

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90622; File No. SR-NASDAQ-2020-083)

December 9, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 1, Section 1; Options 2, Section 5; Options 3, Sections 5, 7, 10, 15 and 23

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> notice is hereby given that on November 30, 2020, The Nasdaq Stock Market LLC (“Nasdaq” 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 the rules of The Nasdaq Options Market LLC (“NOM”) at Options 1, Section 1 (Definitions); Options 2, Section 5 (Market Maker Quotations); Options 3, Section 5 (Entry and Display of Orders); Options 3, Section 7 (Types of Orders and Order and Quote Protocols); Options 3, Section 10 (Order Book Allocation); Options 3, Section 15 (Risk Protections); and Options 3, Section 23 (Data Feeds and Trade Information).

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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.

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 NOM Rules at Options 1, Section 1 (Definitions); Options 2, Section 5 (Market Maker Quotations); Options 3, Section 5 (Entry and Display of Orders); Options 3, Section 7 (Types of Orders and Order and Quote Protocols); Options 3, Section 10 (Order Book Allocation); Options 3, Section 15 (Risk Protections); and Options 3, Section 23 (Data Feeds and Trade Information). Each change is described below.

Options 1, Section 1

The Exchange proposes to amend the definition of “Public Customer” to conform to Nasdaq Phlx LLC’s (“Phlx”) definition at Options 1, Section 1(b)(46). The Exchange believes that making clear that a Public Customer could be a person or entity and clarifying that a Public Customer is not a Professional, as defined within Options 1, Section (a)(47),<sup>3</sup> will make clear what it meant by that term. Today, a Public Customer is not a Professional. In order to properly

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<sup>3</sup> NOM Options 1, Section 1(a)(47) provides that, “The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants.”

represent orders entered on the Exchange, Participants are required to indicate whether orders are “Professional Orders.” To comply with this requirement, Participants are required to review their Public Customers’ activity on at least a quarterly basis to determine whether orders, which are not for the account of a broker-dealer, should be represented as Public Customer Orders or Professional Orders.<sup>4</sup> A Public Customer may be a Professional, provided they meet the requirements specified within NOM Options 1, Section 1(a)(47). If the Professional definition is not met, the order is treated as a Public Customer order.

The Exchange also proposes to remove a sentence within Options 1, Section 1(a)(47) which provides, “A Participant or a Public Customers may, without limitation, be a Professional.” This sentence is confusing, unnecessary, and adds no information to this defined term. By way of comparison, Phlx Options 1, Section 1(b)(46) does not contain a similar sentence and that sentence was recently removed from Nasdaq BX, Inc.’s (“BX”) Rules.<sup>5</sup> The Exchange adopted a Professional designation in 2010<sup>6</sup> and has differentiated Public and Professional customers since that time.

The Exchange also proposes to remove a sentence, within Options 3, Section

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<sup>4</sup> Participants conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While Participants only will be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Public Customer Orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the Participant and the Participant will be required to change the manner in which it is representing the customer's orders within five days.

<sup>5</sup> See Securities Exchange Act Release No. 89476 (August 4, 2020), 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

<sup>6</sup> See Securities Exchange Act Release No. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR-NASDAQ-2010-099) (Order Approving a Proposed Rule Change To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked).

10(a)(1)(C)(i), which provides that a Public Customer order does not include a Professional order. Indicating that a Public Customer order is not a Professional Order is no longer necessary because of the proposed definition for Public Customer. Today, the definition of a Public Customer does not explicitly exclude a Professional. The language that the Exchange proposes to delete currently indicates that Professionals would not be treated the same as a Public Customer in terms of priority and, therefore, would not receive the same allocation that is reserved for Public Customer orders. Since NOM is amending the definition of a Public Customer to explicitly exclude Professionals, the language in the allocation rule is no longer necessary to distinguish these two types of market participants.

#### Bid/Ask Differentials

Currently, NOM Market Maker intra-day quoting requirements, within Options 2, Section 5(d)(2), provide,

Bid/ask Differentials (Quote Spread Parameters). Options on equities (including Exchange-Traded Fund Shares), and on index options must be quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid, including before and during the opening. However, respecting in-the-money series where the market for the underlying security is wider than \$5, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security. The Exchange may establish differences other than the above for one or more series or classes of options.

The Exchange proposes to amend NOM Options 2, Section 5(d)(2) to add the words “Intra-Day” before the title “Bid/ask Differentials (Quote Spread Parameters)” to make clear that these requirements are intra-day. Also, the Exchange proposes to amend this paragraph to remove the

phrase, “including before and during the opening.” The bid/ask differentials, within NOM Options 2, Section 5(d)(2), will continue to apply intra-day. This is consistent with the Exchange’s existing practice. Today, the bid/ask differentials applicable to the opening are noted within Options 3, Section 8(a)(6).<sup>7</sup> As noted within the rule, NOM publishes its specified bid/ask differential on its system settings page.<sup>8</sup> The bid/ask differentials noted for the Valid Width NBBO within the opening provide for quotations with a difference that does not exceed \$5 between the bid and offer regardless of the price of the bid. It is not necessary to discuss the opening bid/ask differentials within Options 2, Section 5 as those differentials are specifically noted within the opening rule.

#### Options 3, Section 5

The Exchange proposes to amend Options 3, Section 5(c) to add additional rule text similar to Phlx Options 3, Section 5(c).<sup>9</sup> NOM’s current Options 3, Section 5(c) states, “The System automatically executes eligible orders using the Exchange’s displayed best bid and offer

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<sup>7</sup> NOM Options 3, Section 8(a)(6) provides, “Valid Width National Best Bid or Offer” or “Valid Width NBBO” shall mean the combination of all away market quotes and any combination of NOM-registered Market Maker orders and quotes received over the QUO or SQF Protocols within a specified bid/ask differential as established and published by the Exchange. The Valid Width NBBO will be configurable by underlying, and tables with valid width differentials will be posted by Nasdaq on its website. Away markets that are crossed will void all Valid Width NBBO calculations. If any Market Maker orders or quotes on NOM are crossed internally, then all such orders and quotes will be excluded from the Valid Width NBBO calculation.”

<sup>8</sup> NOM’s System Settings page is located at:  
[https://www.nasdaq.com/docs/2020/07/02/NOM\\_SystemSettings.pdf](https://www.nasdaq.com/docs/2020/07/02/NOM_SystemSettings.pdf).

<sup>9</sup> Phlx has an All-or-None Order type that is non-displayed. See Options 3, Section 7(b)(5). Phlx Options 3, Section 5(c) accounts for this non-displayed order on the order book. NOM has a Price Improving Order already described within Options 3, Section 5(c). A Price Improving Order on NOM displays differently than Phlx’s All-Or-None Order and therefore is described differently within Options 3, Section 5(c). Otherwise, NOM has no other non-displayed order types.

