

SECURITIES AND EXCHANGE COMMISSION

(Release No.96599; File No. SR-Phlx-2022-50)

January 3, 2023

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 9, Section 13

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 December 23, 2022, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 Options 9, Section 13, Position Limits.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Options 9, Section 13(a) related to Position Limits. Specifically, the Exchange proposes to remove rule text which provides, “Standard and Poor's Depository Receipts (“SPDRs”), which shall have no position limits.” Today, the position limit for SPDR® S&P 500® ETF Trust (“SPY”) is 3,600,000 contracts on the same side of the market, as reflected within Options 9, Section 13(a).

In 2018, Phlx filed a rule change which amended the position limits for SPY.³ Previously, SPY was subject to a pilot program that provided no position limits on options overlying SPY.⁴ The pilot program, which was set to expire on July 12, 2018, was terminated and, in lieu of extending the SPY Pilot Program for another year, the Exchange established position and exercise limits for options on SPY of 1,800,000 contracts with such change becoming operative on July 12, 2018.⁵ Subsequently, the SPY position and exercise limits were amended from 1,800,000 to 3,600,000.⁶

³ See Securities Exchange Act Release No. 83412 (June 12, 2018), 83 FR 28298 (June 18, 2018) (SR-Phlx-2018-44) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1001, Entitled “Position Limits”).

⁴ Id.

⁵ Id.

⁶ See Securities Exchange Act Release No. 89153 (June 25, 2020), 85 FR 39619 (July 1, 2020) (SR-Phlx-2020-30) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 9, Section 13 To Increase the Position Limits for Options on Certain Exchange-Traded Funds).

In 2018⁷ and 2020,⁸ the Exchange proposed to remove rule text from then Rule 1001 (now Options 9, Section 13)⁹ regarding the aforementioned pilot program, but inadvertently did not remove the sentence setting no position limits when the Exchange added the new SPY position limits. At this time, the Exchange proposes to remove the sentence which was eliminated with the 2018 Rule Change so that there is no confusion that the SPY limits are 3,600,000 contracts on the same side of the market, as currently reflected in Options 9, Section 13(a).

Finally, the Exchange proposes a technical amendment to remove a stray open parenthesis within Options 9, Section 13(a).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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 believes that correcting the rule text within Options 9, Section 13(a) by removing the rule text stating that SPY has no position limits will protect investors and the

⁷ See note 4 above.

⁸ See note 7 above.

⁹ See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

¹⁰ 15 U.S.C. 78f(b)

¹¹ 15 U.S.C. 78f(b)(5).

public interest by removing confusing and incorrect rule text. Also, removing inadvertent and conflicting rule text regarding the SPY position limits, which applied to an expired pilot program, will make clear that the current SPY position limits are 3,600,000 contracts on the same side of the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that correcting the rule text within Options 9, Section 13(a) by removing the rule text stating that SPY has no position limits will protect investors and the public interest by removing confusing and incorrect rule text. Also, removing inadvertent and conflicting rule text regarding the SPY position limits, which applied to an expired pilot program, will make clear that the current SPY position limits are 3,600,000 contracts on the same side of the market.

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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,

it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that its proposal to remove the incorrect rule text stating that SPY has no position limits will protect investors and the public interest by making clear that the current SPY position limits are 3,600,000 contracts on the same side of the market. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal will eliminate outdated and potentially confusing rule text, thereby enhancing the clarity of the Exchange's rule, and the proposal also does not raise any new or novel issues. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁶

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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, along with a brief description and text of 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.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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-2022-50 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-2022-50. 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 a.m. and 3 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 available publicly. All submissions should refer to File Number SR-Phlx-2022-50 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.¹⁷

Sherry R. Haywood.
Assistant Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).