SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81980; File No. SR-Phlx-2017-34)

October 30, 2017

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to add an Exception to Phlx Rule 1000(f)(iii) for certain Floor Broker Transactions and add the Snapshot Functionality to the Options Floor Broker Management System

I.   Introduction

On July 18, 2017, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities

and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to add an

exception to Phlx Rule 1000(f)(iii) to permit Floor Brokers to execute (1) multi-leg orders and

(2) simple orders in options on Exchange Trade Funds ("ETFs") that are included in the Options

Penny Pilot,[3] in the trading crowd using "Snapshot," a new functionality Phlx is proposing for its

Floor Broker Management System ("FBMS"). The proposed rule change was published for

comment in the Federal Register on August 1, 2017.[4] On September 11, 2017, the Commission

extended the time period within which to approve the proposed rule change, disapprove the

proposed rule change, or institute proceedings to determine whether to approve or disapprove the

proposed rule change to October 30, 2017.[5] On October 17, 2017, the Exchange filed

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[1]   15 U.S.C. 78s(b)(1).

[2]   17 CFR 240.19b-4.

[3]   See Phlx Rule 1034 (defining terms of the Options Penny Pilot).

[4]   See Securities Exchange Act Release No. 81230 (July 27, 2016), 82 FR 35858 ("Notice").

[5]   See Securities Exchange Act Release No. 81567, 82 FR 43432 (September 15, 2017).

Amendment No. 1 to the proposed rule change.[6] The Commission received no comment letters

on the proposed rule change. This order provides notice of filing of Amendment No. 1 and

approves the proposal, as modified by Amendment No. 1, on an accelerated basis.

II.   Description of the Proposal[7]

A.   Proposed Exception to Phlx Rule 1000(f)

Currently, Phlx Rule 1000(f) requires that all Exchange options transactions be executed

in one of the following three ways: "(i) [a]utomatically by the [Trading System] pursuant to

[Phlx] Rule 1080 and other applicable options rules; (ii) by and among members in the

Exchange's options trading crowd none of whom is a Floor Broker; or (iii) through the Options

[FBMS] for trades involving at least one Floor Broker."[8] Although a Floor Broker may represent

orders in the trading crowd, a Floor Broker is not permitted to execute an order in the trading

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6   See Amendment No. 1, dated October 17, 2017 ("Amendment No. 1"). Amendment No.
         1 updated the original filing to: (1) reflect the implementation of the new Snapshot
         functionality prior to the end of the fourth quarter of 2017; (2) modify the proposal to
         allow Floor Brokers 30 seconds within which to submit a provisionally executed trade
         and Snapshot to the Trading System, rather than the 15 seconds that was originally
         proposed; (3) clarify that if a Snapshot expires, or if the Floor Broker cancels the
         Snapshot or expects that the Trading System will reject the Snapshot, the Floor Broker
         must re-announce the order to the trading crowd, provisionally re-execute the order, and
         take a new Snapshot; (4) further explain how limit orders on the limit order book will
         interact with the Snapshot functionality; and (5) make conforming changes to Phlx Rule
         1064 and Options Floor Procedure Advices and Order and Decorum Regulations C-2
         ("Options Floor Procedure Advice C-2" or "Advice"). To promote transparency of its
         proposed amendment, when Phlx filed Amendment No. 1 with the Commission, it also
         submitted Amendment No. 1 as a comment letter to the file, which the Commission
         posted on its website and placed in the public comment file for SR-Phlx-2017-34
         (available at https://www.sec.gov/comments/sr-phlx-2017-34/phlx201734-2642790-
         161304.pdf). The Exchange also posted a copy of its Amendment No. 1 on its website at
         http://nasdaqphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selected
         node=chp%5F1%5F1%5F1&manual=%2FNASDAQOMXPHLX%2Ffilings%2Fphlx%2
         Dfilings%2F) when it filed Amendment No.1 with the Commission.