(“BBO”) or the Exchange’s non-displayed order book (“internal BBO”).” The Exchange proposes to state, “The System automatically executes eligible orders using the Exchange’s displayed best bid and offer (“BBO”) or the Exchange’s non-displayed order book (“internal BBO”) if the best bid and/or offer on the Exchange has been repriced pursuant to subsection (d) below.” Today, NOM re-prices certain orders to avoid locking and crossing away markets, consistent with its Trade-Through Compliance and Locked or Crossed Markets obligations.<sup>10</sup> Orders which lock or cross an away market automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price.<sup>11</sup> The re-priced order is displayed on OPRA. The order remains on NOM’s Order Book and is accessible at the non-displayed price. For example, a limit order may be accessed on NOM by a Participant if the limit order is priced better than the NBBO. The Exchange believes that the addition of this rule text will provide additional clarity.

### Options 3, Section 7

The Exchange proposes to amend the Cancel-Replacement Order, within Options 3, Section 7(a)(1). By way of background with respect to cancelling and replacing an order, a

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<sup>10</sup> NOM Options 3, Section 5(d) provides, “An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by the member as routable will be routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions. If, at the time of entry, an order that the entering party has elected not to make eligible for routing would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.”

<sup>11</sup> See Options 5, Section 4 (Order Routing), which describes the repricing of orders for both routable and non-routable orders within Options 5, Section 4(a)(iii)(A), (B) and (C).

Participant has the option of either submitting a cancel order and then separately submitting a new order, which serves as a replacement of the original order, in two separate messages, or submitting a single cancel and replace order in one message (“Cancel-Replacement Order”). Submitting a cancel order and then separately submitting a new order will not retain the priority of the original order.

Currently, the rule text for Cancel-Replacement Order provides, “Cancel-Replacement Order shall mean a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed. The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained.” The Exchange proposes to replace the words “shall mean” with “is” and remove the final sentence of the rule text.<sup>12</sup> The Exchange proposes to add a new sentence to the end of the rule which provides, “The replacement order will retain the priority of the cancelled order, if the order posts to the Order Book, provided the price is not amended, and the size is not increased.” Unlike the sentence proposed for deletion, the proposed sentence states in the affirmative the conditions under which the Cancel-Replacement Order will retain priority. Price and size are the terms that will determine if the Cancel-Replacement Order retains its priority, as is the case today, other terms and conditions do not amend the priority of the Cancel-Replacement Order.

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<sup>12</sup> The final sentence of current NOM Options 3, Section 7(a)(1) provides, “The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained.”

The Exchange is not amending the current System functionality of a Cancel-Replacement Order with respect to the terms that will cause the order to lose priority. Today, and with the proposed change, if a Participant does not change or increase the size of the order, it would not trigger a loss in priority. Options 3, Section 7(a)(1) states only if the size of the order were reduced would a loss of priority occur.<sup>13</sup> The proposed rule reverses the phrasing in the current rule and, instead, describes changes to priority when size is increased. Priority is retained if the size of the order does not change or is not increased. The rule is intended to provide transparency regarding changes to a Cancel-Replacement Order which would trigger a loss in priority. Today, and with the proposal, the price of the order may not be changed when submitting a Cancel-Replacement Order; that would be a new order. A similar change was recently made to BX's Cancel-Replacement Order.<sup>14</sup>

The Exchange proposes to amend "Limit Orders," within Options 3, Section 7(a)(2). The Exchange proposes to style "Limit Orders" in the singular and change "are" to "is an" and "orders" to "order." A Limit Order on NOM operates in the same manner as a Limit Order on BX. The Exchange proposes to conform the rule text of NOM's Limit Order to BX Options 3, Section 7(a)(3) by adding a sentence describing marketable limit orders. BX recently amended its rule to similarly change its description of Limit Order.<sup>15</sup> The Exchange proposes to state, "A marketable limit order is a limit order to buy (sell) at or above (below) the best offer (bid) on the Exchange." The Exchange believes that the rule amendment more aptly describes a marketable

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<sup>13</sup> Options 3, Section 7(a)(1) provides, "The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained."

<sup>14</sup> See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

<sup>15</sup> Id.

limit order as compared to the current rule text, which is confusing, but was intended to convey the substance of the proposed text. The new sentence does not substantively amend the current rule text and conforms NOM's description with BX's description.

The Exchange proposes to amend "Minimum Quantity Orders," within Options 3, Section 7(a)(3). The Exchange proposes to style "Minimum Quantity Orders" in the singular and change "are" to "is an" and "orders" to "order." These amendments are technical and non-substantive. The Exchange is otherwise not amending the Minimum Quantity Order rule text.

The Exchange proposes to amend "Market Orders," within Options 3, Section 7(a)(4). The Exchange proposes to style "Market Orders" in the singular and change "are" to "is an" and "orders" to "order." These amendments are technical and non-substantive. The Exchange also proposes to amend a current sentence to state, "Participants can designate that their Market Orders not executed after a pre-established period of time, as established by the Exchange, will be cancelled back to the Participant, once an option series has opened for trading." Market Orders submitted during the opening may be executed, or cancelled if the Market Order is priced through the opening price. The Exchange would only cancel those Market Orders that remained on the Order Book once an option series opened.<sup>16</sup> The pre-established period of time would commence once the intra-day trading session begins for that options series and the order would be cancelled back to the Participant, provided the Participant elected to cancel back its Market Orders. The Exchange proposes to make clear that while the opening is on-going, and the intra-day trading session has not commenced, the pre-established period of time would not commence. Further, the Exchange proposes to note that "Market Orders on the Order Book would be

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<sup>16</sup> See NOM's Trading Halts rule at Options 3, Section 9(d)(2), "After the opening, the Exchange shall reject Market Orders, as defined in Options 3, Section 7, and shall notify Participants of the reason for such rejection."

immediately cancelled if an options series halted, provided the Participant designated the cancellation of Market Orders.” Once an options series halts for trading, the Exchange conducts another Opening Process. In the case where a Market Order was resting on the Order Book, and the Participant had designated the cancellation of Market Orders, in the event of a halt, the Market Orders resting on the Order Book would immediately cancel. This proposed rule text is consistent with existing System functionality. The Exchange believes that this additional rule text brings greater clarity to the Market Order type.

The Exchange proposes to amend “Price Improving Orders,” within Options 3, Section 7(a)(5). The Exchange proposes to style “Price Improving Orders” in the singular and change “are” to “is an” and “orders” to “order.”

