

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98228; File No. SR-Phlx-2023-38)

August 28, 2023

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 8 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 14, 2023, 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 its Rules at Options 8 concerning Floor Trading.

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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend Options 8, Section 11, Floor Market Maker and Lead Market Maker Appointment, and reserve current Options 8, Section 16, Trading for Joint Account. Each change will be described below.

Options 8, Section 11

The Exchange is proposing to amend Options 8, Section 11, Floor Market Maker and Lead Market Maker Appointment. Specifically, the Exchange proposes to remove the current burdensome process within Options 8, Section 11(b) regarding Floor Market Maker³ options assignments.

Today, pursuant to Options 8, Section 11(b), a Floor Market Maker shall notify the Exchange of each option, on an issue-by-issue basis, in which such Floor Market Maker intends to be assigned to make markets. Exchange options transactions initiated by such Market Maker on the Trading Floor for any account in which he had an interest shall to the extent prescribed by the Exchange be in such assigned classes. Such notification shall be in writing on a form prescribed by the Exchange (“Floor Market Maker Assignment Form”). Any change to such Floor Market Maker Assignment Form shall be made in writing by the Floor Market Maker prior to the end of the next business day in which such change is to take place. Receipt of the properly completed Floor Market Maker Assignment Form by a duly qualified Floor Market Maker applicant constitutes acceptance by the Exchange of such Floor Market Maker’s assignment in, or termination of assignment in (as indicated on the Floor Market Maker Assignment Form), the options listed on such Floor Market Maker Assignment Form. All such assignments shall not be

³ The term “Floor Market Maker” is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. See Phlx Options 8, Section 1(a)(4).

effective, and shall be terminated, in the event that such Floor Market Maker applicant fails to qualify as a Floor Market Maker on the Exchange.

The Exchange is proposing to remove the rule text related to notifying the Exchange of each options class in which such Floor Market Maker intends to be assigned and, instead, provide that a Floor Market Maker has an assignment to trade open outcry in all options classes traded on the Exchange.⁴ This proposed rule text is similar to Cboe Exchange, Inc. (“Cboe”) Rule 5.50(e).⁵

Today, a Floor Market Maker may only quote in open outcry on the Exchange’s Trading Floor and may not enter electronic quotations into the electronic System.⁶ Today, Floor Market Makers may be called upon by an Options Exchange Official to make a market in a trading crowd.⁷ Further, Phlx requires that at least one Floor Market Maker is present at the trading post prior to representing an order for execution.⁸ By assigning a Floor Market Maker in all options classes traded on the Exchange, similar to Cboe, Phlx believes it will attract additional liquidity to its trading floor by allowing Floor Market Makers to quote in all options classes traded on Phlx without an administrative barrier.⁹ An approved Floor Market Maker is permitted to

⁴ The Exchange also proposes to remove the rule text prescribing that such notification should be in writing, how to make changes to the Floor Market Maker Assignment Form, and acceptance of the form by the Exchange.

⁵ Cboe Rule 5.50(e) provide that, “During Regular Trading Hours, a Market-Maker has an appointment to trade open outcry in all classes traded on the Exchange. A TPH organization that is registered as a Market-Maker may only trade in open outcry through one of its nominees. A Market-Maker must be physically present in the trading crowd to trade in open outcry.”

⁶ The Options 8 rules govern trading on Phlx’s trading floor. A Floor Market Maker may not stream quotes. See supra note 3.

⁷ See Options 8, Section 27(c) and (d).

⁸ See Options 8, Section 28(a).

⁹ Today, a Floor Market Maker that fails to notify the Exchange in a timely manner would not be permitted to quote in certain options in which they have not been assigned.

quote¹⁰ in all options classes provided the Floor Market Maker is properly registered¹¹ and remains in good standing.¹² The process described in Options 8, Section 11(b) is a notification process, not an approval process. This proposed method of assignment will remove the burdensome manual process of completing a Floor Market Maker Assignment Form for the benefit of both Phlx members who must file the form and Exchange staff who must track assignments.

As provided in Options 8, Section 11(a), the Exchange, in its discretion, may require a unit to obtain additional staff depending upon the number of assigned options classes and associated order flow. The Exchange proposes to amend Options 3, Section 11(a) to specify that “The Exchange, in its discretion, may require a unit to obtain additional staff depending upon the number of assigned options classes that is being quoted and associated order flow.” This change is being made as a Floor Market Maker will be assigned in all options classes pursuant to this proposal and the Exchange would monitor the amount of quoting activity in utilizing its discretion.

Options 8, Section 16

The Exchange proposes to reserve Options 8, Section 16, Trading for a Joint Account, which requires the disclosure of accounts held jointly with other members. This rule was put in

¹⁰ Floor Market Makers are not subject to continuous quoting requirements pursuant to Options 8, Section 27(a). Further, Floor Market Makers are required to trade either (a) 1,000 contracts and 300 transactions, or (b) 10,000 contracts and 100 transactions, on the Exchange each quarter. Transactions executed in the trading crowd where the contra-side is an ROT are not included. See Options 8, Section 27(f). In meeting the trading requirements, Floor Market Makers are not required to quote in all assigned options series.