7   A more detailed description of the proposal appears in the Notice and in Amendment No.
         1.

8   See Phlx Rule 1000(f).

crowd unless one of four exceptions applies.[9] These exceptions are listed in Phlx Rule

1000(f)(iii)(A)-(D) and permit a Floor Broker to execute orders in the trading crowd (rather than

through FBMS) if: (A) there is a problem with the Exchange's systems; (B) the Floor Broker is

executing the trade pursuant to Phlx Rule 1059 ("Accommodation Transactions") or Phlx Rule

1079 ("FLEX Index, Equity and Currency Options"); (C) the transaction involves a multi-leg

order with more than 15 legs; or (D) the transaction involves certain types of split-price orders

that, due to FBMS system limitations, require manual calculation.[10]

The Exchange is proposing to add a new exception to Rule 1000(f)(iii).[11] Proposed Phlx

Rule 1000(f)(iii)(E) would permit Floor Brokers to execute multi-leg orders[12] and simple orders

in options on ETFs that are included in the Options Penny Pilot in the trading crowd using

"Snapshot," a new functionality that Phlx is proposing to add to FBMS.[13]

B.   Proposed Snapshot Functionality for FBMS

Under the proposal, Phlx would permit a Floor Broker to use the Snapshot functionality

at the time the Floor Broker "provisionally executes" a trade in the trading crowd that involves a

multi-leg order or a simple order in an option on an ETF that is included in the Options Penny

Pilot.[14] For purposes of the proposed Phlx Rule 1000(f)(iii)(E) exception, a "provisional

execution" would occur in the trading crowd when either (i) the participants to a trade reach a

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[9]   See Phlx Rule 1000(f)(iii).

[10]   See Phlx Rule 1000(f)(iii)(A)-(D).

[11]   See Notice, supra note 4, at 35860 n.7.

[12]   As defined in Phlx Rule 1066(f).

[13]   See proposed Phlx Rule 1000(f)(iii)(E).

[14]   See proposed Phlx Rule 1063(e)(v)(A)(1). According to the Exchange, due to system
         limitations in FBMS, Floor Brokers are not able to use Snapshot to execute Multi-leg
         Orders with more than 15 legs. See Amendment No. 1, supra note 6, at 6 and 8.

verbal agreement in the trading crowd as to the terms of the trade, or (ii) a Floor Broker announces a cross in accordance with Phlx Rule 1064(a).[15]

According to the Exchange, Snapshot will record the time when a Floor Broker triggers the functionality and the prevailing market conditions for an options class or series,[16] which includes all information required to determine compliance with priority and trade-through requirements, including the Away Best Bid and Offer, the Exchange Best Bid and Offer, customer orders at the top of the Exchange book, and the best bid and offer of all-or-none orders.[17] According to the Exchange, the market conditions captured by Snapshot will be derived from the same real-time market information that exists in the Trading System.[18] At any given time, Phlx would only permit a Floor Broker to have one Snapshot outstanding across all options classes and series.[19]

After a Floor Broker triggers Snapshot and captures the prevailing market conditions, the Floor Broker will have no more than 30 seconds to enter the final terms of the trade into FBMS and then submit the provisional execution (along with the prevailing price and market conditions captured by Snapshot for the options class or series) to the Trading System.[20] If the Floor Broker

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[15]   Phlx Rule 1064(a) allows a Floor Broker who holds orders to buy and to sell the same options series the opportunity to cross such orders, provided that he or she satisfies certain requirements.

[16]   A Floor Broker "triggers" the snapshot by pressing a button in the FBMS and in doing so captures the market conditions that exist at the time when the Floor Broker provisionally executes an order in the trading crowd. See Notice, supra note 4, at 35860-61.

[17]   See proposed Phlx Rule 1063(e)(v). See also Notice, supra note 4, at 35860 n.8.

[18]   See Amendment No. 1, supra note 6, at 6-7.

[19]   See proposed Phlx Rule 1063(e)(v)(A)(3).

