

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90909; File No. SR-Phlx-2021-02)

January 13, 2021

Self-Regulatory Organizations; Nasdaq Phlx LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify Phlx Options 8, Section 28, “Responsibilities of Floor Brokers” and Section 30, “Crossing, Facilitation and Solicited Orders”

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 January 4, 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 and II 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 modify Phlx Options 8, Section 28, “Responsibilities of Floor Brokers” and Section 30, “Crossing, Facilitation and Solicited Orders.”

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.

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.

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

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend its Trading Floor rules at Options 8, Section 28, “Responsibilities of Floor Brokers” and Section 30, “Crossing, Facilitation and Solicited Orders” to permit Floor Brokers<sup>3</sup> to utilize the Options Floor Based Management System (“FBMS”),<sup>4</sup> remotely,<sup>5</sup> to enter certain orders that do not require exposure in open outcry. This proposal is intended to provide greater accessibility to Floor Brokers for the portion of their business which does not require the physical infrastructure afforded by the Trading Floor and allow member organizations to more efficiently staff their operations.

Background

Today, Phlx Rules provide a Business Continuity and Disaster Recovery Plan for its Trading Floor (“BCP”) which is described within Options 8, Section 26(g).<sup>6</sup> The Exchange may

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<sup>3</sup> The term “Floor Broker” means an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders. See Options 8, Section 2(2).

<sup>4</sup> FBMS, an order management system, is the gateway for the electronic execution of equity, equity index and U.S. dollar-settled foreign currency option orders represented by Floor Brokers on the Exchange’s Options Floor. Floor Brokers contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker to FBMS, which creates an electronic audit trail. The execution of orders to Phlx’s electronic trading system also occurs via FBMS. The FBMS application is available on hand-held tablets and stationary desktops.

<sup>5</sup> Utilizing FBMS while not physically present on the Trading Floor would be considered remote access.

<sup>6</sup> Options 8, Section 26(g) provides:

(1) *Loss of Trading Floor*. If the physical location designated as the “Trading Floor”

activate its business continuity and disaster recovery plans to maintain fair and orderly markets in the event of a System failure, disaster, or other unusual circumstance that may threaten the ability to conduct business on the Exchange. On March 17, 2019,<sup>7</sup> Phlx suspended open outcry trading as a result of precautions taken with respect to COVID-19. The Trading Floor re-opened on June 3, 2020.<sup>8</sup> During that period from March 17, 2019 to June 3, 2020, open outcry trading was unavailable.

At the time of the Phlx Trading Floor closure in March 2020, the Exchange permitted Floor Brokers, who otherwise had no means of trading on Phlx in an electronic environment, to utilize FBMS remotely, solely for the purpose of submitting limit orders to the electronic limit order book pursuant to Options 8, Section 28(g), or submitting a Floor Qualified Contingent Cross Order to the System pursuant to Options 8, Section 30(e).<sup>9</sup> Submitting a limit order to the electronic limit order book does not require exposure of that order in open outcry trading as the order is immediately exposed on the electronic limit order book. Similarly, a Floor Qualified Contingent Cross Order submitted to the System does not require exposure in open outcry as this order type is immediately executed upon entry to the System, provided the order complies with

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becomes unavailable, Phlx will enact its Business Continuity Plan and designate the Philadelphia Navy Yard as its “Back-Up Trading Floor.”

(2) *Back-up Trading Floor Unavailable*. In the event that the Back-Up Trading Floor becomes inoperable, the Exchange will only operate its electronic market and will not operate a Trading Floor. The Exchange will operate only its electronic market until the Exchange’s Trading Floor facility is operational. Open outcry trading will not be available in the interim.

(3) *Other Back-Up Trading Arrangements*. This Rule does not preclude the Exchange from conducting business, in the event the Trading Floor and Back-Up Trading Floor are rendered inoperable, pursuant to Options 4, Section 10.

<sup>7</sup> See Options Trader Alert #2020 – 07.

<sup>8</sup> See Options Trader Alert #2020 – 13.

<sup>9</sup> See Options Trader Alert #2020 – 8.

the provisions of Options 8, Section 30(e) and therefore a Floor Broker was not required to be present on the Trading Floor to transact these order types. Floor Brokers were not permitted to transact other order types within Options 3, Section 32 through FBMS during the floor closure. Phlx Surveillance staff surveilled Floor Qualified Contingent Cross Orders submitted through FBMS in real-time. Electronic limit orders must comply with automated System entry checks for compliance with Exchange rules.