The Exchange proposes to amend “On the Open Order,” within Options 3, Section 7(a)(6) by removing the words “The term” at the beginning of the sentence and change “shall mean” to “is.”

The Exchange proposes to amend “Intermarket Sweep Order” or “ISO,” within Options 3, Section 7(a)(7). Today, the rule text provides,

“Intermarket Sweep Order” or “ISO” are limit orders that are designated as ISOs in the manner prescribed by Nasdaq and are executed within the System by Participants at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in Options 5, Section 1. ISOs may have any time-in-force designation except WAIT, are handled within the System pursuant to Options 3, Section 10 and shall not be eligible for routing as set out in Options 3, Section 19. ISOs with a time-in-force designation of GTC are treated as having a time-in-force designation of Day.

(1) Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Options 5, Section 1) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an intermarket sweep order (as defined in Options 5, Section 1). These additional routed orders must be identified as ISOs.

The Exchange proposes to replace the current rule, within Options 3, Section 7(a)(7), with the exception of Options 3, Section 7(a)(7)(1), which is being retained by re-lettered as “A,” with the following rule text which is similar to BX Options 3, Section 7(a)(6),<sup>17</sup> to describe an ISO Order, “is a Limit Order that meets the requirements of Options 5, Section 1(8). Orders submitted to the Exchange as ISO are not routable and will ignore the ABBO and trade at allowable prices on the Exchange. ISOs may be entered on the Order Book. ISOs may have any time-in-force designation and are handled within the System pursuant to Options 3, Section 10 and shall not be eligible for routing as set out in Options 5, Section 4. ISO Orders may not be submitted during the opening.”

An ISO Order is a Limit Order, as noted in the current text and Options 5, Section 1, continues to be referenced in the proposed text. The Exchange continues to note that the orders are not routable. The additional text, “...will ignore the ABBO and trade at allowable prices on the Exchange” is more precise than the current rule text and describes current functionality. The Exchange further proposes to state, “ISOs may be entered on the Order Book.” That is also the case today. The remainder of the current rule text is not necessary as Options 5, Section 1(8) is

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<sup>17</sup> BX’s rule describes the PRISM mechanism, while NOM has no auction mechanisms.

cited. Removing the current rule text and replacing it with text which describes the proper time-in-force designation will make clear what is acceptable on NOM today. This rule text is not proposed to change the functionality of an ISO Order. The Exchange believes the proposed description provides a more succinct description.

Today, ISOs may have any time-in-force designation, except WAIT, and further requires that ISOs with a time-in-force designation of GTC are treated as having a time-in-force designation of Day. The Exchange proposes to remove the WAIT time-in-force within this proposed rule change, as described in more detail below, and, therefore, the WAIT order type no longer needs to be cited.

Further, today, NOM's System does not treat an ISO with a time-in-force designation of GTC as having a time-in-force designation of Day, as provided for within NOM's current rule at Options 3, Section 7(a)(6), rather those orders are treated as GTC. The current sentence is being removed because it is inaccurate. The proposed sentence accurately describes the System functionality. The Exchange does not believe that an ISO with a time-in-force designation of GTC was ever treated as having a time-in-force designation of Day, the rule text was simply inaccurate.

The Exchange proposes to amend "One-Cancels-the-Other Order" at renumbered Options 3, Section 7(a)(8) by changing "shall mean" to "is."

The Exchange proposes to amend the "All-or-None Order," within renumbered Options 3, Section 7(a)(9). The Exchange proposes to replace "shall mean" with "is" and capitalize market order and limit orders.

The Exchange proposes to amend the "Post-Only Orders," within renumbered Options 3, Section 7(a)(10). The Exchange proposes to replace "are" with "is an" and make Post-Only

Orders singular. An extra space is also being removed.

The Exchange proposes to amend Options 3, Section 7(b) to define “Time in Force” as “TIF”.

With respect to an “On the Open Order,” or “OPG” Order, within Options 3, Section 7(b)(1), the Exchange notes that OPGs may not route. This is the case today. This order type functions in the same way as BX’s OPG Order at Options 3, Section 7(b)(1).<sup>18</sup> The Exchange is adding rule text to make clear the manner in which an OPG Order would be treated, which is similar to how a BX OPG Order is treated today.

The Exchange proposes to amend an “Immediate-Or-Cancel” Order or “IOC,” within Options 3, Section 7(b)(2) to add hyphens and make “Or” lowercase. The Exchange proposes to remove the current description which provides that an IOC Order, “shall mean for orders so designated, that if after entry into the System a marketable order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. IOC Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close. IOC Orders entered between the time specified by the Exchange on its website and 9:30 a.m. Eastern Time will be held within the System until 9:30 a.m. at which time the System shall determine whether such orders are marketable.” The Exchange proposes to replace this description with rule text similar to BX Options 3, Section

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<sup>18</sup> BX Options 3, Section 7(b)(1) provides, “An Opening Only order (“OPG”) is entered with a TIF of “OPG”. This order can only be executed in the Opening Process pursuant to Options 3, Section 8. This order type is not subject to any protections listed in Options 3, Section 15. Any portion of the order that is not executed during the Opening Process is cancelled. OPG orders may not route.”

7(b)(2)<sup>19</sup> as these order types are identical, except that NOM has the OTTO protocol and BX does not, and also as mentioned previously NOM has no auctions. Additionally, BX's rule addresses limitations in order protections that do not exist today on NOM. The Exchange proposes to state that an Immediate-or-Cancel Order or "IOC" Order is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled and/or routed pursuant to Participant's instruction. IOC orders may be entered through FIX, OTTO or SQF; IOC Orders entered through OTTO or SQF may not route. Today, IOC Orders entered through OTTO or SQF do not route; only orders entered through FIX may route. The SQF interface is a quoting interface, the Exchange does not route quotes. With respect to OTTO, orders submitted by NOM Market Makers over this interface are treated as quotes and similarly do not route. The Exchange is proposing to memorialize this information within the description of an IOC Order to add clarity.

The Exchange proposes to amend the TIF of "DAY" at Options 5, Section 7(b)(3) to remove the words "shall mean for orders so designated" and add "is an order" to conform the rule text to other text in this rule. The Exchange also proposes to conform the description of a TIF of "DAY" similar to Phlx Options 3, Section 7(c)(1).<sup>20</sup> The Exchange believes that the

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<sup>19</sup> BX Options 3, Section 7(b)(2) provides, "Immediate-or-Cancel" or "IOC" is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. (A) Orders entered with a TIF of IOC are not eligible for routing. (B) IOC orders may be entered through FIX or SQF, provided that an IOC Order entered by a Market Maker through SQF is not subject to the Limit Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2), respectively; (C) Orders entered into the Price Improvement Auction ("PRISM") Mechanism are considered to have a TIF of IOC. By their terms, these orders will be: (1) executed after an exposure period, or (2) cancelled.