[20]   See Amendment No. 1, supra note 6, at 8. The Exchange represents that in most instances, 30 seconds will provide ample time for Floor Brokers to enter their trades into FBMS. See id. at 5.

fails to submit this information to the Trading System by way of FBMS within 30 seconds, the

Snapshot will automatically expire and become unavailable.[21]

After the Trading System receives the provisional execution, Phlx proposes that the

Trading System will compare the price and terms of the provisional execution, as entered into

FBMS by the Floor Broker, against the prevailing market conditions captured by Snapshot for

the options class or series to determine whether the provisional execution is consistent with

applicable priority and trade-through rules.[22] If the price and terms of the provisional execution

entered into FBMS by the Floor Broker is consistent with the applicable priority and trade-

through rules based on the market conditions reflected in the Snapshot, the Trading System

would report the trade to the Consolidated Tape;[23] if not, the Trading System will reject the

provisional execution.[24] The Exchange represents that its Trading System's automated process

for verifying trades for priority and trade-through compliance remains unchanged.[25]

Phlx proposes that, if an order is present on the Exchange's limit order book that has

priority at the time a Floor Broker triggers a Snapshot, the Trading System would not prevent the

Floor Broker from capturing the Snapshot; however, the Trading System would reject the

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[21]   See proposed Phlx Rule 1063(e)(v)(B). See also Amendment No. 1, supra note 6, at 13. The Exchange represents that every time a Floor Broker triggers Snapshot, a record of the Snapshot will be created and retained for audit trail purposes regardless of whether the Floor Broker submits the provisional execution and Snapshot to the Trading System. This record is in addition to the record the Exchange presently creates upon initiation of an order in FBMS. Moreover, according to the Exchange, when a Floor Broker submits a trade subject to a 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 the other trade records. See Notice, supra note 4, at 35860 n.9.

[22]   See proposed Phlx Rule 1063(e)(v)(C).

[23]   See proposed Phlx Rule 1063(e)(v)(C)(1).

[24]   See proposed Phlx Rule 1063(e)(v)(C)(2). See Notice, supra note 4, at 35863.

[25]   See Notice, supra note 4, at 35863.

provisional execution because the order on the limit order book would have priority.[26] In these circumstances, Phlx proposes that the Floor Broker must clear the order with priority on the limit order book, re-announce and again provisionally execute the Floor Broker's order, and take a new Snapshot before submitting the new provisional execution and Snapshot to the Trading System for validation.[27]

Phlx proposes to allow a Floor Broker to take a new Snapshot when the original Snapshot becomes invalid in the occasional event a provisional execution pursuant to Phlx Rule 1000(f)(iii)(E) does not result in a validated execution in the Trading System; however, the Floor Broker must re-expose the order to the trading crowd before triggering a new Snapshot. Specifically, proposed Phlx Rule 1063(e)(v)(D) would allow a Floor Broker to obtain a new Snapshot if: (1) the original Snapshot expires before the Floor Broker submits the provisional execution to the Trading System; (2) the Trading System rejects a provisional execution that was subject to a Snapshot; or (3) the Floor Broker cancels the Snapshot by taking a new Snapshot or allows the original Snapshot to expire because the Floor Broker anticipates that the Trading System will reject a provisional execution.[28] In each of these three instances, the Floor Broker must re-announce and provisionally re-execute the order in the trading crowd, and take a new Snapshot before submitting the new provisional execution to the Trading System.[29]

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[26] See proposed Phlx Rule 1063(e)(v)(C)(3). See also Amendment No. 1, supra note 6, at 8.

[27] See id.

[28] See Amendment No. 1, supra note 6, at 10-12 and 13. The Trading System would reject a provisionally executed order if, for example, there was an order on the limit order book with priority at the time the order was provisionally executed in the trading crowed or the provisionally executed order did not comply with applicable trade-through rules. See Notice, supra note 4, at 35860-61 (providing examples of orders executed using the Snapshot functionality) and Amendment No. 1, supra note 6, at 10-12 (providing examples of when a Floor Broker would be permitted to take a new Snapshot).

[29] In this instance, triggering a new Snapshot would cause a new 30-second Snapshot timer

Phlx is proposing Phlx Rule 1063(e)(v)(A)(2), and amending Options Floor Procedure

Advice C-2 to specify, that "[a] Floor Broker is prohibited from triggering the Snapshot feature

for the purpose of obtaining favorable priority or trade-through conditions or avoiding

unfavorable priority or trade-through conditions."[30] According to the Exchange, conduct that

would violate this Advice includes repeated instances in which Floor Brokers cancel, or permit

valid Snapshots to expire, without submitting trades subject to Snapshots to the Trading System

for verification and reporting to the consolidated tape. According to the Exchange, violations

would also include repeated instances in which a Floor Broker takes more time than is

reasonably necessary under the circumstances to submit provisional executions to the Trading