When the Trading Floor reopened on June 3, 2020, the Exchange permitted each Trading Floor member organization to be represented on the Trading Floor. However, due to the social distancing measures that were put in place to comply with Commonwealth of Pennsylvania health standards as well as Nasdaq's safety measures designed to prevent the spread of COVID-19, not all members and employees associated with a Phlx member organization were able to return to the Trading Floor. Floor Brokers were permitted to continue remotely submitting the aforementioned orders through FBMS, due to the Exchange's inability to allow all Floor Members access to the physical Trading Floor.

#### Proposal

At this time, the Exchange proposes to amend Options 8, Section 28(g) and Options 8, Section 30(e) to continue to allow Floor Brokers the ability to submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System via FBMS remotely, notwithstanding the existence of BCP measures. Floor Brokers may continue to submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System while on the Trading Floor.

Prior to permitting Floor Brokers to access FBMS remotely for the limited purpose of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross

Orders to the System, the Exchange permitted Floor Brokers to submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System utilizing FBMS while on the Trading Floor.<sup>10</sup> Phlx Options 8 Trading Rules apply to members and member organizations engaging in to transact options transactions while physically located on the Trading Floor, including trading crowds.<sup>11</sup> The Options 8 Trading Rules do not permit options transactions to be submitted to the Trading Floor through FBMS remotely by Floor Brokers.<sup>12</sup> Today, Phlx utilizes its Business Continuity Plan to permit Floor Brokers to access the Exchange's System remotely, through FBMS, for the limited purpose of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System.

Due to the social distancing measures that were put in place to comply with Commonwealth of Pennsylvania health standards as well as Nasdaq's safety measures designed to prevent the spread of COVID-19, not all members and employees associated with a Phlx member organization were able to return to the Trading Floor. This proposal would create an exception to the Options 8 Rules for a limited purpose.

Today, Options 8, Section 28(g) permits a Floor Broker who wishes to place a limit order on the electronic limit order book to submit such a limit order electronically through FBMS. This capability exists to enable Floor Brokers to access electronic liquidity and/or to clear priority orders on the limit order book prior to transacting an order in the trading crowd through

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<sup>10</sup> See Options 8, Section 28(g) and 30(e).

<sup>11</sup> See Options 8, Section 1(a).

<sup>12</sup> See note 3 above, by definition Floor Brokers accept and handle options orders while on the Options Floor.

FBMS.<sup>13</sup> Placing limit orders on the order book does not require exposure in open outcry. The Exchange desires to permit Floor Brokers, by rule, the ability to continue to remotely submit limit orders to the electronic limit order book on a permanent basis. This would specifically allow Floor Brokers the ability to clear resting Customers orders from the limit order book for their customers in the event that a Customer order had priority on the limit order book that would otherwise prevent a Floor Qualified Contingent Cross Order from being entered in compliance with Options 8, Section 30(e).

Today, Options 8, Section 30(e) permits Floor Qualified Contingent Cross Orders to be submitted to the System by Floor Brokers on the Floor via FBMS. These orders are not required to be exposed in open outcry. In 2011, Phlx established a Floor Qualified Contingent Cross Order.<sup>14</sup> The proposal specifically provided that "... PHLX proposes to amend Rule 1064 to provide that a PHLX member effectuating a trade on the floor of the Exchange pursuant to the Regulation NMS Qualified Contingent Trade Exemption to Rule 611(a) ("QCT Exemption") can

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<sup>13</sup> See Securities Exchange Act Release No. 68960 (February 20, 2013), 78 FR 13132, 13134 (February 26, 2013) (SR-Phlx-2013-09) (Notice of Filing of Proposed Rule Change To Enhance the Functionality Offered on Its Options Floor Broker Management System ("FBMS") by, Among Other Things, Automating Functions Currently Performed by Floor Brokers). This filing provided the following explanation, "For example, if a Floor Broker enters a two-sided order through the new FBMS and there is an order on the book at a price that prevents the Floor Broker's order from executing, FBMS will indicate to the Floor Broker how many contracts need to be satisfied before the Floor Broker's order can execute at the agreed-upon price. If the Floor Broker agrees to satisfy that order, consistent with the order placed in his care, he can cause FBMS to send a portion of one of his orders to Phlx XL to trade against the order on the book, thereby clearing it and permitting the remainder of the Floor Broker's order to trade. This functionality is optional in the sense that the Floor Broker can decide not to trade against the book, consistent with order instructions he has been given, and therefore not execute his two-sided order at that particular price." Phlx XL refers to the electronic order book.

