

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92873; File No. SR-Phlx-2021-48)

September 2, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Various Phlx Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 23, 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 amend Phlx Options 2, Section 5, Electronic Market Maker Obligations and Quoting Requirements, Options 2, Section 10, Directed Orders, Options 3, Section 13, Price Improvement XL (“PIXL”), and Options 3, Section 26, Message Traffic Mitigation.

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

¹ 15 U.S.C. 78s(b)(1).

² 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

The Exchange proposes to amend Phlx Rules at Options 2, Section 5, Electronic Market Maker Obligations and Quoting Requirements, Options 2, Section 10, Directed Orders, Options 3, Section 13, Price Improvement XL (“PIXL”), and Options 3, Section 26, Message Traffic Mitigation. Each change is described below.

Options 2, Section 5

The Exchange proposes to amend Options 2, Section 5, which describes quoting obligations for Market Makers³ and Lead Market Makers,⁴ to conform the description of a LEAP

³ A “Market Maker” means a Streaming Quote Trader or a Remote Streaming Quote Trader who enters quotations for his own account electronically into the System. See Options 1, Section 1(b)(28). A “Streaming Quote Trader” or “SQT” means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. See Options 1, Section 1(b)(54). A “Remote Streaming Quote Trader” or “RSQT” means a Market Maker that is a member affiliated with an Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker (“RMM”) pursuant to Options 2, Section 11. A Remote Streaming Quote Organization (“RSQTO”) or Remote Market Maker Organization (“RMO”) are Exchange member organizations that have qualified pursuant to Options 2, Section 1. See Options 1, Section 1(b)(49).

⁴ A “Lead Market Maker” means a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). A Lead Market Maker includes a Remote Lead Market Maker which is defined as a Lead Market Maker in one or more classes that

for index options with Options 4A, Section 12(b)(2). Today, SQTs and RSQTs are not required to make two-sided markets in any Quarterly Option Series, any adjusted option series, and any option series with an expiration of nine months or greater, otherwise known as long-term options series or “LEAPs.” Current Options 2, Section 5(c)(2)(A) describes a LEAP as any option series with an expiration of nine months or greater, while Options 4A, Section 12(b)(2) describes a LEAP on an index option as a series of options having not less than twelve and up to 60 months to expiration.⁵ The Exchange proposes to amend Options 2, Section 5(c)(2)(A) to explicitly define a LEAP by product. Specifically, the Exchange proposes to add the following phrase to end of the paragraph, “for options on equities and exchange-traded funds (“ETFs”) or with an expiration of twelve months or greater for index options” to distinguish LEAPs for options on equities and ETFs, which have an opening month of 9 months, from LEAPS for index options, which have an opening month of 12 months. This proposal is non-substantive as Options 4A, Section 12(b)(2) already defines a LEAP on an index option. The Exchange is simply conforming Options 2, Section 5(c)(2)(A) to Options 4A, Section 12(b)(2).

does not have a physical presence on an Exchange's trading floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 1, Section 1(b)(27).

⁵ Phlx previously amended its Options 4A, Section 12, Terms of Option Contracts, to change the number of expirations that the Exchange may open for trading in series of options related to Long-Term Options Series of index options. See Securities Exchange Act Release No. 88460 (March 23, 2020), 85 FR 17146 (March 26, 2020) (SR-Phlx-2020-10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 4A, Section 12, Terms of Option Contracts). This proposal amended Phlx’s current expiration for long-term index options from those series not having less than nine and up to 60 months to expirations to a number of expirations not having less than twelve and up to 60 months to expiration with respect to Long-Term Options Series.

Similar changes to distinguish terms for LEAPs on index options are proposed for Options 2, Section 5(c)(2)(B) and (C) which are applicable to Lead Market Makers,⁶ and Directed SQTs and Directed RSQTs.⁷ Also, a similar change is proposed to be added to Options 2, Section 5(c)(2)(D) which generally describes the manner in which the Exchange calculates quoting obligations. This amendment will bring greater clarity to the Exchange’s rules.

Options 2, Section 10

The Exchange proposes to correct an improper citation within Options 2, Section 10(a)(iii) to Options 10, Section 11(a)(1)(C). The citation should refer to the allocation rule at Options 3, Section 10(a)(1).

Options 3, Section 13

The Exchange proposes to amend Options 3, Section 13, Price Improvement XL (“PIXL”). Specifically, the Exchange proposes to update rule citations within Options 3, Section 13(c) – (e) to Options 9. The rule citations to “Options 9, Section 1” and “Options 9, Section” are being replaced with “General 9, Section 1(c).” The Exchange previously relocated Options 9, Section 1, Conduct Inconsistent with Just and Equitable Principles of Trade, to General 9, Section 1(c).⁸ Certain citations were missing the Section “1” as well. The Exchange also proposes to make “exceed” plural within Options 3, Section 13(d).

⁶ Lead Market Makers are required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any LEAP. See Options 2, Section 5(c)(2)(B).

