

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-91299; File No. SR-Phlx-2021-03)

March 11, 2021

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 Modify Phlx Options 8, Section 26, “Trading Halts, Business Continuity and Disaster Recovery”

I. Introduction

On January 7, 2021, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify Phlx Options 8, Section 26 (Trading Halts, Business Continuity and Disaster Recovery) to make available an audio and video communication program to serve as a “virtual trading crowd” in the event the physical trading floor becomes unavailable, the back-up trading floor becomes inoperable or the Exchange otherwise determines not to operate its back-up trading floor. The proposed rule change was published in the Federal Register on January 14, 2021.<sup>3</sup> On February 26, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On March 2, 2021, the Exchange filed Amendment No. 1 to the

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

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

<sup>3</sup> See Securities Exchange Act Release No. 90880 (January 8, 2021), 86 FR 3217 (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 91220, 86 FR 12733 (March 4, 2021). The Commission designated April 14, 2021, as the date by which it should approve,

proposed rule change, which replaced and superseded the proposed rule change.<sup>6</sup> This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

Options 8, Section 26(g)(1) currently provides that if the physical location designated as the “Trading Floor” becomes unavailable, Phlx will enact its Business Continuity Plan (“BCP”) and designate the Philadelphia Navy Yard as its “Back-Up Trading Floor.” Further, 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.<sup>7</sup> The Exchange will operate only its electronic market until the Exchange’s Trading Floor facility is operational.<sup>8</sup> Open outcry trading will not be available in the interim.<sup>9</sup>

On March 17, 2019, Phlx closed the Trading Floor as a result of precautions taken with respect to COVID-19 and operated in an all-electronic configuration during that time.<sup>10</sup> Due to the uncertainty related to the ongoing pandemic, which includes the possibility of having to close the Trading Floor again, the Exchange now has proposed to adopt Options 8, Section 26(g)(3) to permit open outcry trading to take place in an audio and video communication program to serve as a “virtual trading crowd” if the Trading Floor becomes unavailable, the Back-Up Trading

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

<sup>6</sup> In Amendment No. 1, the Exchange made technical corrections and revisions to the proposed rule text for readability and consistency. Amendment No. 1 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-phlx-2021-03/srphlx202103-8436948-229661.pdf>.

<sup>7</sup> See Phlx Options 8, Section 26(g)(2).

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> See Notice, supra note 3, 86 FR at 3218.

Floor becomes inoperable or the Exchange otherwise determines not to operate its Back-Up Trading Floor.<sup>11</sup> The Exchange represents that if it were to determine to use the virtual trading crowd in a more permanent manner for reasons other than business continuity purposes, the Exchange would submit a separate rule filing to the Commission.<sup>12</sup>

In the program, the Exchange would create virtual trading crowds, in each of which the Exchange would determine which options class(es) will be available for trading.<sup>13</sup> Phlx members would access a virtual trading crowds via “zones.”<sup>14</sup> Similar to the Trading Floor, multiple classes may trade in a single virtual trading crowd, available for trading in a single zone.<sup>15</sup> The Exchange may designate one or more zones.<sup>16</sup> The Exchange will assign each Floor Market Maker to a zone and Floor Brokers may determine in which zone(s) they will be present.<sup>17</sup> The Exchange believes that the proposed configuration of the virtual trading crowd is a practical replication of the structure of the Trading Floor that will allow market participants to interact in nearly the same manner as they do on the Trading Floor.<sup>18</sup>

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<sup>11</sup> Phlx also proposes to update Options 8, Section 26(g)(1) and (2) to specify the availability of the virtual trading crowd in the event the Trading Floor and/or Back-Up Trading floor is unavailable, or the Exchange otherwise determines not to operate its Back-Up Trading Floor. See proposed Options 8, Section 26(g)(1) and (2).

<sup>12</sup> See Notice, supra note 3, 86 FR at 3218, n.8.

<sup>13</sup> The Exchange states that this is similar to the Exchange’s authority with respect to outcry trading on the Trading Floor. See id., 86 FR at 3218.

<sup>14</sup> See proposed Options 8, Section 26(g)(3)(B)(3). A “zone” is a virtual room representing a virtual trading crowd. See Notice, supra note 3, 86 FR at 3218, n.11.

<sup>15</sup> See proposed Options 8, Section 26(g)(3)(B)(3).

<sup>16</sup> Id.

<sup>17</sup> Id. The Exchange states that this arrangement is similar to the arrangement of the Trading Floor. See Notice, supra note 3, 86 FR at 3218, n.11.

<sup>18</sup> See id., 86 FR at 3223.