<sup>20</sup> Phlx Options 3, Section 7(c)(1) provides, "Day. If not executed, an order entered with a TIF of "Day" expires at the end of the day on which it was entered. All orders by their terms are Day Orders unless otherwise specified. Day orders may be entered through FIX."

remainder of the description for a Day Order, “if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close, unless canceled by the entering party, after which it shall be returned to the entering party. Day Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close,” is unnecessarily verbose and proposes to remove this rule text. The Exchange proposes to state, “Day” is an order entered with a TIF of “Day” that expires at the end of the day on which it was entered, if not executed. All orders by their terms are Day Orders unless otherwise specified. Day Orders may be entered through FIX or OTTO. A Day Order on Phlx functions in the same way as a Day Order on NOM. The Phlx rule text is more succinct in describing this order type. Similar changes were recently made on BX.<sup>21</sup>

The Exchange proposes to amend the TIF of “Good Til Cancelled” or “GTC” at Options 5, Section 7(b)(4). The Exchange proposes to remove the words “shall mean for orders” and add “is an order.” The Exchange also proposes to conform the rule text similar to Phlx Options 3, Section 7(c)(4),<sup>22</sup> and provide that a “Good Til Cancelled” or “GTC” is “an order entered with a TIF of “GTC” that, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close. GTC Orders may only be entered through FIX.” The Exchange

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<sup>21</sup> See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

<sup>22</sup> Phlx Options 3, Section 7(c)(4) provides, “A Good Til Cancelled (“GTC”) Order entered with a TIF of GTC, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close.”

would remove the rule text which provides, “that if after entry into System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close.” A GTC Order on Phlx functions in the same way as a GTC Order on NOM. The Exchange is not proposing to amend the functionality of a GTC Order, rather the Exchange believes the proposed description is more succinct.

The Exchange proposes to no longer offer a TIF of “WAIT.” The Exchange would remove the rule text at NOM Options 3, Section 7(b)(5). If the Exchange desires to offer this TIF in the future, it would file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act.<sup>23</sup> The Exchange has provided notice of its intention to remove the TIF of “WAIT”.<sup>24</sup> BX previously offered a WAIT order type recently and discontinued this order types because it was not being utilized to a great extent.<sup>25</sup>

The Exchange proposes to note, within NOM Options 3, Section 7(c), the various routing options which are available. The Exchange proposes to add rule text which provides, “Routing Strategies. Orders may be entered on the Exchange with a routing strategy of SEEK, SRCH or Do-Not-Route (“DNR”) as provided in Options 5, Section 4 through FIX only.”

Finally, the Exchange proposes to re-letter current Options 3, Section 7(c) and (d).

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<sup>23</sup> 15 U.S.C. 78s(b)(1).

<sup>24</sup> See Options Trader Alert #2020 – 26.

<sup>25</sup> See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

### Options 3, Section 15

The Exchange proposes to amend Options 3, Section 15(c) relating to Anti-Internalization to make clear that the Anti-Internalization functionality does not apply during the opening. A similar change was recently made to BX's Rules.<sup>26</sup> The Exchange proposes to clarify that Anti-Internalization does not apply during an opening or reopening following a trading halt, pursuant to Options 3, Section 8, to provide more specificity on how this functionality currently operates. The Exchange notes that the same procedures used during an opening are used to reopen an option series after a trading halt, and therefore proposes to specify that Anti-Internalization will not apply during the opening (i.e., the opening and halt reopening processes). During the opening, Market Makers are able to observe the primary market and then determine how they would like to quote. They are not required to quote in the opening on NOM. Therefore, Anti-Internalization is unnecessary during an opening due to the high level of control that Market Makers exercise over their quotes during this process.

### Options 3, Section 23

The Exchange proposes to amend Options 3, Section 23, Data Feeds and Trade Information, to update its description of Nasdaq ITCH to Trade Options ("ITTO"). The Exchange proposes to amend ITTO at Options 3, Section 23(a)(1) to more closely align with current System operation. The Exchange proposes a technical amendment to the first sentence to replace a comma with the word "and." The Exchange also proposes to relocate rule text concerning order imbalances to the end of the description. The Exchange proposes to amend the first sentence to state that ITTO is a data feed that provides full order and quote depth information for individual orders and

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<sup>26</sup> See Securities Exchange Act Release No. 89759 (September 3, 2020). 85 FR 55877 (September 10, 2020) (SR-BX-2020-023).

quotes on the NOM book, and last sale information for trades executed on NOM. The Exchange would amend and relocate the rule text that provides, “and Order Imbalance Information as set forth in NOM Rules Options 3, Section 8” at the end of the first sentence. The Exchange proposes to add a sentence at the end of the description within Options 3, Section 8 which states, “The feed also provides order imbalances on opening/re-opening (size of matched contracts and size of the imbalance).” This sentence makes clear that order imbalance information is provided for both an opening and re-opening process. Today, a re-opening process initiates after a trading halt has occurred intra-day. Also, the Exchange notes the specific information that would be provided, namely the size of matched contracts and size of the imbalance. The Exchange believes that this additional context to imbalance messages will provide market participants with more complete information about what is contained in the data feed. The Exchange notes that this information is available today and the rule text is being amended to make clear what information is currently provided.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>27</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>28</sup> 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.

### Options 1, Section 1

The Exchange’s proposal to amend the definition of “Public Customer” to conform to

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<sup>27</sup> 15 U.S.C. 78f(b)

<sup>28</sup> 15 U.S.C. 78f(b)(5).

Phlx's definition is intended to provide greater specificity regarding what is meant by the term "Public Customer." The Exchange believes that making clear that a Public Customer could be a person or entity and clarifying that a Public Customer is not a Professional, as defined within Options 1, Section (a)(47),<sup>29</sup> will make clear what it meant by that term. Today, a Public Customer is not a Professional. In order to properly represent orders entered on the Exchange, Participants are required to indicate whether orders are "Professional Orders." To comply with this requirement, Participants are required to review their Public Customers' activity on at least a quarterly basis to determine whether orders, which are not for the account of a broker-dealer, should be represented as Public Customer Orders or Professional Orders.<sup>30</sup> A Public Customer may be a Professional, provided they meet the requirements specified within NOM Options 1, Section 1(a)(47). If the Professional definition is not met, the order is treated as a Public Customer order. The Exchange believes that it is consistent with the Act to state within the definition of "Public Customers" that a Professional is not a Public Customer. As noted above, there is a process for determining if a market participant qualifies as a "Professional." This specificity will serve to protect investors and the public interest in that the terms "Public Customer" and "Professional" are separate categories of market participants, as defined. Also,

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<sup>29</sup> NOM Options 1, Section 1(a)(47) provides that, "The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants."

