

SECURITIES AND EXCHANGE COMMISSION  
(Release No 34-81230; File No. SR-Phlx-2017-34)

July 27, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change to Add Functionality to the Options Floor Broker Management System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 18, 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 add functionality to the Options Floor Broker Management System (“FBMS”), the electronic system through which Exchange Floor Brokers transmit orders to the Exchange’s trading system (“System”). The Exchange also proposes to amend Options Floor Procedure Advice C-2.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

*Overview of FBMS.* As described in Exchange Rule 1063, the Floor Broker Management System or FBMS is the electronic system that enables Floor Brokers to submit option orders represented on the Exchange trading floor (the "Floor") to the Exchange's Trading System for execution and reporting to the consolidated tape. FBMS also facilitates the creation of an electronic audit trail for such orders.

Specifically, when a Floor Broker agrees to the terms of a trade on the Floor, then the Floor Broker memorializes the terms by entering the information into the FBMS software application using either a handheld tablet or a desktop computer. After the Floor Broker enters the trade terms into FBMS, the Floor Broker directs FBMS to transmit the information to the Exchange's automated Trading System.

Upon receipt, the Trading System immediately verifies whether the terms of the trade comply with the Exchange's trade-through and priority requirements. It does so by comparing the terms of the trade to the market that prevailed at the time that the Trading System received the trade from FBMS. If the Trading System determines, at the time of receipt, that the trade violates either the trade-through rule or applicable priority requirements, then the Trading System rejects the trade. However, if the Trading System verifies that the trade complies with the applicable rules, then the Trading System will proceed to execute the trade and report the execution to the consolidated tape for dissemination to the public.

FBMS provides numerous benefits to Floor Brokers, their Customers, and the Exchange. Notably, it helps to ensure fair and orderly trading by automating the enforcement of priority and trade-through rules for on-Floor trades and rendering the enforcement of such rules consistent for both on-Floor and off-Floor trading. FBMS also facilitates trading surveillance by capturing a fulsome audit trail for all options orders that Floor Brokers enter into it.

Notwithstanding the benefits of FMBS, the simplicity of its design and the universality of its application also sometimes generate unintended adverse consequences for Floor Brokers, their Customers, and the Exchange. The circumstances in which these adverse consequences arise are as follows.

Unlike routine trades, which Floor Brokers typically submit from FBMS to the Trading System almost instantaneously after coming to an agreement to their terms in open outcry on the Floor, certain Floor trades involve Multi-leg Orders,<sup>3</sup> which require Floor Brokers to spend several seconds or more to fully calculate or reconcile their terms before the Floor Brokers are ready and able to submit them to the Trading System. For example, the Exchange estimates that the following tasks associated with reconciling the terms of Multi-leg Orders would require the following time periods to complete:

- The announced/negotiated price of a Multi-leg Order differs from that which was entered on the order but is in the allowable minimum price variation (“MPV”) (4 seconds);
- The announced/negotiated volume of a Multi-leg Order differs from that which was entered on the order (4 seconds);

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<sup>3</sup> See Rule 1066(f) (defining the term “Multi-leg Orders”).

- The announced/negotiated volume and price of a Multi-leg Order differs from that which was entered on the order, but the price is in the allowable MPV (7 seconds);
- The Multi-leg Order requires the use of the Complex Calculator to change the volume and/or price for one leg (9 seconds); and
- The Multi-leg Order requires the use of the Complex Calculator to enter all prices and volumes for: (i) 2 legs (14 seconds); 5 legs (27 seconds); 10 legs (51 seconds); and 15 legs (69 seconds).

While the near-instantaneous entry of information about routine trades typically mitigates the risk that market conditions will shift between the time when Floor Brokers agree upon the terms of such trades on the Floor and the time when the Trading System receives the trades for verification and execution, the same cannot be said for trades involving Multi-leg Orders. A heightened risk exists that, during any extended delay that occurs between the time when Floor Brokers come to an agreement on the terms of a trade involving a Multi-leg Order and the time when the Broker submits the trade to the Trading System, market conditions will shift in a way that will render the trade inconsistent with Exchange's priority and trade-through rules, such that the Trading System will reject the trade.