System that are subject to valid Snapshots. [31] The Exchange notes that it expects Floor Brokers

to submit a provisional execution that is subject to a Snapshot as quickly as possible,

notwithstanding the existence of the 30-second time frame within which to do so, and notes that,

in most instances, it should not require a full 30 seconds for a Floor Broker to submit a simple

trade or a cross to the Trading System.[32] The Exchange represents that its Surveillance Staff will

monitor Floor Brokers' use of the Snapshot functionality and the Exchange will take appropriate

action if it determines Floor Brokers are abusing the functionality.[33]

The Exchange proposes to make the Snapshot functionality available to its Floor Brokers

during the fourth quarter of 2017. The Exchange represents that it will notify members via an

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to begin, and the Floor Broker must submit the new provisionally executed trade and Snapshot to the Trading System before the end of that 30-second timer. See Amendment No. 1, supra note 6, at 10-12.

[30] See proposed Phlx Rule 1063(e)(v)(A)(2) and Options Floor Procedure Advice C-2.

[31] See Amendment No. 1, supra note 6, at 9 and 12.

[32] See id. at 9.

[33] See Notice, supra note 4, at 35860. See Amendment No. 1, supra note 6, at 9 and 12.

Options Trader Alert, which will be posted on the Exchange's website, at least seven calendar

days prior to the date on which the Snapshot functionality will be available for use.[34]

III.   Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by

Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations

thereunder applicable to a national securities exchange.[35] In particular, the Commission finds

that the proposed rule change is consistent with Section 6(b)(5) of the Act,[36] which requires,

among other things, that the rules of a national securities exchange be designed 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 and, in general, to protect investors and the public interest, and not be designed to

permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the Exchange's rules require Floor Brokers to execute

transactions through FBMS and prohibit Floor Brokers from executing orders in the trading

crowd unless an exception applies.[37] According to the Exchange, however, transactions

involving multi-leg orders and simple orders in options on ETFs in the Options Penny Pilot that a

Floor Broker submits through FBMS are at a heightened risk of failing to execute when market

conditions change between the time when Floor Brokers and participants in the crowd agree

upon the terms of the trade and the time when the Trading System receives the trade for

verification and execution. In these circumstances, the Trading System would reject the Floor

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[34]   See Amendment No. 1, supra note 6, at 12.

[35]   In approving this proposed rule change, the Commission has considered the proposed
        rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[36]   15 U.S.C. 78f(b)(5).

[37]   See Phlx Rule 1000(f).

Broker's trade because it is inconsistent with the Exchange's priority or trade-through rules.[38]

To mitigate this risk, the new exception under Phlx Rule 1000(f)(iii)(E) is designed to permit

Floor Brokers to use the Snapshot functionality to execute two types of orders in the trading

crowd that they may not otherwise be able to execute successfully under certain market

conditions given the requirements of Phlx Rule 1000(f).

The Commission notes that the Exchange is proposing several measures to help ensure

that Snapshot operates, and is used by Floor Brokers, in a manner that is consistent with the

Exchange Act and Phlx rules.

First, Snapshot is designed to capture the market conditions for the options class or series

at the time of the provisional execution, which will be the time of execution that the Trading

System will use when verifying the price and terms of the provisional execution, as entered into

FBMS by the Floor Broker, for compliance with applicable priority rules of the Exchange and

the trade-through rules of the Options Order Protection and Locked/Crossed Market Plan.[39]

Second, the Exchange has designed Snapshot so that the price and market conditions

captured for the options class or series will expire within 30 seconds after the Floor Broker

triggers it, and so that a Floor Broker will only be allowed to have one Snapshot outstanding

across all options classes and series at any given time.[40] As stated above, the Exchange

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[38] See Notice, supra note 4, at 35859.

[39] See Notice, supra note 4, at 35862-63. The Options Order Protection and
Locked/Crossed Market Plan is available at
http://www.optionsclearing.com/components/docs/clearing/services/options_order_protec
tion_plan.pdf. The Commission notes that the Exchange represents that the market
conditions provided by Snapshot are derived from the same real-time market conditions
that exist in the Trading System and that Snapshot will contain all information necessary
for the Trading System to determine that a provisional execution is consistent with
applicable priority and trade-through rules. See Amendment No. 1, supra note 6, at 6-7.