⁷ Directed SQTs and Directed RSQTs are not required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any LEAP. See Options 2, Section 5(c)(2)(C).

⁸ See Securities Exchange Act Release No. 91058 (February 4, 2021), 86 FR 8966 (February 10, 2021) (SR-Phlx-2021-04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its PSX Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell and Make Other Changes to the Phlx Rules).

Options 3 Section 26

The Exchange proposes to amend Options 3, Section 26, Message Traffic Mitigation. Specifically, the Exchange proposes to amend Options 3, Section 26(a)(3) which currently provides, “The Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer, when: . . . the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with previously disseminated bid (offer). Such percentage, which shall never exceed 20%, shall be determined on an issue-by-issue basis by the Exchange and announced to membership via Exchange circular.” The Exchange proposes to make some non-substantive amendments to the sentence, such as changing “shall” to “will” and moving the phrase “by the Exchange”. The Exchange also proposes to amend the practice of issuing a circular to announce the percentage specified in Options 3, Section 26(a)(3) to instead posting the percentage on the Exchange’s website. The Exchange believes that posting the information on the Exchange’s website will provide members and member organizations a reference to the current percentage provided for within Options 3, Section 26(a)(3) without the need to locate a notice that was previously issued. Further, this practice will continue to provide transparency to members and member organizations.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

interest.

Options 2, Section 5

The proposed amendment to Options 2, Section 5 is consistent with the Act because it will distinguish LEAPs for options on equities and ETFs, which have an opening month of 9 months, from LEAPS for index options, which have an opening month of 12 months. This proposal is non-substantive as Options 4A, Section 12(b)(2) already defines a LEAP on an index option. The Exchange is simply conforming Options 2, Section 5(c)(2)(A) to Options 4A, Section 12(b)(2). This amendment will bring greater clarity to the Exchange's rules.

Options 2, Section 10

The Exchange's proposal to correct an improper citation within Options 2, Section 10(a)(iii) is consistent with the Act and will bring greater clarity to the Exchange's rules.

Options 3, Section 13

The Exchange's proposal to update rule citations within Options 3, Section 13(c) – (e) from "Options 9" or "Options 9, Section 1" to "General 9, Section 1(c)" is consistent with the Act and will bring greater clarity to the Exchange's Rulebook.

Options 3 Section 26

The Exchange's proposal to amend Options 3, Section 26(a)(3) to make some non-substantive amendments, such as changing "shall" to "will" and moving the phrase "by the Exchange" and amending the practice of issuing a circular to instead posting the percentage on the Exchange's website are consistent with the Act. The Exchange believes that posting the information on the Exchange's website will provide members and member organizations a reference to the current percentage within Options 3, Section 26(a)(3) without the need to locate

a notice that was previously issued. Further, this practice will continue to provide transparency to members and member organizations.

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.

Options 2, Section 5

The proposed amendment to Options 2, Section 5 does not impose an undue burden on competition because the proposal is a non-substantive amendment to add specificity to the rule by distinguishing LEAPs for options on equities and ETFs, which have an opening month of 9 months, from LEAPs for index options, which have an opening month of 12 months. This proposal will conform Options 2, Section 5(c)(2)(A) to Options 4A, Section 12(b)(2).

Options 2, Section 10

The Exchange’s proposal to correct an improper citation within Options 2, Section 10(a)(iii) does not impose an undue burden on competition, rather it will bring greater clarity to the Exchange’s rules.

Options 3, Section 13

The Exchange’s proposal to update rule citations within Options 3, Section 13(c) – (e) from “Options 9” or “Options 9, Section 1” to “General 9, Section 1(c)” does not impose an undue burden on competition, rather the proposal will bring greater clarity to the Exchange’s Rulebook.

Options 3 Section 26

The Exchange’s proposal to amend Options 3, Section 26(a)(3) to make some non-substantive amendments, such as changing “shall” to “will” and moving the phrase “by the

Exchange” and amending the practice of issuing a circular to instead posting the percentage within Options 3, Section 26(a)(3) on the Exchange’s website does not impose an undue burden on competition. The Exchange believes that posting the information on the Exchange’s website will continue to provide transparency to members and member organizations.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked that the Commission waive the operative delay to permit the Exchange to immediately amend Options 2, Section 5 to distinguish

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 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.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

LEAPs for options on equities and ETFs, which have an opening month of 9 months or greater, from LEAPS for index options, which have an opening month of 12 months or greater, thereby conforming Options 2, Section 5(c)(2)(A) to Options 4A, Section 12(b)(2). Further, the Exchange states that amending Options 3, Section 26(a)(3) will continue to provide transparency to members and member organizations with respect to the manner in which the Exchange manages quote traffic. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because (1) it will allow the Exchange to immediately implement the proposed changes which are designed to add clarity and consistency to the Exchange's rules concerning LEAPs and (2) it will allow the Exchange to immediately implement a change designed to better communicate to market participants information concerning quote mitigation. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2021-48 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-2021-48. 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 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-2021-48 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).