Simple orders in certain options are also susceptible to this risk when the markets for such options are volatile or prone to rapid changes – even during a short time frame between the time of agreement to the terms of a trade on the Floor and Trading System receipt. The market for options on exchange traded funds (“ETFs”) in the Penny Options Pilot is an example of a market that tends to shift rapidly.

When the aforementioned scenarios occur, they harm Floor Brokers, their Customers, and the Exchange. In particular, a Customer experiences harm when a trade that a Floor Broker

agrees to on its behalf cannot be executed on the terms agreed upon by the parties, if at all. This harm is unfair in that it occurs, not because the Customer's trade is invalid when agreed upon, but instead because the Floor Broker finds it humanly impossible to reconcile the trade details in FBMS and submit the trade to the Trading System quickly enough to keep pace with the market – a market that is often dominated by electronic trading algorithms that update quotations in nanoseconds rather than seconds. Meanwhile, a Floor Broker suffers financially when he or she is unable to execute a trade on behalf of his or her client. Finally, the Exchange suffers when, as a result of all of the foregoing, Floor Brokers and their Customers forego trading on the Floor of the Exchange and instead resort to other venues that afford no similar disadvantages to those who engage in floor trades and are not held to the same execution standards that FBMS enforces today. Indeed, the Exchange observes that competing exchanges, like NYSE Amex, execute floor trades based upon the time when their floor brokers reach agreement on the trades in the trading crowd rather than the time when the trading system receives the trades; the Exchange further observes that at such competing exchanges, floor trades often execute at prices that differ from those that prevail when the exchanges report the trades to the consolidated tape.

The Exchange notes that the problem it is attempting to solve through this proposal did not exist prior to the advent of FBMS, when Floor Brokers stamped paper tickets with the times when they reached agreement on their trades in the trading crowd, entered the trade terms onto the tickets, and submitted the tickets to an Exchange Data Entry Technician, who in turn forwarded the trade information to the Trading System for execution as of the time of the date stamp on the ticket. Moreover, the Exchange notes that even in the original version of FBMS, Floor Brokers could self-stipulate the time when they executed a trade and thereby avoid the risk

that the market would move before they finished entering the terms of that trade into FBMS and submitted it to the System.

*Overview of Snapshot.* To mitigate the unintended and unfair consequences of the current iteration of FBMS – while also preserving its benefits – the Exchange proposes to amend Rules 1000 and 1063 to permit the use of a new feature in FMBS called “Snapshot.”<sup>4</sup>

Snapshot will in many respects serve as an electronic equivalent – if not an enhanced version – of a paper ticket for Floor Brokers.<sup>5</sup> Specifically, Snapshot will enable Floor Brokers who engage in certain types of Floor trades to: (i) provisionally execute<sup>6</sup> the trades in open outcry on the options Floor<sup>7</sup>; (ii) capture information about the state of the market that exists at the time when they provisionally execute such trades (i.e., take a “snapshot” of the market); (iii) afford Floor Brokers a limited amount of additional time to submit their provisionally executed trades through FBMS to the Trading System; and (iv) provided that Floor Brokers enter the trade information into FBMS and submit it to the Trading System in a timely fashion, have the

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<sup>4</sup> The Exchange became capable of offering Snapshot upon upgrading FBMS to version 3.0 in November 2016. The Exchange works continually to enhance Exchange systems to improve trading on the Exchange and in the national market system. The history of the different versions of FBMS is described in great detail in a previous filing. See Securities Exchange Release No. 78593 (August 16, 2016) (SR-Phlx-2016-82).

<sup>5</sup> As described below, Snapshot would be superior to a paper ticket in that it would provide for systematic enforcement of trade-through and priority rules.