<sup>30</sup> Participants conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While Participants only will be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Public Customer Orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the Participant and the Participant will be required to change the manner in which it is representing the customer's orders within five days.

this definition conforms to Phlx’s definition at Options 1, Section 1(b)(47).

The Exchange’s proposal to remove a sentence within Options 1, Section 1(a)(47) which provides, “A Participant or a Public Customers may, without limitation, be a Professional,” is consistent with the Act. This sentence is confusing, unnecessary, and adds no information to this defined term. By way of comparison, Phlx Options 1, Section 1(b)(46) does not contain a similar sentence and that sentence was recently removed from Nasdaq BX, Inc.’s (“BX”) Rules.<sup>31</sup> The Exchange adopted a Professional designation in 2010<sup>32</sup> and has differentiated Public and Professional customers since that time. NOM proposes removing this sentence because it does not add useful information to understanding who may qualify as a Professional.

The Exchange’s proposal to remove a sentence, within Options 3, Section 10(a)(1)(C)(i), which allocation rule provides that a Public Customer order does not include a Professional order is consistent with the Act. Today, the definition of a Public Customer does not explicitly exclude a Professional. Indicating that a Public Customer order is not a Professional Order is no longer necessary because of the proposed definition for Public Customer. The language that the Exchange proposes to delete, currently indicates that Professionals would not be treated the same as a Public Customer in terms of priority and, therefore, would not receive the same allocation that is reserved for Public Customer orders. Since NOM is amending the definition of a Public Customer to explicitly exclude Professionals, the language in the allocation rule is no longer necessary to distinguish these two types of market participants.

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<sup>31</sup> See Securities Exchange Act Release No. 89476 (August 4, 2020), 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

<sup>32</sup> See Securities Exchange Act Release No. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR-NASDAQ-2020-099) (Order Approving a Proposed Rule Change To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked).

### Bid/Ask Differentials

The Exchange's proposal to amend NOM Options 2, Section 5(d)(2) to add the words "Intra-Day" before the title "Bid/ask Differentials (Quote Spread Parameters)" and make clear that remove references to the opening, will make clear for Market Makers their intra-day requirements. The bid/ask differentials, within NOM Options 2, Section 5(d)(2), will continue to apply intra-day. This is consistent with the Exchange's existing practice. Today, the bid/ask differentials applicable to the opening are noted within Options 3, Section 8(a)(6).<sup>33</sup> As noted within the rule, NOM publishes its specified bid/ask differential on its system settings page.<sup>34</sup> The bid/ask differentials noted for the Valid Width NBBO within the opening provide for quotations with a difference that does not exceed \$5 between the bid and offer regardless of the price of the bid. It is not necessary to discuss the opening bid/ask differentials within Options 2, Section 5 as those differentials are specifically noted within the opening rule. This clarification is consistent with the Act because it is designed to avoid any confusion for Market Makers as to their intra-day requirements versus their opening requirements.

### Options 3, Section 5

The Exchange's proposal to amend Options 3, Section 5(c) to add additional rule text

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<sup>33</sup> NOM Options 3, Section 8(a)(6) provides, "Valid Width National Best Bid or Offer" or "Valid Width NBBO" shall mean the combination of all away market quotes and any combination of NOM-registered Market Maker orders and quotes received over the QUO or SQF Protocols within a specified bid/ask differential as established and published by the Exchange. The Valid Width NBBO will be configurable by underlying, and tables with valid width differentials will be posted by Nasdaq on its website. Away markets that are crossed will void all Valid Width NBBO calculations. If any Market Maker orders or quotes on NOM are crossed internally, then all such orders and quotes will be excluded from the Valid Width NBBO calculation."

<sup>34</sup> NOM's System Settings page is located at:  
[https://www.nasdaq.com/docs/2020/07/02/NOM\\_SystemSettings.pdf](https://www.nasdaq.com/docs/2020/07/02/NOM_SystemSettings.pdf).

similar to Phlx Options 3, Section 5(c)<sup>35</sup> is consistent with the Act. Today, NOM re-prices certain orders to avoid locking and crossing away markets, consistent with its Trade-Through Compliance and Locked or Crossed Markets obligations.<sup>36</sup> Orders which lock or cross an away market automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price.<sup>37</sup> The re-priced order is displayed on OPRA. The order remains on NOM's Order Book and is accessible at the non-displayed price. For example, a limit order may be accessed on NOM by a Participant if the limit order is priced better than the NBBO. The Exchange believes that the addition of this rule text will add greater specificity to the rule.

#### Options 3, Section 7

The Exchange's proposal to amend the Cancel-Replacement Order, within Options 3, Section 7(a)(1), is consistent with the Act. A Participant has the option of either submitting a cancel order and then separately submitting a new order, which serves as a replacement of the original order, in two separate messages, or submitting a single cancel and replace order in one message ("Cancel-Replacement Order"). Submitting a cancel order and then separately submitting a new order will not retain the priority of the original order. The Exchange's proposal to replace the words "shall mean" with "is" and remove the final sentence of the rule

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<sup>35</sup> Phlx has an All-or-None Order type that is non-displayed. See Options 3, Section 7(b)(5). Phlx Options 3, Section 5(c) accounts for this non-displayed order on the order book. NOM has a Price Improving Order already described within Options 3, Section 5(c). A Price Improving Order on NOM displays differently than Phlx's All-Or-None Order and therefore is described differently within Options 3, Section 5(c). Otherwise, NOM has no other non-displayed order types.

<sup>36</sup> See NOM Options 3, Section 5(d).

<sup>37</sup> See Options 5, Section 4 (Order Routing), which describes the repricing of orders for both routable and non-routable orders within Options 5, Section 4(a)(iii)(A), (B) and (C).

text will bring greater clarity to this rule. The Exchange addition of a new sentence to the end of the rule which provides, “The replacement order will retain the priority of the cancelled order, if the order posts to the Order Book, provided the price is not amended, and the size is not increased” states in the affirmative the conditions under which the Cancel-Replacement Order will retain priority. Price and size are the terms that will determine if the Cancel-Replacement Order retains its priority, as is the case today, other terms and conditions do not amend the priority of the Cancel-Replacement Order.

