

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81069; File No. SR-Phlx-2017-49)

June 30, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Delivery of Options Disclosure Documents and Special Statement for Uncovered Options Writers

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 June 20, 2017 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 Rule 1029, Delivery of Options Disclosure Documents.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchanges proposes to amend Rule 1029 in two respects, first in connection with the required delivery to customers of any amended Options Disclosure Document (“ODD”), and second to set forth for the use of members and member organizations a Special Statement for Uncovered Options Writers for delivery to customers.

Delivery of Amended Options Disclosure Documents

Rule 1029 currently requires every member and member organization to deliver a current ODD to each customer at or prior to the time such customer's account is approved for options trading. The rule also contains a requirement that each amended ODD shall be distributed to every customer having an account approved for trading the options class(es) to which such ODD relates, or, the alternative, shall be distributed not later than the time a confirmation of a transaction is delivered to each customer who enters into an option transaction pertaining to such an options class. The language concerning amended Options Disclosure Documents is somewhat awkward and cumbersome, with the required timing of the provision of the amended ODD presented as “an alternative” to a requirement that the amended ODD be distributed in the first place to every customer having an account approved for trading the options classes(es) to which such ODD relates. The Exchange proposes to delete this language, and to replace it with more straightforward language requiring a copy of each amendment to an ODD to be furnished to each customer who was previously furnished the ODD to which the amendment pertains, not later than the time a confirmation of a transaction in the category of options to which the

amendment pertains is delivered to such customer. This language is based upon comparable language in Chapter 11, Section 15(a)(ii), of the Nasdaq Options Market rules, Nasdaq ISE Rule 616(a)(2), and Chicago Board Options Exchange (“CBOE”) Rule 9.15(a). The Exchange is also making a minor edit to the introductory sentence, substituting the word “transactions” for the word “trading” in order to conform to the terminology used by the foregoing exchanges.

Special Statement for Uncovered Options Writers

Rule 1024(c)(v) requires every member organization transacting business with the public in uncovered option contracts develop, implement and maintain specific written procedures governing the conduct of such business, including requirements that customers approved for writing uncovered short options transactions be provided with a special written description of the risks inherent in writing uncovered short option transactions, at or prior to the initial uncovered short option transaction. This written disclosure document must be furnished to customers in addition to the ODD required to be provided to customers trading in options pursuant to Rule 1029(a). Current Rule 1029(b) states that the written description of risks required by Rule 1024(c)(v) shall be in a format prescribed by the Exchange or in a format developed by the member organization, provided it contains substantially similar information as the prescribed Exchange format and has received prior written approval of the Exchange.

The Exchange now proposes to add Rule 1029(c), which will set forth a sample risk description captioned “Special Statement for Uncovered Options Writers” (the “Special Statement”) for use by member organizations to satisfy the requirements of Rule 1029(b). The Special Statement alerts customers to the special risks associated with uncovered options writing which may expose investors to potentially significant loss, and states that this type of strategy may therefore not be suitable for all customers approved for options transactions. The Special Statement describes potential losses of uncovered call and put option writing, the possibility of

significant margin calls, strategies where the potential risk is unlimited, consequences of unavailability of a secondary market in options, and the risk born by the writer of an American-style option subject to assignment of an exercise at any time after he has written the option until the option expires. The proposed rules are intended to increase customer awareness of the risks entailed in selling uncovered short option contracts.³ This language is almost identical to language contained in Chapter 11, Section 15 (c) of the NOM rules, CBOE Rule 9.15(b), and ISE Rule 616(d).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁵ 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 amendment of the portion of the rule requiring the delivery to customers of any amended ODD should protect investors by making this regulatory obligation more clear to members and member organizations, thus ensuring that amendments will be delivered to each customer who was previously furnished the ODD to which the amendment pertains. The proposed rule setting forth the Special Statement is intended to protect investors by

³ The Special Statement was originally based upon a prototype developed by the Options Self-Regulatory Council consisting of representatives of the American Stock Exchange, Chicago Board Options Exchange, Midwest Stock Exchange, National Association of Securities Dealers, New York Exchange, Philadelphia Stock Exchange and Pacific Stock Exchange. See Securities Exchange Act Release No. 26952 (June 21, 1989), 54 FR 27256 (June 28, 1989). The language of the Special Statement was included as an exhibit to SR-Phlx-89-24 which was approved in the foregoing approval order, but was not submitted as part of the rule text in that filing. The Exchange is now adding the Special Statement language into the actual rule text.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

facilitating increased customer awareness of the particular risks associated with selling uncovered short option contracts. The distribution to customers of this short succinct written statement that describes the risks associated with uncovered options writing will help ensure investor protection because it will increase customer awareness of the potential for significant losses in writing uncovered short options contracts. Since disclosure is an important component of investor protection under the federal securities laws, providing investors with this special uncovered short options risk statement may help ameliorate problems associated with uncovered short options transactions (e.g., significant margin calls), especially during volatile markets.

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 language which is proposed to be added to Rule 1029 has previously been considered and approved by the Commission for use in other exchanges' rulebooks as discussed above.⁶

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 Act⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸

⁶ See footnote 3 above.

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-2017-49 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-2017-49. 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

⁸ 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.

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2017-49 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.⁹

Brent J. Fields
Secretary

⁹ 17 CFR 200.30-3(a)(12).