<sup>6</sup> As set forth in proposed Rule 1063(e)(v)(A)(1), provisional execution occurs when either: (i) the participants to a trade reach a verbal agreement in the trading crowd as to the terms of the trade or (ii) a Floor Broker crosses an order as set forth in Rule 1064(a). Execution is defined as “provisional” insofar as the trade may be deemed invalid and then rejected when the Trading System subsequently verifies it.

<sup>7</sup> The use of Snapshot (for multi-leg orders and simple orders on options in ETFs included in the Options Penny Pilot) would be an exception to the general rule set forth in Rule 1000(f)(iii) that Floor Brokers may not execute trades in open outcry on the options trading Floor.

Trading System verify<sup>8</sup> their trades for compliance with trade-through and priority rules based upon the state of the market that existed at the time when the trades were provisionally executed and Snapshots were taken (rather than at the time when the Trading System received the trades). Provided that the trades are indeed compliant, then the Trading System will report them to the consolidated tape. (If the trades are deemed to have been non-compliant with trade-through or priority rules at the time when the Snapshots were taken, then they will be rejected.) The time and market captured by the Snapshot will be utilized for all purposes, including audit trail<sup>9</sup> and surveillance purposes.

The Exchange notes that Snapshot would not interact with the Exchange's electronic order book. As set forth in proposed Rule 1063(e)(v)(C)(3), if an order exists on the book that has priority at the time when a Floor Broker seeks to take a Snapshot, the System will not

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<sup>8</sup> The Snapshot will contain all information necessary for the Trading System to determine that a provisionally executed trade is consistent with all applicable priority and trade-through rules based on the time the trade is provisionally executed on the Floor. Specifically, the Snapshot will include: (1) the away market best bid and best offer; (2) the Exchange best bid and best offer; (3) Customer orders at the top of the Exchange book; and (4) the best bid and offer of all-or-none orders. The System needs each of these data elements to complete important priority and trade-through checks. The Snapshot must capture information regarding Customer orders and all-or-none orders because those impact the determination of priority and trade through differently than other orders on the Exchange Book.

<sup>9</sup> Every time a Floor Broker takes a Snapshot, a record of the Snapshot will be created and retained for audit trail purposes regardless of whether the Floor Broker acts upon the Snapshot by submitting it to the Trading System. This record is in addition to that which the Exchange presently creates upon initiation of an order in FBMS. Moreover, when a Floor Broker submits a trade subject to Snapshot to the Trading System and the trade is thereafter reported to the consolidated tape, an additional execution record will be created and retained for audit trail purposes that will contain all of the same details as all other trade records. For example, the Snapshot and the execution record created at the time of reporting to the consolidated tape will contain the time when a Snapshot was taken, the time of reporting to the consolidated tape, and all relevant order and execution details (including the Exchange best bid and offer and away best bid and offer). Lastly, the Snapshot record will include Exchange all-or-none order details to provide a fulsome capture of the Exchange best bid and offer at the time of the Snapshot.

prevent the Floor Broker from taking the Snapshot, but he will need to clear the order on the book, re-announce and provisionally re-execute the trade, and take a new Snapshot before he submits the provisionally executed trade to the Trading System or else the Trading System will reject the provisionally executed trade and will not report that trade to the consolidated tape (as it would violate the priority rules of the Exchange).

The following is an example of how Snapshot would operate in practice and how it would impact a hypothetical trade. In this example, a Floor Broker receives a Customer order to buy 100 SPY Jan 250 Calls for \$1.05. He enters the trading crowd, lawfully announces the order, and requests bids and offers from the trading crowd. A Market Maker in the trading crowd offers to sell 100 contracts at \$1.04 while the National Best Bid or Offer is \$1.03 bid and \$1.05 offer (no Customer orders on the offer). At this point, the Floor Broker can agree to the trade of the 100 SPY Jan 250 calls at a price of \$1.04, a price which is \$0.01 better than the limit price of the Customer order.

