BBO Improvement Interval, the Requesting Member must indicate at the post the price at which the member expects to trade. In the case of FLEX equity options only whenever the Requesting Member has indicated an intention to cross or act as principal on the trade and has matched or improved the BBO during the BBO Improvement Interval, the Requesting Member will be permitted to execute the contra side of the trade that is the subject of the RFQs, to the extent of at least 40% of the trade, provided the order is a Public Customer order or an order respecting the Requesting Member's firm proprietary account. Notwithstanding the foregoing, all market participants may effect crossing transactions. See Options 8, Section 34(c)(5).

¹³ The BBO Improvement Interval means the minimum period of time, to be established by the Exchange, during which members may submit FLEX Quotes to meet or improve the BBO established during the Request Response Time. See Options 8, Section 34(b)(15).

¹⁴ Whenever, following the completion of FLEX bidding and offering responsive to a given RFQs, the Requesting Member rejects the BBO or the BBO size exceeds the FLEX transaction size indicated in the RFQs, members may accept the entire order or the unfilled balance of the BBO. See Options 8, Section 34(c)(3).

an order for execution as a means to expose orders to potential liquidity. As such, separate liquidity assessments by Regulatory staff are not needed.

Fifth, similar to Cboe, the proposed rule change incorporates the concept that the expiration date is the date on which an executed FLEX option is submitted to the System, which, on Phlx, is the date the FLEX option is reported to OPRA and disseminated as an administrative message through the System¹⁵ by Market Operations staff. A FLEX option series is available for trading only when exposed in open outcry and, after completion of the RFQ process, thereafter, Exchange staff manually submits the executed FLEX option to the System through which it is promptly reported to OPRA and disseminated as an administrative message. For purposes of the definition of the System pursuant to Phlx Rules, the date of submission to the Phlx System is the date on which the executed FLEX option is reported to OPRA.

Technical Amendments

The Exchange proposes to amend the rule text utilized to describe the maximum expiration for a FLEX currency option to conform that language to the terminology proposed herein to describe maximum expirations for FLEX index and equity options. The Exchange would delete the rule text which states, “within three years for FLEX currency options,” and replace that rule text with the phrase “no more than 3 years from the date on which a FLEX

¹⁵ The term “System” shall mean the automated system for order execution and trade reporting owned and operated by the Exchange which comprises: (i) an order execution service that enables members to automatically execute transactions in option series; and provides members with sufficient monitoring and updating capability to participate in an automated execution environment; (ii) a trade reporting service that submits “locked-in” trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the Options Price Reporting Authority (“OPRA”) for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a “locked-in” trading environment; and (iii) the data feeds described at Options 3, Section 23. See Options 1, Section 1(b)(57).

currency option is submitted to the System.” The Exchange is not amending the term for FLEX currency options.

The Exchange also proposes to add a “,” after the word “Equity” in the title of Options 8, Section 34 and amend the term “FLEX Order” within Options 8, Section 34(b)(6)(B) to “FLEX option order” to conform the usage of the term throughout Options 8, Section 34. The Exchange proposes to remove “; or” within Options 8, Section 34(b)(6)(A).

Finally, the Exchange proposes two amendments within Options 8, Section 34(c) to update the name of the post and identify the message sent by the Exchange. To that end, the term “FLEX post” is proposed to be changed to “Market Operations post” and the phrase “administrative text message” is proposed to be change to “administrative message.” These proposed changes will update the rule to the current terminology. These proposed amendments do not represent substantive changes to the current FLEX option process, rather these changes are merely wording changes which continue to reflect the current process without substantive change.

Implementation

The Exchange intends to begin implementation of the proposed rule change no earlier than September 13, 2021 and no later than September 30, 2021. The Exchange will issue an Options Trader Alert to Participants to provide notification of the implementation date.

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

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

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.

This proposal is intended to simplify the process and permit Phlx members and member organizations to transact FLEX index and equity options with the same expiration terms as Cboe, NYSE Arca, and NYSE American members. This amendment would permit all FLEX equity and index options to have the same maximum 15 year term as other options markets that offer FLEX.¹⁸ For the reasons Phlx has articulated below, the Exchange believes this proposal is consistent with the Act.

Expanding the maximum expiration terms to 15 years uniformly for FLEX index and equity options is consistent with the Act as it will permit transactions which currently trade OTC to be conducted within an exchange environment. Phlx believes that expanding the eligible term for FLEX equity and index options, as proposed, is important and necessary to the Exchange's efforts to create products and markets that provide members, member organizations, and investors interested in FLEX-type options with an improved but comparable alternative to the OTC market in customized options, which can take on contract characteristics similar to FLEX options, but are not subject to the same maximum term restriction. By expanding the eligible term for FLEX index and equity options, market participants will now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market, similar to Cboe, NYSE Arca, and NYSE American. Specifically, Market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to the following: (1) enhanced efficiency

¹⁸ See Cboe's Rule 4.21(b)(4), NYSE Arca 5.32-O and NYSE American Rule 903G.

in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX options.

