SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98320; File No. SR-PHLX-2023-41)

September 7, 2023

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate
Effectiveness of Proposed Rule Change to Amend Options 3, Section 13 Concerning PIXL

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 30, 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 self-regulatory organization. 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 3, Section 13, Price Improvement

XL ("PIXL").

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

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[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

Phlx proposes to amend Options 3, Section 13, Price Improvement XL ("PIXL"), to harmonize its price improvement rule text regarding entry checks in Options 3, Section 13(a)(1) through (3) to mirror the rule text of Nasdaq GEMX, LLC's ("GEMX"), Nasdaq MRX, LLC's ("MRX"), and Nasdaq ISE, LLC's ("ISE") PIM, and BX's PRISM, without changing the substantive operations of these price improvement auctions. The Exchange proposes to amend Options 3, Section 13(a)(1) through (3) to harmonize the language, to the extent possible, with other Nasdaq affiliated markets. The harmonization will allow market participants to compare Phlx's PIXL entry checks with similar mechanisms on Nasdaq affiliated markets.

The Exchange also proposes to make two technical amendments to Options 4A at Section 6, Position Limits, and Section 12, Terms of Index Options Contracts. The Exchange also proposes additional changes described below.

PIXL Entry Checks

Phlx proposes to add "a price that is" to the end of Options 3, Section 13(a)(1) and add new subparagraphs (A) and (B) to distinguish opposite and same side checks for a PIXL Order for less than 50 options contracts.[3] The opposite side check for a PIXL Order for less than 50 options contracts is currently specified in the current rule text which is being relocated to Options 3, Section 13(a)(1)(A). The same side check for a PIXL Order for less than 50 options

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[3] The proposed language below in Options 3, Section 13(a)(1) through (3) excludes Complex Orders which are described in Options 3, Section 13(a)(4).

contracts currently does not specify the NBBO check. Today, if the PIXL Order is for less than 50 option contracts, and if the difference between the NBBO is $0.01, the Initiating Member must stop the entire PIXL Order at a price that is on the same side of the market as the PIXL Order, equal to or better than the NBBO[4] and better than any Limit Order on the Limit Order Book. This language represents current System functionality. Additionally, Phlx proposes to add more detail to describe the current System functionality. If the PIXL Order is for a Non-Public Customer, the PIXL Order must also be better than any quote on the same side of the market as the PIXL Order. Today, the System will check if the PIXL Order is better than any quote on the same side of the market as the PIXL Order if the PIXL Order is for a Non-Public Customer. The addition of this detail within Options 3, Section 13(a)(1)(B) will bring transparency to the current System checks for a PIXL Order for less than 50 options contracts.

Phlx proposes to amend Options 3, Section 13(a)(2) to add a ":" to the end of (a)(2) and add new subparagraphs (A) and (B) which distinguish the opposite side and same side checks if the PIXL Order is for the account of a Public Customer and such order is for 50 option contracts or more. The opposite side check for a PIXL Order for the account of a Public Customer for 50 option contracts or more is currently specified in the current rule text, which is being relocated to Options 3, Section 13(a)(2)(A). The same side check for a PIXL Order for the account of a Public Customer for 50 option contracts or more currently does not specify the manner in which the PIXL Order must improve on the same side or the NBBO check. The Exchange proposes to amend the same side check in Options 3, Section 13(a)(2)(B) to state that if the PIXL Order is for the account of a Public Customer and such order is for 50 option contracts or more, or if the

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[4] For example, if the market is 0.98 bid and 0.99 offer, a Public Customer PRISM Order to buy for less than 50 contracts must be stopped at 0.98 cents in this scenario to be accepted into a PRISM Auction, provided there is no resting order or quote on the BX order book at 0.98 in which case the PRISM Order would be rejected.

difference between the NBBO is greater than $0.01, the Initiating Member must stop the entire PIXL Order at a price that is, on the same side of the market as the PIXL Order, (1) at least $0.01 better than any Limit Order on the Limit Order book; (2) at or better than the PIXL Order's limit price (if the Order is a Limit Order); and equal to or better than the NBBO. This rule text represents current System functionality. This new rule text makes clear the various same side entry checks that are performed by the current System.