Presently, and without the availability of Snapshot, if the market changes to \$1.05 bid and \$1.07 offer while the Floor Broker is updating his order in FBMS to reflect the provisional execution price of \$1.04, then the Floor Broker will be unable to complete his purchase of 100 contracts at \$1.04 on behalf of the Customer and the Customer may end up paying the new offer of \$1.07 per contract. Moreover, if another round of negotiation occurs in the crowd due to the inability of the Floor Broker to execute the previously agreed-upon trade at the time of agreement, then the same scenario noted above may occur again, resulting in either an error for the Floor Broker or the Customer paying a price higher than \$1.07.

With Snapshot, by contrast, the Floor Broker could click the Snapshot button in FBMS upon reaching an agreement with a Market Maker in the crowd as to the terms of the trade,



thereby effecting a provisional execution of the trade based upon the available market of a \$1.03 bid and \$1.05 offer. As discussed below, once the Floor Broker clicks the Snapshot button, he will have up to 15 seconds to enter into FBMS the final terms of his Customer's trade and then submit the trade to the Trading System. The Trading System will then verify that the trade complies with trade-through and priority rules based upon the market that existed, \$1.03 bid and \$1.05 offer, when the Snapshot was taken. Because in this example, the Trading System determines that the trade is valid, it will report the trade to the consolidated tape.

By affording the Floor Broker the extra time that he needs to enter and submit this provisionally executed trade without having to bear the interim risk of market conditions changing, Snapshot would help ensure that the Floor Broker is able to execute the Customer order and do so at a price that meets the Customer's expectations and needs while continuing to adhere to trade-through and priority rules. In a larger sense, Snapshot would also compensate for the inherent disparity that exists between electronic options trading (involving the instantaneous interactions of trading algorithms) and floor-based options trading (involving the slower interactions of human beings). Lastly, it would help ensure that the Exchange remains competitive with other floor trading venues, like NYSE Amex, that already permit trading to occur in a manner similar to Snapshot, as well as with venues, like the proposed BOX Options Exchange trading floor, that are vague about whether they would permit such trading practices.<sup>10</sup>

*Limitations on the Availability of Snapshot.* Although the Exchange believes that Snapshot will be a welcome and beneficial addition to its Floor trading operations, the Exchange

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<sup>10</sup> See Ltr. from J. Conley, SVP and Corporate Secretary, Nasdaq to B. Fields, Secretary, Securities and Exchange Commission, dated March 27, 2017, at 3-4 (commenting on the failure of the BOX Options Exchange, in its proposal to establish open outcry trading, to explain how it would address a shift in the market that occurs between the time when a trade is agreed upon in open outcry and when it is entered into the BOX electronic order entry system for verification and execution).

nevertheless recognizes the prudence of imposing reasonable controls upon the use of Snapshot to ensure that Floor Brokers do not misuse or abuse the functionality. These controls, which are set forth in proposed Rule 1063(v)(A), are as follows.

First, a Floor Broker may not use the Snapshot feature for all of his options orders. Instead, a Floor Broker may trigger the Snapshot feature only for his or her use with a trade involving a Multi-leg Order (as defined in Rule 1066(f)) or a simple option order on an ETF that is included in the Options Penny Pilot. The reason for this limitation is to ensure that Floor Brokers use Snapshot only when the complexity of an order or the fast-moving nature of the market for certain options reasonably justifies the need for additional time to calculate or enter trade information or the ability to preserve market conditions that exist at the time of provisional execution. As discussed above, options involving Multi-leg Orders often involve time-consuming tasks prior to trade entry that justify use of Snapshot. Likewise, the market for options orders on ETFs included in the Options Penny Pilot is known to be especially fast-moving and volatile, which again justifies the use of Snapshot.

A second limitation that the Exchange proposes is that a Floor Broker may have only one Snapshot outstanding at any given time across all options classes and series. In other words, when a Floor Broker takes a Snapshot of a trade and while that Snapshot remains valid, the Floor Broker may not simultaneously take a Snapshot of another trade. The Exchange has built this limitation into FBMS such that FBMS will enforce it automatically. This limitation will directly contribute to preventing Floor Brokers from engaging in excessive use of and abuse of Snapshot.