All Options 8 Rules will apply to open outcry trading in the virtual trading crowd in the same manner as they apply to open outcry trading on the Trading Floor, except as otherwise provided for in proposed Options 8, Section 26(g)(3)(F), described below. Proposed Options 8, Section 26(g)(3)(A) lists certain terms in the Rules related to open outcry trading on the Trading Floor that will be deemed to refer to corresponding terms related to open outcry trading in the virtual trading crowd. Specifically:

- References in the Rules to the “floor,” “trading floor,” and “Exchange floor” (and any other terms with the same meaning) will be deemed to refer to the virtual trading crowd; and
- References in the Rules to “physical presence” or “on-floor” or “floor” (and any other terms with the same meaning) will be deemed to refer to “presence” in a virtual trading crowd.

The Exchange represents that access to the virtual trading crowd will be substantially similar to access to the Trading Floor.<sup>19</sup> Access to the virtual trading crowd will be limited to members and member organizations, clerks, Exchange employees, and any other persons the Exchange authorizes admission to the virtual trading crowd.<sup>20</sup> The Exchange will provide access

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<sup>19</sup> See Notice, supra note 3, 86 FR at 3219. The Exchange states that, currently, admission to the Trading Floor is limited to members and member organizations, Exchange employees, clerks employed by members and member organizations, inactive nominees, and Exchange visitors that receive authorized admission to the Trading Floor pursuant to Exchange policy, and any other persons that the Exchange authorizes admission to the Trading Floor. See id.

<sup>20</sup> See proposed Options 8, Section 26(g)(3)(B). The Exchange states that it is not proposing to amend its membership requirements with respect to the virtual trading crowd. See Notice, supra note 3, 86 FR at 3219. Persons and entities may apply to become a Phlx member by complying with the membership requirements described within Phlx General 3 (Membership and Access). Id.

to the virtual trading crowd to members the Exchange has approved to perform a Trading Floor function (including Floor Brokers and Floor Market Makers).<sup>21</sup> Every member and the member's employees in the virtual trading crowd must consent to video and audio recording in order to participate in the virtual trading crowd.<sup>22</sup>

Members will be required to join the virtual trading crowd via a computer and either computer audio, cell phone, or hard-wired phone, as determined by the Exchange.<sup>23</sup> Every member must be identified within the chat by name in place of a badge requirement.<sup>24</sup> Any unidentified attendee will be removed from the virtual trading crowd.<sup>25</sup> Every member in the virtual trading crowd must provide Market Operations with a contact number where Market Operations will be able to reach them during the trading day.<sup>26</sup> The contact number may not be the same number that is being used to connect to the virtual trading crowd.<sup>27</sup> Floor members will be responsible for maintaining updated contact information.<sup>28</sup>

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<sup>21</sup> See Notice, supra note 3, 86 FR at 3219.

<sup>22</sup> See proposed Options 8, Section 26(g)(3)(B)(1).

<sup>23</sup> See proposed Options 8, Section 26(g)(3)(B)(2). Phlx states that it will send a password-protected invitation to each floor participant permitted access to the virtual trading crowd. See Notice, supra note 3, 86 FR at 3220.

<sup>24</sup> See proposed Options 8, Section 26(g)(3)(B). The Exchange states that members would be required to join the virtual trading crowd in a manner that clearly identifies the member or member's employee. See Notice, supra note 3, 86 FR at 3219.

<sup>25</sup> Id. The Exchange represents that it will have an audit trail of the telephone numbers that have joined each remote conferencing session in order to ensure that only members join the remote conferencing feature. See id., 86 FR at 3220.

<sup>26</sup> See proposed Options 8, Section 26(g)(3)(B)(2).

<sup>27</sup> See id.

<sup>28</sup> See id.

Members and member organizations may use any equipment to access the virtual trading crowd and do not need to register devices they use while in the virtual trading crowd.<sup>29</sup> Notwithstanding Options 8, Section 28(g) and Options 8, Section 30(e), members and member organizations would be permitted remote access to the Options Floor Based Management System (“FBMS”) when the virtual trading floor is enacted for purposes of executing transactions which require exposure in open outcry.<sup>30</sup>

The Exchange may determine to require any Floor Market Maker or Floor Broker in a virtual trading crowd that attempts trades against an order represented for execution to express its bid or offer in a chat available in the remote conferencing feature.<sup>31</sup> Chats will be visible to all participants in a zone and will not be permitted directly between individual participants.<sup>32</sup> The Exchange states that it will require members to utilize the chat function if Surveillance

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<sup>29</sup> See proposed Options 8, Section 26(g)(3)(C). The Exchange represents that Options 8, Section 38 (Communications and Equipment) will otherwise apply in the same manner to the virtual trading crowd as it does to the Trading Floor (to the extent the context requires). See Notice, *supra* note 3, 86 FR at 3220.