<sup>14</sup> See Securities Exchange Act Release No. 64415 (May 5, 2011), 76 FR 27732 (May 12, 2011) (SR-Phlx-2011-56) (Notice of Filing of Proposed Rule Change To Establish a Qualified Contingent Cross Order for Execution on the Floor of the Exchange).

cross the options legs of the trade on PHLX as a Floor QCC Order immediately upon entry and without order exposure if no Customer Orders exist on the Exchange's order book at the same price. Floor QCC Orders will be electronically entered by a Floor Broker on the floor of the Exchange using the Floor Broker Management System and the execution will then be executed electronically. Only Floor Brokers will be permitted to enter Floor QCC Orders.”<sup>15</sup> The proposal specifically provided for a Floor Qualified Contingent Cross Order to be entered by Floor Brokers through FBMS while on the Trading Floor without order exposure. The filing further provides that “...it would be incorrect to say that the Floor QCC Order differs from the electronic QCC Order due to the Options Floor Broker's presence on the Floor.”<sup>16</sup>

The Exchange's proposal seeks to continue to permit Floor Brokers to enter both limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System through FBMS, albeit remotely, without amending the manner in which these orders, which require no order exposure, are handled by FBMS or the System.

The Exchange believes that permitting Floor Brokers the ability to utilize FBMS remotely, for the limited purposes of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Order to the System, would allow Floor Brokers to conduct the portion of their business which does not require the infrastructure afforded by the Trading Floor remotely and, therefore, allow member organizations flexibility to more efficiently staff their operations. The ability to service certain orders, such as limit orders and Floor Qualified Contingent Cross Orders, which do not require open outcry exposure, is a relevant part of a Floor Broker's business. The Exchange is proposing to expand the ability of a member

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<sup>15</sup> Id at 27732 and 27733.

<sup>16</sup> Id at 27733.

organization to conduct this limited portion of the Floor Broker business model to assist firms in being able to continuously operate this portion of their business, notwithstanding any closures or halts of the Trading Floor. Every Floor Broker must be registered with the Exchange pursuant to Options 8, Section 6 and would be assessed applicable fees provided for within Options 7. The Exchange notes that this proposal does not amend the manner in which fees or other pricing incentives, such as caps, apply to Floor Brokers. Any transaction originating from open outcry on the Trading Floor is considered a floor transaction. With offering FBMS remotely, the Exchange has not amended the manner in which fees are assessed or rebates are paid for purposes of Options 7 pricing to Floor Brokers. A limit order entered to the limit order book via FBMS was subject to electronic fees and rebates prior to the introduction of remote FBMS and that remains the case with the introduction of remote FBMS. These transactions are submitted to the electronic order book directly and are assessed the same fees and rebates as other limit orders submitted to the electronic order book. Also, the Exchange does not distinguish the manner in which it assesses pricing for Floor Qualified Contingent Cross Orders or electronic Qualified Contingent Cross Orders. The pricing is the same regardless of the manner in which the Qualified Contingent Cross Order was submitted. The Exchange proposes to add a sentence to Options 7, Section 1 to define a floor transaction to add clarity to the manner in which floor based pricing is assessed. The Exchange proposes to add the following definition to Options 7, Section 1, “A ‘floor transaction’ is a transaction that is effected in open outcry on the Exchange’s Trading Floor.”

Finally, the Exchange represents that it has the proper security infrastructure in place to offer FBMS remotely and securely to Floor Brokers.



## Technical Amendment

The Exchange proposes a technical amendment to Options 8, Section 1(a) to add the word “System” to the end of “Options Floor Based Management” within the first sentence to conform the manner in which the Exchange utilizes this term within Options 8.

### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</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, in general to protect investors and the public interest.

The Exchange’s proposal to permit Floor Brokers the ability to utilize FBMS remotely, for the limited purposes of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Order to the System, is consistent with the Act. This proposal would allow member organizations to utilize their Floor Brokers, who may be located off the Trading Floor to conduct certain aspects of their business that do not require open outcry, remotely. Every Floor Broker would continue to be required to be registered with the Exchange pursuant to Options 8, Section 6 and would be assessed applicable fees provided for within Options 7.