The Exchange notes that it proposes to amend Floor Advice C-2 to render it a violation for a Floor Broker to trigger the Snapshot feature for the purpose of obtaining favorable priority or trade-through conditions or improperly avoiding unfavorable priority or trade-through

conditions. Conduct that violates this Advice would include, for example, repeated instances in which Floor Brokers permit valid Snapshots to expire without submitting the trades subject to the Snapshots to the Trading System for verification and reporting to the consolidated tape.

Surveillance Staff will monitor and enforce proper usage of the Snapshot feature on a post-trade basis.

*Limitations on the Validity of a Snapshot.* In addition to the above, the Exchange proposes, in Rule 1063(v)(B), to limit the time period during which a Snapshot will remain valid such that a trade may execute based upon it. Specifically, the Exchange proposes to make each Snapshot valid for only 15 seconds, meaning that a Floor Broker may submit a trade from FBMS to the Trading System based upon a Snapshot at any time within 15 seconds after the Floor Broker clicks the Snapshot button and activates the feature.

The Exchange decided to impose this limitation after it concluded that allowing Floor Brokers to rely upon a Snapshot for an extended period of time would unduly impair the validity of the consolidated tape. For example, the Exchange considered making a Snapshot valid for up to the full 90 seconds available to report trades to the consolidated tape. Although designating Snapshots as valid for up to 90 seconds would have provided Floor Brokers with ample time to enter and submit even their most complex trades, the Exchange concluded that the cost to market transparency of lengthy delays in executing and reporting trades would outweigh this benefit. At the other end of the spectrum, the Exchange also considered imposing a strict time limitation on the validity of a Snapshot (as short as five seconds), but it decided against doing so after concluding that such a limitation would eliminate the utility of the Snapshot feature in most of the scenarios in which it could be useful. Ultimately, the Exchange settled on a 15 second limitation for the validity of a Snapshot as a reasonable and prudent compromise between the

needs of the Floor Brokers for additional time to completely reconcile and record the terms of their trades with the needs of market participants for fast, accurate, and transparent reporting of trades.

If a Snapshot expires before a Floor Broker completes his or her entry and submission of a trade, then FBMS will not permit the Floor Broker to rely upon the expired Snapshot to submit the trade to the Trading System. Instead, the Floor Broker has two options under the Exchange's proposal.

First, assuming that the Floor Broker re-confirms the acceptability of the terms of the trade with all participants, then the Floor Broker may finish entering the trade details into FBMS without Snapshot and submit it to the Trading System. The Trading System will then validate and (assuming validity) execute the trade in the normal course using the market conditions that prevail at the time when the Trading System receives the trade.

Alternatively, the Floor Broker may, after re-confirming the terms of the trade, take a new Snapshot of the market that records a new time of provisional execution. The Floor Broker would then have no more than 15 seconds within which to submit the re-confirmed trade and, upon timely submission, the Trading System would evaluate it based upon the prevailing market conditions reflected in the new Snapshot. Provided that the submitted trade adheres to the priority and trade-through restrictions based upon the prevailing market condition reflected in the new Snapshot, then the Trading System will report the trade to the consolidated tape. Note that if the Floor Broker records multiple Snapshots respecting the same order, the Trading System would automatically use the most recent Snapshot for verification purposes.

*Ability to Refresh a Snapshot Before it Expires.* Lastly, the proposal would permit a Floor Broker to replace a valid and existing Snapshot, prior to its expiration, with a new one by

re-clicking the Snapshot button within 15 seconds of clicking it the first time. The Exchange proposes to include this functionality in Snapshot to allow a Floor Broker to address a scenario in which the market shifts between the time of provisional execution and the time when the Floor Broker takes a Snapshot, wherein the market captured in the Snapshot is such that it would not permit a trade to occur in accordance with the Exchange's rules. In this scenario, where the Trading System rejects or the Floor Broker reasonably anticipates that the Trading System will reject a provisional execution subject to a Snapshot, the proposal provides that the Floor Broker must re-announce the trade in the crowd before he refreshes the Snapshot.<sup>11</sup>

This functionality in Snapshot would also allow a Floor Broker to take a new Snapshot when he reasonably anticipates that he will be unable to input the final terms of the trade within the 15 second window. In this scenario, the proposal provides that the Floor Broker need only re-confirm the terms of the trade with the existing participants before he refreshes the Snapshot.