[40] See Notice, supra note 4, at 35861. The Exchange notes that the limitation to only allow
Floor Brokers to have one Snapshot outstanding at any given time across options classes

anticipates that Floor Brokers will enter their provisional executions as quickly as possible, notwithstanding the availability of Snapshot and the 30-second Snapshot timer, and in most instances, 30 seconds will provide ample time for Floor Brokers to enter provisional executions into FBMS.[41]

Third, to the extent that a Snapshot expires, the Trading System rejects a provisional execution, or the Floor Broker cancels or permits a Snapshot to expire, the Floor Broker must re-announce and provisionally execute the order again in the trading crowd before taking a new Snapshot.

Fourth, the Exchange represents that all relevant trade data resulting from executions pursuant to proposed Phlx Rule 1000(f)(iii)(E) will be recorded in both Snapshot and on a separate execution record, which will be created once the trade is reported to the consolidated tape.[42]

Finally, the Commission notes that the Exchange's rule will prohibit Floor Brokers from triggering Snapshot for the purpose of obtaining favorable, or avoiding unfavorable, priority or trade-through conditions. In addition, the Exchange represents that its surveillance staff will monitor Floor Brokers for excessive use or abuse for the Snapshot functionality (e.g., repeated expirations or cancellations of the Snapshot) and it will take appropriate action if it determines such instances are occurring.[43]

For the foregoing reasons, the Commission finds that the proposed rule change, as

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and series should contribute to preventing Floor Brokers from engaging in excessive use of and abuse of Snapshot. See Notice, supra note 4, at 35861.

[41]   See Amendment No. 1, supra note 6, at 5 and 7.

[42]   See Notice, supra note 4, at 35860 n.9. See also supra note 21.

[43]   See Amendment No. 1, supra note 6, at 9 and 12.

modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act and the rules

and regulations thereunder applicable to national securities exchanges.

IV.   Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning

whether Amendment No. 1 to 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 No. 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 No. 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 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 such

filing will also 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 No. SR-Phlx-2017-34 and should be submitted on or before

[insert date 21 days from publication in the Federal Register].

V.   Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by

Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended

proposal in the Federal Register. As described above, in Amendment No. 1, Phlx (1) updated its

proposal to state that the new Snapshot functionality will be made available prior to the end of

the fourth quarter of 2017; (2) modified the proposal to allow Floor Brokers 30 seconds within

which to submit a provisionally executed trade and Snapshot to the Trading System, rather than

the 15 seconds that was originally proposed; (3) further explained how limit orders on the limit

order book will interact with the Snapshot functionality; (4) clarified the circumstances when a

new Snapshot may be taken and the conditions for doing so; and (5) made conforming changes

to Phlx Rule 1064 and Options Floor Procedure Advice C-2.[44] The Commission believes that

Amendment No. 1 provided additional specificity regarding the new proposed exception in Phlx

Rule 1000(f)(iii) and the operation of the Snapshot functionality. Specifically, Amendment No.

1 eliminated the concept of "refreshing" a Snapshot and instead clarified the specific

circumstances in which a Floor Broker will be permitted to take a new Snapshot and the

conditions that must be satisfied to do so (e.g., re-announcing the order to the trading crowd and

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[44]   See Amendment No. 1, supra note 6, at 3-7.

provisionally re-executing the order). The Exchange states that the changes in Amendment No. 1 simplify the proposal and will make it easier for the Exchange to administer and surveil the use of the Snapshot functionality.[45] In addition, the Commission notes that the changes may create additional opportunities for orders to interact in the trading crowd in those occasional instances when a provisional execution pursuant to Phlx Rule 1000(f)(iii)(E) does not result in a validated execution in the Trading System. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[46] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI.   Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[47] that the proposed rule change (SR-Phlx-2017-34), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Eduardo A. Aleman
Assistant Secretary

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[45]   See id. at 5-6.

[46]   15 U.S.C. 78s(b)(2)

[47]   15 U.S.C. 78s(b)(2).

[48]   17 CFR 200.30-3(a)(12).