<sup>30</sup> See proposed Options 8, Section 26(g)(3)(C). The Exchange states that floor members must use Exchange-provided FBMS, to the extent applicable, while transacting in the virtual trading crowd. See Notice, *supra* note 3, 86 FR at 3220. The Exchange also represents that all FBMS order and transaction data, as well as compliance checks, available on the Trading Floor will continue to be available in the virtual trading crowd. See *id.*, 86 FR at 3219.

<sup>31</sup> See proposed Options 8, Section 26(g)(3)(D).

<sup>32</sup> See proposed Options 8, Section 26(g)(3)(D). The Exchange will retain records of the chats, consents, and any other records related to the virtual trading crowd that are subject to the Exchange’s record retention obligations under the Act. See proposed Options 8, Section 26(g)(3)(E).

determines that increased volume or activity in the virtual trading crowd warrant mandatory use of the chat feature for members to maintain a fair and orderly market.<sup>33</sup>

Furthermore, the Exchange proposes to set forth the following open outcry requirements in the virtual trading crowd:<sup>34</sup>

- Prior to speaking on remote conferencing, each member must announce themselves each time.
- If a member experiences a technical issue accessing the remote conferencing, the Exchange will not be responsible for unexecuted trades.
- Floor Market Maker quotes will be considered firm in the event the Floor Market Maker is disconnected from the virtual trading crowd and the parties have a Meeting of the Minds with respect to the terms of the transaction. A “Meeting of the Minds” means the contra-side(s) verbally confirmed participation in the trade. In the event that a Floor Market Maker is disconnected from the virtual trading crowd, a Floor Market Maker quote would not be considered firm if the quote were provided and the parties did not have a Meeting of the Minds with respect to the terms of the transaction.<sup>35</sup>

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<sup>33</sup> See Notice, supra note 3, 86 FR at 3221. The Exchange believes that the chat tool will benefit virtual trading crowd participants due to the limitations of communication software (such as limitations on how many people may be heard at the same time in a virtual trading crowd or potential buffering or echoing). See id., 86 FR at 3220-21.

<sup>34</sup> See proposed Options 8, Section 26(g)(3)(F)(1)a.-g.

<sup>35</sup> Floor Market Maker quotes on the Trading Floor are considered firm when announced in open outcry and once accepted the transaction may be effectuated within FBMS. See Notice, supra note 3, 86 FR at 3221. Additionally, a Floor Market Maker that experiences issues with internet connection, makes an error or otherwise is unaware of recent news in a particular option, would be held to a quote verbalized in open outcry. See id.

- FLEX Trade tickets must be sent by email to the Phlx Correction Post.
- A break-out room may be utilized to declare a dispute or otherwise notify an Options Floor Official of any required notifications.<sup>36</sup>
- A member may not permit any other unauthorized person to gain audio or video access to the virtual trading crowd. A member shall not record any trading sessions.

### Technical Amendments

The Exchange proposes to amend Options 8, Section 22 (Execution of Options Transactions on the Trading Floor) to correct two incorrect citations to Options 8, Section 35 in Options 8, Sections 22(b) and (c).

### 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,<sup>37</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>38</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>39</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

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<sup>36</sup> The Exchanges states that it would establish a break-out room within the remote conferencing for each dispute. See id.

<sup>37</sup> 15 U.S.C. 78f.

<sup>38</sup> 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).

<sup>39</sup> 15 U.S.C. 78f(b)(5).



As discussed above, Phlx proposes to adopt rules to enable a virtual trading crowd for open outcry trading when the Trading Floor and Back-Up Trading Floor are unavailable. This would allow trading on the Exchange to occur more similarly to physical floor trading than the current rules for all-electronic trading in situations when the floor becomes inoperable. Among other things, the Exchange believes that the proposed enhancement to its BCP through the implementation of a virtual trading crowd environment would ameliorate some of the features in open outcry trading that are difficult to replicate in an all-electronic environment, particularly the segment of trading strategies that benefit from human interactions to negotiate pricing and to facilitate executions of large orders and high-risk and complicated trading strategies.<sup>40</sup> The Exchange believes that the proposed rule change may facilitate continued trading of these orders if and when the Trading Floor and Back-Up Trading Floor are unavailable. As a result, the Exchange believes that providing continuous access to open outcry trading in these circumstances will remove impediments to a free and open market and will ultimately benefit investors, particularly those executing high-risk and complex trading strategies.