The proposal will allow investors to use longer expiration FLEX equity and index options to hedge longer-term issuances of structured products linked to returns of an individual stock. Specifically, the proposal is consistent with the Act because it will allow institutions to use longer-term FLEX index options to protect portfolios from long-term market moves with a known and limited cost, thereby better serving the long-term hedging needs of institutional investors and provide those investors with an alternative to hedging their portfolios with off-exchange customized options and warrants.

The Exchange's proposal to eliminate rule text that describes Regulatory staff's discretionary authority to extend the maximum term of FLEX options that expire within three years pursuant to Options 8, Section 34(b)(6)(B) after having performed a liquidity assessment and also renumber current Options 8, Section 34(b)(6)(C) to new "B" is consistent with the Act because the process by which the FLEX options are transacted already require floor members to seek liquidity in open outcry. The Exchange details its process above for seeking liquidity in open outcry when transacting FLEX options today on the Trading Floor. As the above-referenced process demonstrates, Phlx seeks to maintain a competitive Trading Floor through the administration of its rules which contain processes to ensure that options transactions are exposed in such a way as to permit other floor members an opportunity to participate in price discovery by requiring floor members to seek liquidity in open outcry. For example, the Options 8 rules require one Floor Market Maker to be present in the trading crowd prior to representing an order for execution as a means to expose orders to potential liquidity. As such, separate liquidity assessments by Regulatory staff are not needed.

Similar to Cboe, the proposed rule change incorporates the concept that the expiration date is the date on which an executed FLEX option is submitted to the System, which, on Phlx, is the date the FLEX option is reported to OPRA and disseminated as an administrative message through the System by Market Operations staff. A FLEX option series is available for trading only when exposed in open outcry and, after completion of the RFQ process, thereafter, Exchange staff manually submits the executed FLEX option to the System through which it is promptly reported to OPRA and disseminated as an administrative message. For purposes of the definition of the System pursuant to Phlx Rules, the date of submission to the Phlx System is the date on which the executed FLEX option is reported to OPRA.

Technical Amendments

The Exchange's proposal to amend the rule text utilized to describe the maximum expiration for a FLEX currency option is consistent with the Act because it conforms that language to the terminology proposed herein to describe maximum expirations for FLEX index and equity options. The proposal to delete the rule text which states, "within three years for FLEX currency options," and replace that rule text with the phrase "no more than 3 years from the date on which a FLEX currency option is submitted to the System" is non-substantive.

The Exchange's proposals to add a ";" after the word "Equity" in the title of Options 8, Section 34, amend the term "FLEX Order" within Options 8, Section 34(b)(6)(B) to "FLEX option order," and remove "; or" within Options 8, Section 34(b)(6)(A) are non-substantive rule changes. Finally, the proposals to update the name of the post and identify the message sent by the Exchange are also non-substantive rule changes. These proposed amendments do not represent substantive changes to the current FLEX option process, rather these changes are

merely wording changes which continue to reflect the current process without substantive change.

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. All floor participants are able to transact FLEX options. As noted herein, this amendment will provide Phlx with a comparable alternative to the OTC market in customized options. Finally, Cboe, NYSE Arca, and NYSE American permit expirations of up to 15 years for FLEX index and equity options.¹⁹

Technical Amendments

The Exchange's proposal to amend the rule text utilized to describe the maximum expiration for a FLEX currency option does not impose an undue burden on competition because it conforms that language to the terminology proposed herein to describe maximum expirations for FLEX index and equity options. The proposal to delete the rule text which states, "within three years for FLEX currency options," and replace that rule text with the phrase "no more than 3 years from the date on which a FLEX currency option is submitted to the System" is non-substantive.

The Exchange's proposals to add a ";" after the word "Equity" in the title of Options 8, Section 34, amend the term "FLEX Order" within Options 8, Section 34(b)(6)(B) to "FLEX option order," and remove "; or" within Options 8, Section 34(b)(6)(A) are non-substantive rule changes. Finally, the proposals to update the name of the post and identify the message sent by the Exchange are also non-substantive rule changes. These proposed amendments do not

¹⁹ See Cboe's Rule 4.21(b)(4), NYSE Arca 5.32-O and NYSE American Rule 903G.

represent substantive changes to the current FLEX option process, rather these changes are merely wording changes which continue to reflect the current process without substantive change.

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 Act²⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.²¹

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.

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 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.

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 email to rule-comments@sec.gov. Please include File Number SR-Phlx-2021-45 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-2021-45. This file number should be included on the subject line if email 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-2021-45 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.²²

Jill M. Peterson
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).