The Exchange’s proposal is not amending the current System functionality of a Cancel-Replacement Order with respect to the terms that will cause the order to lose priority. Today, and with the proposed change, if a Participant does not change or increase the size of the order, it would not trigger a loss in priority. Options 3, Section 7(a)(1) states only if the size of the order were reduced would a loss of priority occur.<sup>38</sup> Priority is retained if the size of the order does not change or is not increased. The rule is intended to provide transparency regarding changes to a Cancel-Replacement Order which would trigger a loss in priority. Today, and with the proposal, the price of the order may not be changed when submitting a Cancel-Replacement Order; that would be a new order. A similar change was recently made to BX’s Cancel-Replacement Order.<sup>39</sup> Price and size are the terms that will determine if the Cancel-Replacement Order retains its priority, as is the case today, other terms and conditions do not amend the priority of the Cancel-Replacement Order.

The Exchange’s proposal to amend “Limit Orders,” within Options 3, Section 7(a)(3), to

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<sup>38</sup> Options 3, Section 7(a)(1) provides, “The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained.”

<sup>39</sup> See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

add the sentence for marketable limit orders which is currently in BX's rule is consistent with the Act. A Limit Order on NOM operates in the same manner as a Limit Order on BX. The Exchange proposes to conform the rule text of NOM's Limit Order to BX Options 3, Section 7(a)(3) by adding the sentence describing marketable limit orders. BX recently amended its rule to similarly change its description of Limit Order.<sup>40</sup> The Exchange proposes to state, "A marketable limit order is a limit order to buy (sell) at or above (below) the best offer (bid) on the Exchange." The Exchange believes that the rule amendment is consistent with the Act as it more aptly describes a marketable limit order as compared to the current rule text, which is confusing, but was intended to convey the substance of the proposed text. The new sentence does not substantively amend the current rule text and conforms NOM's description with BX's description.

The Exchange's proposal to amend "Minimum Quantity Orders," within Options 3, Section 7(a)(3), is non-substantive and makes technical edits that do not change the meaning of the term. The Exchange is otherwise not amending the Minimum Quantity Order rule text.

The Exchange's proposal to amend "Market Orders," within Options 3, Section 7(a)(4), is consistent with the Act. The Exchange's proposes to style "Market Orders" in the singular and change "are" to "is an" and "orders" to "order." These amendments are technical and non-substantive. The Exchange's proposal to amend the current sentence to state, "Participants can designate that their Market Orders not executed after a pre-established period of time, as established by the Exchange, will be cancelled back to the Participant, once an option series has opened for trading." Market Orders submitted during the opening may be executed, or cancelled if the Market Order is priced through the opening price. The Exchange would only cancel those

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<sup>40</sup>

Id.

Market Orders that remained on the Order Book once an option series opened.<sup>41</sup> The pre-established period of time would commence once the intra-day trading session begins for that options series and the order would be cancelled back to the Participant, provided the Participant elected to cancel back its Market Orders. The Exchange’s proposal makes clear that while the opening is on-going, and the intra-day trading session has not commenced, the pre-established period of time would not commence.

The proposal to note that “Market Orders on the Order Book would be immediately cancelled if an options series halted, provided the Participant designated the cancellation of Market Orders” is consistent with the Act. Once an options series halts for trading, the Exchange conducts another Opening Process. In the case where a Market Order was resting on the Order Book, and the Participant had designated the cancellation of Market Orders, in the event of a halt, the Market Orders resting on the Order Book would immediately cancel. This proposed rule text is consistent with existing System functionality. The Exchange believes that this additional rule text brings greater clarity to the Market Order type.

The Exchange proposes to amend “Price Improving Orders,” within Options 3, Section 7(a)(5) is consistent with the Act. The Exchange proposes to style “Price Improving Orders” in the singular and change “are” to “is an” and “orders” to “order” are non-substantive amendments.

The Exchange’s proposal to amend “On the Open Order,” within Options 3, Section 7(a)(6) by removing the words “The term” at the beginning of the sentence and change “shall mean” to “is” are non-substantive amendments.

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<sup>41</sup> See NOM’s opening rule at Options 3, Section 8(d)(2), “After the opening, the Exchange shall reject Market Orders, as defined in Options 3, Section 7, and shall notify Participants of the reason for such rejection.”

The Exchange's proposal to amend "Intermarket Sweep Order" or "ISO" Orders, within Options 3, Section 7(a)(7), with the exception of Options 3, Section 7(a)(7)(1), which is being retained by re-lettered as "A," and addition of rule text is consistent with the Act. The new rule text is similar to BX Options 3, Section 7(a)(6).<sup>42</sup>

An ISO Order is a Limit Order, as noted in the current text and Options 5, Section 1, continues to be referenced in the proposed text. The Exchange continues to note that the orders are not routable. The additional text, "...will ignore the ABBO and trade at allowable prices on the Exchange" is more precise than the current rule text and describes current functionality. The Exchange further proposes to state, "ISOs may be entered on the Order Book." That is also the case today. The remainder of the current rule text is not necessary as Options 5, Section 1(8) is cited. Removing the current rule text and replacing it with text which describes the proper time-in-force designation will make clear what is acceptable on NOM today. This rule text is not proposed to change the functionality of an ISO Order. The Exchange believes the proposed description provides a more succinct description.

Today, the rule provides that ISOs may have any time-in-force designation, except WAIT, and further requires that ISOs with a time-in-force designation of GTC are treated as having a time-in-force designation of Day. The Exchange proposes to remove the WAIT time-in-force within this proposed rule change, as described in more detail below, and, therefore, the WAIT order type no longer needs to be cited. NOM's System does not treat an ISO with a time-in-force designation of GTC as having a time-in-force designation of Day, as provided for within NOM's current rule at Options 3, Section 7(a)(6), rather those orders are treated as GTC. The current sentence is being removed because it is inaccurate. The proposed sentence is consistent

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<sup>42</sup> BX's rule describes the PRISM mechanism, while NOM has no auction mechanisms.

with the Act because it accurately describes the System functionality. The Exchange does not believe that an ISO with a time-in-force designation of GTC was ever treated as having a time-in-force designation of Day, the rule text was simply inaccurate. This proposal is consistent with the protection of investors and the public interest because it will clarify the handling of ISO Orders for market participants.

The Exchange's proposal to amend "One-Cancels-the-Other Order" within renumbered Options 3, Section 7(a)(8) is consistent with the Act because the changes are technical in nature and non-substantive.

The Exchange's amendment to "All-or-None Order," within renumbered Options 3, Section 7(a)(9), is non-substantive and does not change the meaning of the term.

The Exchange's amendment to "Post-Only Orders," within renumbered Options 3, Section 7(a)(10), is non-substantive and does not change the meaning of the term.

Adding "TIF to Options 3, Section 7(b) allows that term to be defined within the Rules.

