

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92986; File No. SR-Phlx-2021-52)

September 15, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Phlx Options 10, Section 5, Branch Office, and Options 10, Section 17, Profit Sharing 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 September 3, 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. Phlx filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 adopt new Phlx Options 10, Section 5, Branch Office, and Options 10, Section 17, Profit Sharing. The Exchange also proposes to amend General 9, Section 58, and Options 10, Section 6, Opening of Accounts.

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.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 204.19b-4(f)(6).

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 adopt two new rules at Options 10, Section 5, Branch Office, and Options 10, Section 17, Profit Sharing. The Exchange also proposes to amend General 9, Section 58 and Options 10, Section 6, Opening of Accounts. Each change will be described below.

Options 10, Section 5

The Exchange proposes to adopt a new Options 10, Section 5, titled "Branch Offices." Options 10, Section 5 is currently reserved. The proposed rule would be similar to Nasdaq BX, Inc. ("BX") and The Nasdaq Options Market LLC ("NOM") Options 10, Section 5. The proposed rule text would provide,

(a) Every OEF approved to do options business with the public under this Options 10 shall file with Phlx Regulation and keep current a list of each of its branch offices showing the location of each such office and the name of the manager of each such office.

(b) No branch office of an OEF shall transact options business with the public unless the manager of such branch office has been qualified as a Options Principal

or General Securities Sales Supervisor; provided, that this requirement shall not apply to branch offices in which not more than three (3) representatives are located so long as the OEF can demonstrate to the satisfaction of Phlx Regulation that the options activities of such branch offices are appropriately supervised by a Options Principal or General Securities Sales Supervisor.

Similar to BX and NOM, Phlx would require every Order Entry Firm or “OEF”⁵ that is approved to do business with the public pursuant to Options 10 to file with Phlx Regulation a list of each branch office. The list must include the location of the branch office and the name of the manager of the office. The OEF must keep this list current. Further, an OEF must ensure that the branch office manager is qualified prior to transacting business with the public in the branch office. A manager must be registered as an Options Principal or General Securities Sales Supervisor, unless there are not more than three representatives in that branch office and the OEF can demonstrate to the satisfaction of Phlx Regulation that the options activities of such branch offices are appropriately supervised by an Options Principal or General Securities Sales Supervisor.

⁵ The term “Order Entry Firm” or “OEF” means a member organization that submits orders, as agent or principal, on the Exchange. See Phlx Options 1, Section 1(b)(32).

Currently, Phlx General 4,⁶ Section 1220(a)(8)⁷ and Supplementary Material .04 of that rule⁸ require the manager to be registered as an Options Principal or General Securities Sales Supervisor. In 2018, NOM's and BX's registration requirements⁹ were updated to mirror a similar change by FINRA.¹⁰ At that time, Phlx Options 10, Section 5 should have been amended to update the registrations applicable to a branch office manager to conform to the new General 4 registration requirements. The Exchange is proposing to make those amendments at this time.

⁶ Phlx General 4 is incorporated by reference to the General 4 Rules of The Nasdaq Stock Market LLC.

⁷ General 4, Rule 1220(a)(8) provides, in part, "Each member that is engaged in transactions in options with the public shall have at least one Registered Options Principal. In addition, each principal as defined in paragraph (a)(1) of this Rule who is responsible for supervising a member's options sales practices with the public shall be required to register with the Exchange as a Registered Options Principal, subject to the following exception. If a principal's options activities are limited solely to those activities that may be supervised by a General Securities Sales Supervisor, then such person may register as a General Securities Sales Supervisor pursuant to paragraph (a)(10) of this Rule in lieu of registering as a Registered Options Principal."

⁸ Supplementary Material .04 to General 4, Rule 1220 provides, in part, "Any person required to be registered as a principal who supervises sales activities in corporate, municipal and option securities, investment company products, variable contracts, direct participation program securities and security futures may be registered solely as a General Securities Sales Supervisor. In addition to branch office managers, other persons such as regional and national sales managers may also be registered solely as General Securities Sales Supervisors as long as they supervise only sales activities."

⁹ See Securities Exchange Act Nos. 84386 (October 9, 2018), 83 FR 51988 (October 15, 2018) (SR-NASDAQ-2018-078) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules); and 84353 (October 3, 2018), 83 FR 50999 (October 10, 2018) (SR-BX-2018-047) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend, Reorganize and Enhance Membership, Registration and Qualification Rules, and To Make Conforming Changes to Certain Other Rules).

¹⁰ See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR-FINRA -2017-007) (Order Approving Proposed Rule Change To Adopt Consolidated Registration Rules, Restructure the Representative-Level Qualification Examination Program, Allow Permissive Registration, Establish Exam Waiver Process for Persons Working for Financial Services Affiliate of Member, and Amend the Continuing Education Requirements).