Prior to permitting Floor Brokers to access FBMS remotely for the limited purpose of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System, the Exchange permitted Floor Brokers to submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Order to the System utilizing

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

FBMS while on the Trading Floor.<sup>19</sup> Phlx Options 8 Trading Rules require members and member organizations to transact options transactions while physically located on the Trading Floor, including trading crowds.<sup>20</sup> The Options 8 Trading Rules do not permit options transactions to be submitted to the Trading Floor through FBMS remotely by Floor Brokers.<sup>21</sup> This proposal would create an exception to the Options 8 Rules to allow Floor Brokers to submit limit orders and Floor Qualified Contingent Cross Orders remotely through FBMS.

Today, Options 8, Section 28(g) permits a Floor Broker who wishes to place a limit order on the electronic limit order book to submit such a limit order electronically through the FBMS. This capability exists to enable Floor Brokers to access electronic liquidity and/or to clear a priority orders on the limit order book prior to transacting an order in the trading crowd with the help of the FBMS.<sup>22</sup> Placing limit orders on the Order Book does not require exposure in open outcry. The Exchange desires to continue to grant this capability remotely to allow Floor

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<sup>19</sup> See Options 8, Section 28(g) and 30(e).

<sup>20</sup> See Options 8, Section 1(a).

<sup>21</sup> See note 3 above, by definition Floor Brokers accept and handle options orders while on the Options Floor.

<sup>22</sup> See Securities Exchange Act Release No. 68960 (February 20, 2013), 78 FR 13132, 13134 (February 26, 2013) (SR-Phlx-2013-09) (Notice of Filing of Proposed Rule Change To Enhance the Functionality Offered on Its Options Floor Broker Management System (“FBMS”) by, Among Other Things, Automating Functions Currently Performed by Floor Brokers). This filing provided, “For example, if a Floor Broker enters a two-sided order through the new FBMS and there is an order on the book at a price that prevents the Floor Broker's order from executing, FBMS will indicate to the Floor Broker how many contracts need to be satisfied before the Floor Broker's order can execute at the agreed-upon price. If the Floor Broker agrees to satisfy that order, consistent with the order placed in his care, he can cause FBMS to send a portion of one of his orders to Phlx XL to trade against the order on the book, thereby clearing it and permitting the remainder of the Floor Broker's order to trade. This functionality is optional in the sense that the Floor Broker can decide not to trade against the book, consistent with order instructions he has been given, and therefore not execute his two-sided order at that particular price.”

Brokers the ability to continue to clear Customer orders on the limit order book for their customers in the event that a Customer order had priority on the limit order book and prevents a Floor Qualified Contingent Cross Order from being entered.

Today, Options 8, Section 30(e) permits Floor Qualified Contingent Cross Orders to be submitted to the System by Floor Brokers on the Floor via FBMS. These orders are not required to be exposed in open outcry. In 2011, Phlx established a Floor Qualified Contingent Cross Order.<sup>23</sup> The proposal specifically provided for a Floor Qualified Contingent Cross Order to be entered by Floor Brokers through FBMS while on the Trading Floor without order exposure.

The Exchange's proposal seeks to continue to permit Floor Brokers to enter both limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System through FBMS, albeit remotely, without amending the manner in which these orders, which require no order exposure, are handled by FBMS or the System.

Floor Brokers are an essential part of the Trading Floor and their business is largely dependent on access to the physical Trading Floor and the ability of market participants to expose orders in open outcry. Floor Brokers service multiple customer segments and several subsets of order flow. Their largest customers are bank trading desks, inter-dealer brokerage desks, liquidity providers, and hedge funds. Each of these client types direct certain orders to Floor Brokers. Banks and inter-dealers primarily utilize Floor Brokers for manual handling of stock-tied Floor Qualified Contingent Cross Orders, complicated order structures with abnormal ratios (beyond 3:1 allowable electronically) and "cash spreads," where a notional trade value is negotiated and relayed to the trading crowd for participation. Banks also look to facilitate larger

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<sup>23</sup> See Securities Exchange Act Release No. 64415 (May 5, 2011), 76 FR 27732 (May 12, 2011) (SR-Phlx-2011-56) (Notice of Filing of Proposed Rule Change To Establish a Qualified Contingent Cross Order for Execution on the Floor of the Exchange).

bank customer orders that exhibit considerable real-time risk. While Floor Brokers represent the bank side of these transactions, Floor Market Makers provide additional liquidity and efficiently perform the price discovery process through manual handling and exposure. Inter-dealers will also utilize Floor Brokers for price discovery and additional sourcing of liquidity for larger orders where they need assistance. Finally, complicated strategy transactions are often represented by Floor Brokers. End-users are more inclined to use their services due to their expertise in order handling and knowledge of the trading ecosystem.