The Exchange's proposal to amend the "On the Open Order," or "OPG" Order, within Options 3, Section 7(b)(1), to note that OPGs may not route, is consistent with the Act. The System would not route an OPG Order today. This order type functions in the same way as BX's OPG Order at Options 3, Section 7(b)(1).<sup>43</sup> The Exchange is adding rule text to make clear the manner in which an OPG Order would be treated, which is similar to how a BX OPG Order is treated today. This proposal is consistent with the protection of investors and the public interest because it will clarify the handling of OPG Orders for market participants.

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<sup>43</sup> BX Options 3, Section 7(b)(1) provides, "An Opening Only order ("OPG") is entered with a TIF of "OPG". This order can only be executed in the Opening Process pursuant to Options 3, Section 8. This order type is not subject to any protections listed in Options 3, Section 15. Any portion of the order that is not executed during the Opening Process is cancelled. OPG orders may not route."

The Exchange’s proposal to amend an “Immediate-Or-Cancel” Order or “IOC,” within Options 3, Section 7(b)(2), is consistent with the Act. The Exchange’s proposal replaces the current description with Phlx’s description at Options 3, Section 7(c)(2) as these order types are identical. The Exchange’s proposal to state that an Immediate-or-Cancel Order or “IOC” Order is a Market Order or Limit Order to be executed in whole or in part upon receipt will bring greater clarity to the rule. Further the Exchange’s proposal to add that any portion not so executed is cancelled is consistent with the current description. The Exchange proposes to replace this description with rule text similar to BX Options 3, Section 7(b)(2)<sup>44</sup> as these order types are identical, except that NOM has the OTTO protocol and BX does not, and also as mentioned previously NOM has no auctions. Additionally, BX’s rule addresses limitations in order protections that do not exist today on NOM. The Exchange proposes to state that an Immediate-or-Cancel Order or “IOC” Order is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled and/or routed pursuant to Participant’s instruction. IOC orders may be entered through FIX, OTTO or SQF; IOC Orders entered through OTTO or SQF may not route. Today, IOC Orders entered through OTTO or SQF do not route; only orders entered through FIX may route. The SQF interface is a quoting interface, the Exchange does not route quotes. With respect to OTTO, orders submitted by NOM Market Makers over this interface are treated as quotes and similarly do not route. The

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<sup>44</sup> BX Options 3, Section 7(b)(2) provides, “Immediate-or-Cancel” or “IOC” is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. (A) Orders entered with a TIF of IOC are not eligible for routing. (B) IOC orders may be entered through FIX or SQF, provided that an IOC Order entered by a Market Maker through SQF is not subject to the Limit Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2), respectively; (C) Orders entered into the Price Improvement Auction (“PRISM”) Mechanism are considered to have a TIF of IOC. By their terms, these orders will be: (1) executed after an exposure period, or (2) cancelled.

Exchange's amendments are consistent with the Act in that the changes memorialize pertinent information within the description of an IOC Order to add clarity.

The Exchange's proposal to amend the TIF of "DAY" at Options 3, Section 7(b)(3) to conform the description of a TIF of "DAY" to Phlx Options 3, Section 7(c)(1)<sup>45</sup> is consistent with the Act. The Exchange believes the current text describing NOM's Day TIF is unnecessarily verbose and proposes to remove this language. A DAY Order on Phlx functions in the same way as a DAY Order on NOM. The proposal is not amending the System functionality of a DAY Order. The Phlx rule text is more succinct in describing this order type. Similar changes were recently made on BX.<sup>46</sup>

The Exchange's proposal to amend the TIF of "Good Til Cancelled" or "GTC" at Options 3, Section 7(b)(4) is consistent with the Act. The Exchange proposes to conform the rule text to Phlx Options 3, Section 7(c)(4).<sup>47</sup> The Exchange is not amending the manner in which the System function with respect to GTC Orders. GTC Orders, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open, as specified by the Exchange, until market close, as is the case today.

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<sup>45</sup> Phlx Options 3, Section 7(c)(1) provides, "Day. If not executed, an order entered with a TIF of "Day" expires at the end of the day on which it was entered. All orders by their terms are Day Orders unless otherwise specified. Day orders may be entered through FIX."

<sup>46</sup> See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

<sup>47</sup> Phlx Options 3, Section 7(c)(4) provides, "A Good Til Cancelled ("GTC") Order entered with a TIF of GTC, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close."

Also, today, a GTC Order may only be entered through FIX. A GTC Order on Phlx functions in the same way as a GTC Order on NOM. The Exchange believes that the amended rule text will bring greater transparency to its rules as the proposed description is more succinct and thereby protects investors and the general public.

The Exchange's proposal to no longer offer a TIF of "WAIT" is consistent with the Act because it will remove an order type that is not in demand on NOM and simply the offerings provided by NOM. If the Exchange desires to offer this TIF in the futures, it would file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act.<sup>48</sup> The Exchange has provided notice of its intention to remove the TIF of "WAIT".<sup>49</sup> BX previously offered a WAIT order type recently and discontinued this order types because it was not being utilized to a great extent.<sup>50</sup>

The Exchange's proposal to note, within NOM Options 3, Section 7(c), the various routing options which are available is consistent with the Act.

#### Options 3, Section 15

The Exchange believes its proposal to clarify that Anti-Internalization will not apply during an opening is consistent with the Act as it would provide more specificity on how this functionality currently operates. A similar change was recently made to BX's Rules.<sup>51</sup> The Exchange notes that the same procedures used during an opening are used to reopen an option series after a trading halt, and therefore proposes to specify that Anti-Internalization will not

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<sup>48</sup> 15 U.S.C. 78s(b)(1).

<sup>49</sup> See Options Trader Alert #2020 – 26.

<sup>50</sup> See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

<sup>51</sup> See Securities Exchange Act Release No. 89759 (September 3, 2020). 85 FR 55877 (September 10, 2020) (SR-BX-2020-023).

apply during the opening (i.e., the opening and halt reopening processes). During the opening, Market Makers are able to observe the primary market and then determine how they would like to quote. They are not required to quote in the opening on NOM. Therefore, Anti-Internalization is unnecessary during an opening due to the high level of control that Market Makers exercise over their quotes during this process.

#### Options 3, Section 23

The Exchange's proposal to amend Options 3, Section 23, Data Feeds and Trade Information, to update its descriptions of the ITTO data feed is consistent with the Act because the updated descriptions will bring greater transparency to the Exchange's rules and more closely align with current System operation.