By way of example, a Floor Broker enters the trading crowd with a Customer Multi-leg Order to Buy 100 IBM Jan 100 calls for \$1.05 and Sell 97 Jan 105 calls for \$0.85. The market for the Jan 100 calls is \$1.00 bid and \$1.15 offer while the market for the Jan 105 calls is \$0.70 bid and \$1.00 offer. The trading crowd has no interest in participating in this trade. This is a lawful trade and when the Floor Broker announces the execution, he clicks the Snapshot button. When the Snapshot appears, it reflects a rapid change in the market for the Jan 100 calls to \$1.10 bid and \$1.15 offer. When the Floor Broker sees the Snapshot, he knows that it will be useless because the Trading System will reject the trade since his price of \$1.05 is outside of the market. While the Snapshot remains valid, he sees the market for the Jan 100 calls change back to \$1.00

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<sup>11</sup> An example of this would occur if the System rejects or the Floor Broker realizes that the System will reject his or her Snapshot because an order exists on the Exchange's limit order book that has priority.

bid and \$1.15 offer. He re-announces the trade, receives no interest, and then clicks the Snapshot button again to record the change in the market and receives a new 15 second window in which to open the Complex Calculator, enter the terms of the trade into the Complex Calculator, and submit the trade to the Trading System for execution.

A second example where a Floor Broker may utilize the Snapshot feature and find it necessary to re-click the Snapshot could occur when the Floor Broker enters the trading crowd with a multi-Legged Customer Order to buy 819 contracts of Leg 1, sell 912 contracts of Leg 2, and buy 1011 contacts of Leg 3 – all for a net price of \$2.00. In the trading crowd, the Floor Broker receives interest from several Market Makers who provide \$2.00 offers with a net offer size greater than his order size (providing an over subscription of size). Because the Floor Broker has sufficient interest to execute the trade at \$2.00, he clicks Snapshot, but he then finds himself unable, before the Snapshot expires, to finalize the volumes that each Market Maker will agree to trade (given that each Market Maker desired to trade more contracts than the order size). Accordingly, the Floor Broker re-confirms the terms of the trade and then refreshes the Snapshot.

The Exchange does not believe that Floor Brokers have an incentive to abuse the Snapshot “refresh” functionality to take advantage of favorable market moves. Nevertheless, in an abundance of caution, the Exchange proposes to limit to three the number of Snapshots that Floor Brokers may take with respect to any single order, regardless of whether each such Snapshot persists for the full 15 seconds or for a shorter period.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup> 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 to protect investors and the public interest.

Snapshot promotes just and equitable principles of trade and serves the interests of investors and the public by increasing the likelihood that investors will be able to execute their orders and do so in line with their expectations and needs. Similarly, Snapshot mitigates the risk that the Trading System will unfairly reject a trade due to a change in market conditions that occurs between the time when the parties negotiate a lawful and valid trade on the Floor and the time when the Trading System receives it.

Snapshot also renders the Exchange Floor more competitive with off-floor electronic trading venues because it compensates for the inefficiencies and delays inherent in a floor trading system that depends upon the inputs and interactions of human beings; such inefficiencies and delays do not exist in fully-electronic trading environments, where computers and algorithms interact on a near instantaneous basis. Additionally, Snapshot will render the Floor more competitive with other floor-based trading venues at which the Exchange observes trade executions occurring seconds or even minutes after verifications occur, but on trading terms that existed as of the time of verification.