¹¹ See Options 8, Section 8.

¹² Pursuant to Options 8, Section 11(b), “All such assignments shall not be effective, and shall be terminated, in the event that such Floor Market Maker applicant fails to qualify as a Floor Market Maker on the Exchange.” Of note, the Exchange is not amending the process of assignment and approval to become the Floor Lead Market Maker. The term “Floor Lead Market Maker” is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange’s trading floor. See Options 8, Section 1(a)(3).

place to address conflicts of interest among members. Options 8, Section 16 is unnecessary because, today, there is no trading conducted in joint accounts on the trading floor. Also, Options 8, Section 16 is unnecessary because General 9, Section 67, Participation in Joint Accounts, requires, among other information, disclosure of other ownership and financial information.¹³

Today, all members (electronic and floor) are currently subject to General 9, Section 67, Participation in Joint Accounts, however only Phlx floor members are also subject to Options 8, Section 16. While Options 8, Section 16 requires prior approval of a joint account¹⁴ to initiate the purchase or sale on the Exchange of any security for any account in which he, his member organization or a participant therein, is directly or indirectly interested with any person other than such member organization or participant therein, General 9, Section 67, requires the reporting of joint accounts and permits Phlx staff to disapprove any joint account. Further, General 9, Section 67 requires a Phlx member to report participation in such joint account before any transactions are effected on the Exchange for such joint account.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect

¹³ General 9, Section 67 requires a joint account to be reported to the Exchange by any member, member organization, or partner or stockholder therein, participating in such joint account before any transactions are effected on the Exchange for such joint account and shall include in substance the following: (1) Names of persons participating in such account and their respective interest therein; (2) Purpose of such account; (3) Amount of commitments in such account; and (4) A copy of any written agreement or instrument in writing relating to such account. See General 9, Section 67(b).

¹⁴ The Exchange notes that the approval is not on a transaction basis, rather it is on an account basis.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Options 8, Section 11

The Exchange's proposal to amend Options 8, Section 11, Floor Market Maker and Lead Market Maker Appointment, is consistent with the Act and the protection of investors and the general public because assigning a Floor Market Maker in all options classes traded on the Exchange will enable Phlx to attract additional liquidity to its trading floor by allowing Floor Market Makers to quote in all options classes traded on Phlx without any burdensome administrative barriers. Furthermore, the proposal will remove impediments to and perfect the mechanism of a free and open market by removing the manual process of completing a Floor Market Maker Assignment Form for the benefit of both Phlx members who must file the form and Exchange staff who must track assignments.

With respect to protecting investors and the general public, Phlx continues to have rules in place to maintain orderly markets on its trading floor. Today, a Floor Market Maker may only quote in open outcry on the Exchange's Trading Floor and may not enter electronic quotations into the electronic System. Floor Market Makers may be called upon by an Options Exchange Official to make a market in a trading crowd.¹⁷ Further, Phlx requires that at least one Floor Market Maker is present at the trading post prior to representing an order for execution.¹⁸ An assigned Floor Market Maker is permitted to quote¹⁹ in all options classes provided the Floor

¹⁷ See Options 8, Section 27(c) and (d).

¹⁸ See Options 8, Section 28(a).

¹⁹ Floor Market Makers are not subject to continuous quoting requirements pursuant to Options 8, Section 27(a). Further, Floor Market Makers are required to trade either (a) 1,000 contracts and 300 transactions, or (b) 10,000 contracts and 100 transactions, on the Exchange each quarter. Transactions executed in the trading crowd where the contra-side is an ROT are not included. See Options 8, Section 27(f). In meeting the trading requirements, Floor Market Makers are not required to quote in all assigned options series.

Market Maker is properly registered²⁰ and remains in good standing.²¹ This proposed rule text is similar to Cboe Rule 5.50(e).²²

Amending Options 3, Section 11(a) to specify that “The Exchange, in its discretion, may require a unit to obtain additional staff depending upon the number of assigned options classes that is being quoted and associated order flow” is consistent with the Act and the protection of investors because the Exchange would monitor the amount of quoting activity in utilizing its discretion going forward.

Options 8, Section 16

The Exchange’s proposal to reserve Options 8, Section 16, Trading for a Joint Account, is consistent with the Act and the protection of investors and the general public because the rule is unnecessary. Today, there is no trading conducted in joint accounts on the trading floor. Also, Options 8, Section 16 is unnecessary because General 9, Section 67, Participation in Joint Accounts, requires, among other information, disclosure of other ownership and financial information.²³ While Options 8, Section 16 requires prior approval of a joint account²⁴ to initiate

²⁰ See Options 8, Section 8.