Phlx proposes to amend Options 3, Section 13(a)(3) to add ":" to the end of (a)(3) and add new subparagraphs (A) and (B) which distinguish the opposite side and same side checks for a PIXL Order for the account of a broker dealer or any other person or entity that is not a Public Customer and such order is for 50 option contracts or more. The Exchange currently does not specify the opposite side check in the case whether the PIXL Order is for an account of a broker dealer or any other person that is not a Public Customer and the order is for 50 contracts or more. The Exchange proposes to note the current entry check performed by the System by amending the language in Options 3, Section 13(a)(3)(A) to provide, if the PIXL Order is for the account of a broker dealer or any other person or entity that is not a Public Customer and such order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01, the Initiating Member must stop the entire PIXL Order at a price that is: (A) equal to or better than the NBBO and the internal market PBBO (the "Reference BBO") on the opposite side of the market from the PIXL Order.[5] This language represents current System functionality. Phlx notes that the Reference BBO was defined in Options 3, Section 13(a)(3)(A). The Exchange proposes to amend the same side check in the case whether the PIXL Order is for an account of a broker dealer or any other person that is not a Public Customer and the order is for 50 contracts

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[5]   The Exchange also proposes to amend Options 3, Section 13(a)(3)(B) to re-number current (A) and (B).

or more. The Exchange proposes to state if the PIXL Order is for the account of a broker dealer or any other person or entity that is not a Public Customer and such order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01, the Initiating Member must stop the entire PIXL Order at a price that is on the same side of the market as the PIXL Order, the better of: (1) the Reference BBO price improved by at least $0.01, (2) the PIXL Order's limit price (if the order is a Limit Order), or (3) equal to or better than the NBBO. The Exchange is removing the clause in current Options 3, Section 13(a)(3)(2) which the Exchange believes is confusing as current Options 3, Section 13(a)(3)(1) notes the Reference BBO must be improved by at least $0.01. Also, the NBBO entry check is being relocated to new subparagraph (a)(3)(B)(3).

Finally, the Exchange is making a technical amendment to Options 3, Section 13(a)(4)(A) to remove a semicolon and replace it with a comma.

The Exchange believes that the proposed amendments will bring greater clarity to the current System functionality as the various System checks are noted for each side of the PIXL Order. Further, the NBBO check is specifically noted as this check on the same side check ensures the order does not trade-through. The Exchange is not substantively amending the current System functionality.

Auction Process

The Exchange proposes a technical amendment to Options 3, Section 13(b)(4) to remove the "an" at the beginning of the paragraph as this is unnecessary. Next, the Exchange proposes to replace references to "Limit Order," "order" and "orders" within Options 3, Section 13(b)(4) with the word "interest" because an order or quote on the order book may interact with a PIXL Order. This represents current System functionality.

Finally, the Exchange proposes to amend Options 3, Section 13(b)(6) to remove the term "then-existing" from the paragraph. The phrase is not necessary as the clause "cPBBO at the time of the conclusion of the Auction" makes clear which cPBBO will be referenced.

Technical Amendments

The Exchange proposes to make two technical amendments within Options 4A, Options Index Rules. The Exchange proposes to renumber Options 4A, Section 6(a)(iv) to Options 4A, Section 6(a)(ii). The Exchange also proposes to re-letter Options 4A, Section 12(a)(2)(H), (I) and (J), respectively, as Options 4A, Section 12(a)(2)(G), (H) and (I).

2.   Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] 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.

PIXL Entry Checks

Phlx's proposal to amend Options 3, Section 13(a)(1) – (3) to harmonize the language within the PIXL entry checks with language within GEMX's PIM, ISE's PIM, MRX's PIM and BX's PRISM, without changing the substantive operations of these price improvement auctions, is consistent with the Act and the protection of investors and the general public because by utilizing similar language, market participants will be able to compare Phlx's PIXL entry checks with similar mechanisms on Nasdaq affiliated markets.

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[6]   15 U.S.C. 78f(b).

[7]   15 U.S.C. 78f(b)(5).

Amending Options 3, Section 13(a)(1) and adding new subparagraphs (A) and (B) to distinguish opposite and same side checks for a PIXL Order for less than 50 options contracts and specifying the same side NBBO check is consistent with the Act and the protection of investors and the general public because it will add more detail to describe the current System functionality. The NBBO check is always relevant in the same side check to avoid a trade-through. Specifying that if the PIXL Order is for a Non-Public Customer, the PIXL Order must also be better than any quote on the same side of the market as the PIXL Order is consistent with the Act so that the PIXL Order improves the order book and provides a meaningful opportunity for price improvement. Further, the addition of this detail within Options 3, Section 13(a)(1)(B) will bring transparency to the current System checks for a PIXL Order for less than 50 options contracts.