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

The Exchange believes that it is consistent with the Act to specifically exempt multi-leg orders and simple orders in options on Options Penny Pilot ETFs from the general rule set forth Rule 1000(f)(iii) that Floor Brokers may not execute orders in the options trading crowd. As noted previously, the complex calculations that are often involved in multi-leg orders and the fast-moving nature of the markets for options on Penny Pilot ETFs render these two categories of options particularly appropriate for exceptional treatment using Snapshot. Enabling Floor Brokers to provisionally execute these two categories of options on the Options Floor (using Snapshot), rather than execute them in the Trading System, will not adversely impact investors or the quality of the market due to the controls that the Exchange proposes on the circumstances in which Floor Brokers may use Snapshot and on the manner in which they may use it. In fact, the proposal will protect investors and the public interest by improving Floor Brokers' ability to execute multi-leg orders and simple options on Penny Options Pilot ETFs while continuing to ensure that all priority and trade through rules are systematically enforced.

Moreover, this proposal is consistent with Rule 611 of Regulation NMS,<sup>14</sup> which requires the Exchange to establish policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations. Presently, the Exchange verifies that a proposed trade complies with the trade-through rule as of the time when the Trading System receives the trade from FBMS; if the trade complies, then the Trading System executes the trade and reports it to the consolidated tape. However, the proposal would serve as an exception to this practice. It would permit Floor Brokers, upon reaching a meeting of the minds in the trading crowd regarding the terms of a trade, to take a Snapshot that provisionally executes the trade on the Floor. When the Floor Broker submits the trade to the Trading System using Snapshot, the

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<sup>14</sup> 12 CFR 242.611.



Trading System will verify that the provisionally executed trade complied with the trade-through rule as of the time of its execution – i.e., the time when the crowd agreed to the terms of the trade and Snapshot was taken – rather than at the time when the Trading System receives the trade. If the Trading System determines that the provisionally executed trade complied with the trade-through rule, then it will report the trade to the consolidated tape. If, however, the Trading System determines that the provisionally executed trade was non-compliant with the trade-through rule as of the time when the Snapshot was taken, then it will reject the trade. In other words, even though the proposal will change the time of execution of a trade for purposes of verifying compliance with the trade-through rule, the automated compliance verification process will otherwise be unchanged and will still apply to systematically prevent trade-throughs for all trades, including those utilizing Snapshot.<sup>15</sup>

Finally, the Exchange’s proposal accomplishes the above in a manner that: (1) continues to provide automated and verifiable enforcement of applicable trade-through and priority rules; (2) is documented in writing and transparent, in contrast to the practices of other exchanges; (3) provides for trade reporting to occur in a timely fashion, even for the most complex trades, and within a 15 second time frame that is far less than the maximum 90 second reporting period

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<sup>15</sup> The Exchange notes that the SEC has published analogous guidance indicating that a broker-dealer that individually negotiates the terms of a block trade among multiple parties would have policies and procedures reasonably designed to prevent a trade-through even where the individually negotiated price is not at or within the best protected quotations at the time when the transaction terms are entered into the broker-dealer’s automated system if the broker-dealer takes steps to verify that the transaction price of the trade was at or within the best protected quotations at some point during a 20 second period up to and including the time when the transaction terms are entered into the broker-dealer’s order entry system. See SEC, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 or Regulation NMS, Question 3.23: Agency Block Transactions with Non-Trade-Through Prices that are Individually Negotiated, at <https://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm>.

allowable; and (4) imposes surveillance and responsible limitations upon Snapshot that ensure appropriate usage and prevents violations and abuse.

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.

In fact, the proposal is pro-competitive for several reasons. The Exchange believes that the Snapshot feature will result in the Exchange's Floor operating more efficiently, which will help it compete with other floor-based exchanges.

Moreover, the proposal helps the Exchange compete by ensuring the robustness of its regulatory program, ensuring Floor Brokers' compliance with that program, and by enhancing Customer protections through further utilization of electronic tools by members. The Exchange considers all of these things to be differentiators in attracting participants and order flow.

Lastly, the proposal does not impose a burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act. Although the benefits of Snapshot will apply initially only to Floor Brokers, the Exchange plans to extend its availability to Registered Options Traders and Specialists once it receives authority to allow them to utilize FBMS.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed

rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-34 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-2017-34. 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 Web site (<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-2017-34 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.<sup>16</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).