The Exchange proposes to relocate Supplementary Material .08 to Options 10, Section 6 to proposed Supplementary Material .01 to Options 10, Section 5 and amend a citation within proposed Supplementary Material .01(vi) of Options 10, Section 5 from “(1) – (vii)” to “(i) to (vii)” to conform the numbering.

The proposed rule would permit Phlx to better regulate branch offices of member organizations¹¹ by making clear within proposed Options 10, Section 5, related to doing business with the public, that an OEF that transacts business with the public must be qualified as a Registered Options Principal or General Securities Sales Supervisor. Further, the proposed rule explains that the requirement to be qualified as a Registered Options Principal or General Securities Sales Supervisor shall not apply to branch offices in which not more than three representatives are located so long as the OEF can demonstrate to the satisfaction of Phlx Regulation that the options activities of such branch offices are appropriately supervised by a Registered Options Principal or General Securities Sales Supervisor. This additional specificity will assist member organizations in complying with branch office requirements. Today, the Exchange has other rules to regulate supervision of branch office such as General 9, Section 20, Supervision. The addition of this rule, similar to NOM and BX, will permit Phlx to enforce the rule in a manner similar to NOM and BX by specifically requiring that members and member organizations that are doing business with the public maintain certain qualifications similar to

¹¹ The term “member organization” means a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of General 3, Sections 5 and 10 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization. See General 1, Section 1(17).

NOM and BX. Members and member organizations that are required to comply with Options 10, Section 5 now have transparent information to determine if they have the appropriate manager qualifications. Also, the proposed rule makes clear when the requirement to be qualified as a Registered Options Principal or General Securities Sales Supervisor does not apply. The specified qualifications for branch managers will ensure branch offices are properly supervised by qualified individuals.

Options 10, Section 17

The Exchange proposes to adopt a new Options 10, Section 17, Profit Sharing. Options 10, Section 17 is currently reserved. The Exchange's rule is similar to FINRA Rule 2150(c),¹² Sharing in Accounts; Extent Permissible.¹³ For purposes of comparing Phlx's proposed rule to FINRA's Rule 2150, the Exchange notes that the term "member" within FINRA Rule 2150 is equivalent to Phlx's defined term "member organization." Phlx also utilizes an additional term, "member",¹⁴ to define its floor membership. Each "member" on Phlx's trading floor is required to obtain a permit to conduct business on the trading floor.¹⁵ FINRA does not have a similar trading floor concept.

Similar to FINRA Rule 2150(c), Phlx proposes to prohibit members, member organizations, and associated persons from sharing directly or indirectly in the profits or losses in

¹² FINRA and Phlx utilize different terminology to describe members. Also, the rules are numbered differently and the rule citations differ.

¹³ Phlx has rule text similar to FINRA Rule 2150(a) within General 9, Section 2(a). Also, Phlx has rule text similar to FINRA Rule 2150(b) within General 9, Section 54.

¹⁴ The term "member" means a permit holder which has not been terminated in accordance with the By-Laws and these Rules of the Exchange. A member is a natural person and must be a person associated with a member organization. Any references in the rules of the Exchange to the rights or obligations of an associated person or person associated with a member organization also includes a member. See General 1, Section 1(16).

¹⁵ See Phlx General 3, Section 11.

any account of a customer, however the rule does provide three circumstance within proposed Options 10, Section 17(a)(1) through (3) wherein a member, member organization, or person associated with a member organization may share in the profits or losses in such an account¹⁶ Specifically, proposed Options 10, Section 17(a) permits a member, member organization, or person associated with a member organization to share directly or indirectly in the profits or losses in any account of a customer carried by a member, member organization, or person associated with a member organization, if prior written authorization is obtained as described in proposed subparagraphs (1) and (2) and the member, member organization, or person associated with a member organization shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the member, member organization, or person associated with a member organization as described in proposed subparagraph (3).

Proposed Options 10, Section 17(b) exempts from paragraph (a)(3) the accounts of the immediate family of such member, member organization, or person associated with a member organization. The rule proposes to define “immediate family” to include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the member, member organization, or person associated with a member organization otherwise contributes directly or indirectly.

¹⁶ Proposed Options 10, Section 17(a)(1) through (3) provides that a member, member organization, or person associated with a member organization may share in the profits or losses in such an account if (1) such member or person associated with a member organization obtains prior written authorization from the member organization employing the associated person; (2) such member, member organization, or person associated with a member organization obtains prior written authorization from the customer; and (3) such member, member organization, or person associated with a member organization shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the member, member organization, or person associated with a member organization.

Proposed Options 10, Section 17(c) permits a member, member organization, or person associated with a member organization that is acting as an investment adviser to receive compensation based on a share in profits or gains in an account provided certain conditions are met. Specifically, the member or person associated with a member organization seeking such compensation obtains prior written authorization from the member or member organization employing the associated person; and such member, member organization, or person associated with a member organization seeking such compensation obtains prior written authorization from the customer; and all of the conditions in Rule 205-3 of the Investment Advisers Act of 1940 (as the same may be amended from time to time) are satisfied.