The Commission finds that the proposed implementation of the virtual trading crowd for BCP purposes is consistent with the Act. The Commission believes that the proposed virtual trading crowd will allow the Exchange to provide a trading environment to floor members that is reasonably designed to facilitate open outcry trading when circumstances restrict physical human interaction on the Trading Floor and Back-Up Trading Floor. The Commission notes that the Exchange has conducted several town halls with floor members on the virtual trading crowd and made the functionality available for testing so that the Exchange will be ready to implement it if necessary. The Exchange states that it has received positive feedback from floor members

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<sup>40</sup> See Notice, supra note 3, 86 FR at 3222.

regarding the tool and will continue to make updates as necessary and appropriate in response to member feedback.<sup>41</sup> As a result, the Commission finds that the virtual trading crowd is reasonably designed to allow continuous access to open outcry trading, which will remove impediments to a free and open market and may ultimately benefit investors, particularly those facilitating executions of large orders and complex trading strategies.

Additionally, the design of the virtual trading zones to closely replicate the arrangement of the physical trading floor will facilitate the rollout of the virtual trading crowd to floor members and help remove impediments to a free and open market when the Trading Floor and Back-Up Trading Floor become unavailable. Virtual trading zones will provide floor members the ability to interact in a substantially similar way as they do on the Trading Floor. Furthermore, the proposed chat functionality, which is not otherwise available on the Trading Floor, is reasonably designed to create a virtual environment that promotes fair and orderly markets by providing floor participants with an additional tool to communicate with one another to the extent necessary given the potential inherent limitations of communication software.

Finally, the Commission finds that the design of the virtual trading crowd will help prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade by requiring that the Rules and regulatory requirements apply in the substantially the same manner as open outcry on the Trading Floor. Specifically, the Exchange represents that all Rules related to open outcry trading, including within Options 8, will apply to open outcry trading in a virtual trading crowd, except as otherwise provided for in proposed Options 8, Section 26(g)(3)(F).<sup>42</sup> Floor members participating in a virtual trading crowd will be subject to

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<sup>41</sup> See id., 86 FR at 3222.

<sup>42</sup> See supra notes 21-26; 30-32 and accompanying text.

the same regulatory requirements on the virtual trading floor as they are on the Trading Floor, including those set forth in General 8.<sup>43</sup> Orders in the virtual trading crowd must be systematized and represented, and transactions reported, in the same manner as on the Trading Floor.<sup>44</sup> The Exchange also requires that floor members use Exchange-provided FBMS, to the extent applicable, while transacting in the virtual trading crowd, and represents that all FBMS order and transaction data, as well as compliance checks, available on the Trading Floor will continue to be available in the virtual trading crowd.<sup>45</sup> In addition, Phlx Surveillance staff will remotely surveil transactions in the virtual trading crowd, in real-time, and an Options Floor Official will be present in each virtual trading crowd.<sup>46</sup> Moreover, the Exchange represents that it will retain records of the chats, consents, and any other records related to the virtual trading consistent with the Exchange's record retention obligations under the Act.<sup>47</sup>

#### IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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

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<sup>43</sup> See id., 86 FR at 3223.

<sup>44</sup> See id.

<sup>45</sup> See id., 86 FR at 3219.

<sup>46</sup> See id., 86 FR at 3223. The Exchange also represents that the Floor Surveillance Procedures will be updated to account for the video conferencing and chat requirements, as well as any changes to surveil a virtual trading crowd. See id.

<sup>47</sup> See id., 86 FR at 3223.

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2021-03 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-2021-03. The file numbers 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 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 publicly available. All submissions should refer to File No. SR-Phlx-2021-03 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

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

The Commission finds good cause for approving the proposed rule change, as amended by Amendment No. 1, prior to the 30<sup>th</sup> day after the date of publication of notice in the Federal Register. In Amendment No. 1, the Exchange made technical corrections and revisions to the proposed rule text for readability and consistency.<sup>48</sup> The Commission notes that Amendment No. 1 does not change the substance of the proposed rule change, but merely adds detail and clarification to several items of the proposal. Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.<sup>49</sup>

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>50</sup> that the

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<sup>48</sup> See Amendment No. 1, supra note 6.

<sup>49</sup> 15 U.S.C. 78s(b)(2).

<sup>50</sup> Id.

proposed rule change, as modified by Amendment No. 1 (SR-Phlx-2021-03), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>51</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>51</sup> 17 CFR 200.30-3(a)(57) and (58).