Notwithstanding the importance of Floor Brokers on the Exchange's Trading Floor, the ability to service other orders, such as limit orders and Floor Qualified Contingent Cross Orders, which do not require open outcry exposure, is a relevant part of a Floor Broker's business. The Exchange is proposing to expand the ability of a member organization to conduct this limited portion of the Floor Broker business model to assist firms in being able to continuously operate this portion of their business, notwithstanding any closures or halts of the Trading Floor.

The Exchange notes that a closure of the Trading Floor renders the Floor Broker business, which is largely reliant on open outcry trading, inoperable. The Exchange believes that this proposal is designed to protect investors and the public interest as a form of risk mitigation as the proposal would allow the portion of the Floor Broker business, which is not dependent on open outcry, to continue regardless of the status of the Trading Floor. Further, the proposal would allow member organizations to more efficiently staff their operations. For example, member organizations may utilize staff in other locations as the remote access removes the dependency on physical presence on the Trading Floor.

This proposal does not amend the manner in which fees or other pricing incentives, such as caps, apply to Floor Brokers. Any transaction originating from open outcry on the Trading

Floor is considered a floor transaction. With offering FBMS remotely, the Exchange has not amended the manner in which fees are assessed or rebates are paid for purposes of Options 7 pricing to Floor Brokers. A limit order entered to the limit order book via FBMS was subject to electronic fees and rebates prior to the introduction of remote FBMS and that remains the case with the introduction of remote FBMS. These transactions are submitted to the electronic order book directly and are assessed the same fees and rebates as other limit orders submitted to the electronic order book. Also, the Exchange does not distinguish the manner in which it assesses pricing for Floor Qualified Contingent Cross Orders or electronic Qualified Contingent Cross Orders. The pricing is the same regardless of the manner in which the Qualified Contingent Cross Order was submitted. Phlx Surveillance staff surveilled Floor Qualified Contingent Cross Orders submitted through FBMS in real-time. Electronic limit orders must comply with automated System entry checks for compliance with Exchange rules. Finally, the Exchange represents that it has the proper security infrastructure in place to offer FBMS remotely and securely to Floor Brokers.

#### Technical Amendment

The Exchange's proposal to amend Options 8, Section 1(a) to add the word "System" to the end of "Options Floor Based Management" within the first sentence is consistent with the Act as this term conforms the manner in which the Exchange utilizes the term "Options Floor Based Management System" throughout Options 8.

#### 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 Exchange's proposal to permit Floor Brokers the ability to utilize FBMS remotely, for the limited purposes of submitting limit orders to the electronic limit order book and Floor

Qualified Contingent Cross Order to the System, does not impose an undue burden on competition. A Floor Broker, unlike a Market Maker, is mostly dependent on the infrastructure provided by a Trading Floor in order to operate its business model. Market Makers on the other hand may transact their business in either of the two models provide by Phlx, the Trading Floor or electronic model. Market Makers have the infrastructure to continue to conduct their business, even in the event of the closure of the Trading Floor, while Floor Brokers are mostly reliant on open outcry trading and this portion of their business is inoperable if open outcry is unavailable.

The Exchange's proposal seeks to provide greater accessibility to Floor Brokers for the portion of their business which does not require the infrastructure afforded by the Trading Floor while not amending the manner in which those orders are handled by either FBMS or the System. This proposal is competitive in that it allows Floor Brokers the ability to participate more continuously and efficiently on Phlx. All Floor Brokers have access to FBMS and therefore would be able to remotely submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System as well as continue to submit these types of orders while on the Trading Floor. Further, the Exchange believes that this proposal, which would allow member organizations to utilize their Floor Brokers, who may be located in other locations, to more efficiently staff their operations and also to conduct their business, even in the event of a closure of the Trading Floor.

Finally, this proposal does not amend the manner in which fees or other pricing incentives, such as caps, apply to Floor Brokers.

## Technical Amendment

The Exchange's proposal to amend Options 8, Section 1(a) to add the word "System" to the end of "Options Floor Based Management" within the first sentence does not impose an undue burden on competition as this term conforms the manner in which the Exchange utilizes the term "Options Floor Based Management System" throughout Options 8.

### 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>24</sup> and Rule 19b-4(f)(6) thereunder.<sup>25</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>26</sup>

At any time within 60 days of the filing of such 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

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<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 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.

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>27</sup> of the Act to determine whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2021-02 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-2021-02. 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

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<sup>27</sup> 15 U.S.C. 78s(b)(2)(B).



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-2021-02 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>28</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>28</sup> 17 CFR 200.30-3(a)(12).