This proposal would enable Phlx to better regulate profit sharing arrangements of member organizations, members, and persons associated with member organizations by clearly specifying the manner in which a member organization, member, or person associated with a member organization may share in the profits or losses in such an account, describing what activity is exempt from the direct proportionate share limitation of proposed paragraph (a)(3), and delineating within proposed paragraph (c) how a member organization, member, or person associated with a member organization that is acting as an investment adviser may receive compensation based on a share in profits or gains in an account. Today, Phlx General 9, Section 7, Report of Financial Arrangements, permits Phlx to learn of such arrangements. The proposed rule would enable Phlx to restrict the ability to profit share to certain limited circumstances, similar to FINRA.

General 9, Section 58

The Exchange proposes to amend General 9, Section 58, Advertisements, Market Letters, Research Reports and Sales Literature, to amend the heading “Supplementary Material” to

“Supplementary Material to General 9, Section 58” so the format of the heading is the same as other General 9 rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁷ in general, and with Section 6(b)(5) of the Act,¹⁸ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

Options 10, Section 5

The adoption of a new Options 10, Section 5, titled “Branch Offices,” is consistent with the Act and will protect investors and the public interest because the proposed rule explains the requirement to be qualified as a Registered Options Principal or General Securities Sales Supervisor and also explains when the requirement to be registered as such does not apply.¹⁹ General 9, Section 20, Supervision, does not offer the same specificity as proposed within Options 10, Section 5 with respect to branch offices, and General 9, Section 20 does not specifically apply only to members doing business with the public. The addition of this rule, similar to NOM and BX Options 10, Section 5, will permit Phlx to enforce the rule in a manner

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ The qualification requirement shall not apply to branch offices in which not more than three representatives are located so long as the OEF can demonstrate to the satisfaction of Phlx Regulation that the options activities of such branch offices are appropriately supervised by a Registered Options Principal or General Securities Sales Supervisor. See proposed Options 10, Section 5(b).

similar to NOM and BX by requiring certain qualifications for members doing business with the public. These qualifications for branch managers will protect investors and the public interest by ensuring branch offices are properly supervised by qualified individuals who will ensure compliance with the Exchange's rules. Today, Phlx General 4 requires member organizations, members, and persons associated with a member organization to have certain qualifications when conducting certain activity. These qualifications are designed to ensure that individuals have the necessary knowledge and experience to supervise persons employed by the member organization at a branch office. Proposed Options 10, Section 5 specifically requires that members and member organizations that are doing business with the public maintain certain qualifications. Members and member organizations that are required to comply with Options 10, Section 5 now have transparent information to determine which of the qualifications apply to a manager of a branch office and when those qualification apply.

Options 10, Section 17

Adopting a new Options 10, Section 17, Profit Sharing, similar to FINRA Rule 2150(c), Sharing in Accounts; Extent Permissible, is consistent with the Act. This proposal will protect investors and the public interest because it will clearly specify the way a member, member organization, or person associated with a member organization may share in the profits or losses in such an account. The proposal also will describe what activity is exempt from the direct proportionate share limitation of proposed paragraph (a)(3). Finally, the proposal will delineate within proposed paragraph (c) how a member, member organization, or person associated with a member organization that is acting as an investment adviser may receive compensation based on a share in profits or gains in an account. Members, member organizations, and persons associated with a member organization will have clear guidance on when profit sharing is

permissible. Today, Phlx General 9, Section 7, Report of Financial Arrangements, permits Phlx to learn of such arrangements, and Phlx General 1, Section 1(c) does not permit members, member organizations, and persons associated with a member organization to engage in conduct inconsistent with just and equitable principles of trade. The proposed rule would enable Phlx to further restrict the ability to profit share in certain limited circumstances, similar to FINRA.

General 9, Section 58

The Exchange's proposal to amend a heading within General 9, Section 58, Advertisements, Market Letters, Research Reports and Sales Literature, is a non-substantive rule change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

Options 10, Section 5

The Exchange's proposal to adopt a new Options 10, Section 5, titled "Branch Offices," does not impose an undue burden on competition as all member organizations that conduct business with the public would be subject to the proposed rule.

Options 10, Section 17

The Exchange's proposal to adopt a new Options 10, Section 17, Profit Sharing, similar to FINRA Rule 2150(c), Sharing in Accounts; Extent Permissible, does not impose an undue burden on competition as all members, member organizations, and persons associated with member organizations that conduct business with the public would be subject to the proposed rule.

General 9, Section 58

The Exchange's proposal to amend a heading within General 9, Section 58, Advertisements, Market Letters, Research Reports and Sales Literature, is a non-substantive rule 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 e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2021-52 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-2021-52. 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-2021-52 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

J. Matthew DeLesDernier
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).