Amending Options 3, Section 13(a)(2) to add new subparagraphs (A) and (B) to distinguish the opposite side and same side checks if the PIXL Order is for the account of a Public Customer and such order is for 50 option contracts or more, and specifying the manner in which the PIXL Order must improve on the same side or the NBBO check is consistent with the Act and the protection of investors and the general public. The Exchange currently requires, if the PIXL Order is for the account of a Public Customer and such order is for 50 option contracts or more, that the PIXL Order must be at or better than the PIXL Order's limit price and it must also not trade-through the order book. The eligibility requirements if the PIXL Order is for the account of a Public Customer and such order is for 50 option contracts or more should provide a meaningful opportunity for price improvement, and thereby benefit investors and others in a manner that is consistent with the Act.

Amending Options 3, Section 13(a)(3) to add new subparagraphs (A) and (B) to distinguish the opposite side and same side checks for a PIXL Order for the account of a broker dealer or any other person or entity that is not a Public Customer and such order is for 50 option contracts or more and specifying the opposite side check and same side NBBO check is consistent with the Act and the protection of investors and the general public. The opposite side check must be equal to or better than the NBBO and any non-displayed order on the Exchange's order book to avoid a trade-through. Also, the NBBO check is always relevant in the same side check to avoid a trade-through. The eligibility requirements if the PIXL Order is for the account of a broker dealer or any other person or entity that is not a Public Customer and such order is for 50 option contracts or more should provide a meaningful opportunity for price improvement, and thereby benefit investors and others in a manner that is consistent with the Act.

The Exchange believes that the proposed amendments will bring greater clarity to the current System functionality as the various System checks are noted for each side of the PIXL Order. Further, the NBBO check is specifically noted as this check on the same side check ensures the order does not trade-through. The Exchange is not substantively amending the current System functionality.

Auction Process

The Exchange's proposal to amend Options 3, Section 13(b)(4) to replace references to "Limit Order," "order" and "orders" with the word "interest" is consistent with the Act and the protection of investors and the general public because an order or quote on the order book may currently interact with a PIXL Order. The proposed rule text makes clear that a quote will participate in a PIXL as unrelated marketable interest. The clarification will make the rule text transparent.

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Amending Options 3, Section 13(b)(6) to remove the term "then-existing" from the paragraph is consistent with the Act because the phrase is not necessary as the subsequent clause makes clear which cPBBO will be referenced.

Technical Amendments

The Exchange's proposal to make two technical amendments within Options 4A, Options Index Rules, are consistent with the Act as the amendments to Options 4A, Sections 6 and 12 are non-substantive.

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.

PIXL Entry Checks

Phlx's proposal to amend Options 3, Section 13(a)(1) – (3) to harmonize the language within the PIXL entry checks with language within GEMX's PIM, ISE's PIM, MRX's PIM and BX's PRISM, without changing the substantive operations of these price improvement auctions, does not impose an undue burden on competition because market participants will be able to compare Phlx's PIXL entry checks with similar mechanisms on Nasdaq affiliated markets.

Amending Options 3, Section 13(a)(1) – (3) to specify the entry checks that are utilized by Phlx's System today to initiate a PIXL does not impose an undue burden on competition because these checks will apply uniformly to any order entered into PIXL. Further, the proposed amendments will add transparency to the current System functionality as the various System checks are noted for each side of the PIXL Order. Further, the Exchange is not substantively amending the current System functionality.

Auction Process

The Exchange's proposal to amend Options 3, Section 13(b)(4) to replace references to "Limit Order," "order" and "orders" within Options 3, Section 13(b)(4) with the word "interest" does not impose an undue burden on competition because all quotes will participate in a PIXL as an unrelated order. The clarification will make the rule text transparent.

Amending Options 3, Section 13(b)(6) to remove the term "then-existing" from the paragraph does not impose an undue burden on competition because the phrase is not necessary as the subsequent clause makes clear which cPBBO will be referenced.

Technical Amendments

The Exchange's proposal to make two technical amendments within Options 4A, Options Index Rules, do not impose an undue burden on competition as the amendments to Options 4A, Sections 6 and 12 are non-substantive.

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6) thereunder.[9]

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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.

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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 (https://www.sec.gov/rules/sro.shtml); or

- Send an email to rule-comments@sec.gov. Please include file number SR-PHLX-2023-41 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-2023-41. 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-2023-41 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.[10]

Sherry R. Haywood,

Assistant Secretary.

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[10]   17 CFR 200.30-3(a)(12).