²¹ Pursuant to Options 8, Section 11(b), “All such assignments shall not be effective, and shall be terminated, in the event that such Floor Market Maker applicant fails to qualify as a Floor Market Maker on the Exchange.” Of note, the Exchange is not amending the process of assignment and approval to become the Floor Lead Market Maker. The term “Floor Lead Market Maker” is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange’s trading floor. See Options 8, Section 1(a)(3).

²² Cboe Rule 5.50(e) provide that, “During Regular Trading Hours, a Market-Maker has an appointment to trade open outcry in all classes traded on the Exchange. A TPH organization that is registered as a Market-Maker may only trade in open outcry through one of its nominees. A Market-Maker must be physically present in the trading crowd to trade in open outcry.”

²³ General 9, Section 67 requires a joint account to be reported to the Exchange by any member, member organization, or partner or stockholder therein, participating in such joint account before any transactions are effected on the Exchange for such joint account and shall include in substance the following: (1) Names of persons participating in such account and their respective interest therein; (2) Purpose of such account; (3) Amount of commitments in such account; and (4) A copy of any written agreement or instrument in writing relating to such account. See General 9, Section 67(b).

²⁴ The Exchange notes that the approval is not on a transaction basis, rather it is on an account basis.

the purchase or sale on the Exchange of any security for any account in which he, his member organization or a participant therein, is directly or indirectly interested with any person other than such member organization or participant therein, General 9, Section 67, requires the reporting of joint accounts and permits Phlx staff to disapprove any joint account. Further, General 9, Section 67 requires a Phlx member to report participation in such joint account before any transactions are effected on the Exchange for such joint account.

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 8, Section 11

The Exchange's proposal to amend Options 8, Section 11, Floor Market Maker and Lead Market Maker Appointment, does not impose an intra-market burden on competition because all Floor Market Makers will be assigned in all options classes traded on the Exchange, provided the Floor Market Maker continues to qualify as a Floor Market Maker on the Exchange. The proposal will not require Floor Market Makers to quote in additional options series to meet their trading requirements²⁵ unless they elect to do so.

The Exchange's proposal to amend Options 8, Section 11, Floor Market Maker and Lead Market Maker Appointment, does not impose an inter-market burden on competition because Cboe²⁶ also appoints its Market-Maker to trade open outcry in all classes traded on Cboe. Additionally, other options trading floors may elect to adopt a similar rule.

²⁵ Floor Market Makers are not subject to continuous quoting requirements pursuant to Options 8, Section 27(a). Further, Floor Market Makers are required to trade either (a) 1,000 contracts and 300 transactions, or (b) 10,000 contracts and 100 transactions, on the Exchange each quarter. Transactions executed in the trading crowd where the contra-side is an ROT are not included. See Options 8, Section 27(f). In meeting the trading requirements, Floor Market Makers are not required to quote in all assigned options series.

²⁶ See Cboe Rule 5.50(e).

Amending Options 3, Section 11(a) to specify that “The Exchange, in its discretion, may require a unit to obtain additional staff depending upon the number of assigned options classes that is being quoted and associated order flow” does not impose an undue burden on intra-market competition because the Exchange would continue to apply this discretion in a fair manner by treating all similarly-situated Floor Market Makers in the same manner.

Amending Options 3, Section 11(a) to specify that “The Exchange, in its discretion, may require a unit to obtain additional staff depending upon the number of assigned options classes that is being quoted and associated order flow” does not impose an undue burden on inter-market competition because other options trading floors markets may adopt a similar discretion.

Options 8, Section 16

The Exchange’s proposal to reserve Options 8, Section 16, Trading for a Joint Account, does not impose an intra-market burden on competition as no Phlx member on the trading floor would be subject to the rule. Additionally, all Phlx members and member organizations would be required to comply with General 9, Section 67.

The Exchange’s proposal to reserve Options 8, Section 16, Trading for a Joint Account, does not impose an inter-market burden on competition because other options trading floors may adopt similar rules.

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) of the Act²⁷ and Rule 19b-4(f)(6) thereunder.²⁸

A proposed rule change filed under Rule 19b-4(f)(6)²⁹ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)³⁰ 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 the Commission to waive the 30-day operative delay so that the Exchange may implement the proposed change and alleviate an administrative burden. The Exchange states that assigning Floor Market Makers in all options classes traded on the Exchange will enable Phlx to attract additional liquidity to its trading floor allowing Floor Market Makers to quote in all options classes traded on Phlx, without any burdensome administrative barrier, and that the proposal will also remove the manual process of completing a Floor Market Maker Assignment Form for the benefit of both Phlx members and Exchange staff. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.³¹

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

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ 17 CFR 240.19b-4(f)(6)(iii).

³¹ 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).

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 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2023-38 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-2023-38. This file number should be included on the subject line if email 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 (<https://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 the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2023-38 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,

Assistant Secretary.

³² 17 CFR 200.30-3(a)(12), (59).