The Exchange's proposal will make clear that order imbalance information is provided for both an opening and re-opening process. Today, a re-opening process initiates after a trading halt has occurred intra-day. Also, the Exchange's proposal notes the specific information that would be provided, namely the size of matched contracts and size of the imbalance. The Exchange believes that this additional context to imbalance messages will provide market participants with more complete information about what is contained in the data feed. The Exchange notes that this information is available today and the rule text is being amended to make clear what information is currently provided.

#### 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 1, Section 1

The Exchange's proposal to amend the definition of "Public Customer" to conform to Phlx's definition is intended to provide greater specificity regarding what is meant by the term

“Public Customer.” This proposal does not impose an undue burden on competition, rather it makes clear that a Public Customer could be a person or entity and clarifies that a Public Customer is not a Professional, as defined within Options 1, Section (a)(47).<sup>52</sup> Today, a Public Customer is not a Professional. In order to properly represent orders entered on the Exchange, Participants are required to indicate whether orders are “Professional Orders.” To comply with this requirement, Participants are required to review their Public Customers’ activity on at least a quarterly basis to determine whether orders, which are not for the account of a broker-dealer, should be represented as Public Customer Orders or Professional Orders.<sup>53</sup> A Public Customer may be a Professional, provided they meet the requirements specified within NOM Options 1, Section 1(a)(47). If the Professional definition is not met, the order is treated as a Public Customer order. The process for determining if a market participant qualifies as a “Professional” is applicable to all Participants. Also, this definition conforms to Phlx’s definition at Options 1, Section 1(b)(47).

The Exchange’s proposal to remove a sentence within Options 1, Section 1(a)(47) which provides, “A Participant or a Public Customers may, without limitation, be a Professional,” does not impose an undue burden on competition. This sentence is confusing, unnecessary, and adds

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<sup>52</sup> NOM Options 1, Section 1(a)(47) provides that, “The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants.”

<sup>53</sup> Participants conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While Participants only will be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Public Customer Orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the Participant and the Participant will be required to change the manner in which it is representing the customer's orders within five days.

no information to this defined term. By way of comparison, Phlx Options 1, Section 1(b)(46) does not contain a similar sentence and that sentence was recently removed from Nasdaq BX, Inc.'s ("BX") Rules.<sup>54</sup> The Exchange adopted a Professional designation in 2010<sup>55</sup> and has differentiated Public and Professional customers since that time. NOM proposes removing this sentence because it does not add useful information to understanding who may qualify as a Professional.

The Exchange's proposal to remove a sentence, within Options 3, Section 10(a)(1)(C)(i), which allocation rule provides that a Public Customer order does not include a Professional order does not impose an undue burden on competition. Today, the definition of a Public Customer does not explicitly exclude a Professional. Indicating that a Public Customer order is not a Professional Order is no longer necessary because of the proposed definition for Public Customer. The language that the Exchange proposes to delete, currently indicates that Professionals would not be treated the same as a Public Customer in terms of priority and, therefore, would not receive the same allocation that is reserved for Public Customer orders. Since NOM is amending the definition of a Public Customer to explicitly exclude Professionals, the language in the allocation rule is no longer necessary to distinguish these two types of market participants.

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<sup>54</sup> See Securities Exchange Act Release No. 89476 (August 4, 2020), 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

<sup>55</sup> See Securities Exchange Act Release No. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR-NASDAQ-2020-099) (Order Approving a Proposed Rule Change To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked).

### Bid/Ask Differentials

The Exchange’s proposal to amend NOM Options 2, Section 5(d)(2) to add the words “Intra-Day” before the title “Bid/ask Differentials (Quote Spread Parameters)” and make clear that remove references to the opening, will make clear for Market Makers their intra-day requirements. The bid/ask differentials, within NOM Options 2, Section 5(d)(2), will continue to apply intra-day. This proposal does not impose an undue burden on competition, rather it conform the Exchange’s existing practice. Today, the bid/ask differentials applicable to the opening are noted within Options 3, Section 8(a)(6).<sup>56</sup> As noted within the rule, NOM publishes its specified bid/ask differential on its system settings page.<sup>57</sup> The bid/ask differentials noted for the Valid Width NBBO within the opening provide for quotations with a difference that does not exceed \$5 between the bid and offer regardless of the price of the bid. It is not necessary to discuss the opening bid/ask differentials within Options 2, Section 5 as those differentials are specifically noted within the opening rule. This clarification avoids any confusion for Market Makers as to their intra-day requirements versus their opening requirements.

### Options 3, Section 5

The Exchange’s proposal to amend Options 3, Section 5(c) to add additional rule text

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<sup>56</sup> NOM Options 3, Section 8(a)(6) provides, “Valid Width National Best Bid or Offer” or “Valid Width NBBO” shall mean the combination of all away market quotes and any combination of NOM-registered Market Maker orders and quotes received over the QUO or SQF Protocols within a specified bid/ask differential as established and published by the Exchange. The Valid Width NBBO will be configurable by underlying, and tables with valid width differentials will be posted by Nasdaq on its website. Away markets that are crossed will void all Valid Width NBBO calculations. If any Market Maker orders or quotes on NOM are crossed internally, then all such orders and quotes will be excluded from the Valid Width NBBO calculation.”

<sup>57</sup> NOM’s System Settings page is located at:  
[https://www.nasdaq.com/docs/2020/07/02/NOM\\_SystemSettings.pdf](https://www.nasdaq.com/docs/2020/07/02/NOM_SystemSettings.pdf).

similar to Phlx Options 3, Section 5(c)<sup>58</sup> does not impose an undue burden on competition.

Today, NOM re-prices certain orders to avoid locking and crossing away markets, consistent with its Trade-Through Compliance and Locked or Crossed Markets obligations.<sup>59</sup> Orders which lock or cross an away market automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price.<sup>60</sup> The re-priced order is displayed on OPRA. The order remains on NOM's Order Book and is accessible at the non-displayed price.

#### Options 3, Section 7

The Exchange's proposal to amend the Cancel-Replacement Order, within Options 3, Section 7(a)(1), does not impose an undue burden on competition. A Participant has the option of either submitting a cancel order and then separately submitting a new order, which serves as a replacement of the original order, in two separate messages, or submitting a single cancel and replace order in one message ("Cancel-Replacement Order"). Submitting a cancel order and then separately submitting a new order will not retain the priority of the original order. The Exchange's proposal to replace the words "shall mean" with "is" and remove the final sentence of the rule text will bring greater clarity to this rule. The Exchange addition of a new sentence to the end of the rule states in the affirmative the conditions under which the Cancel-Replacement

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<sup>58</sup> Phlx has an All-or-None Order type that is non-displayed. See Options 3, Section 7(b)(5). Phlx Options 3, Section 5(c) accounts for this non-displayed order on the order book. NOM has a Price Improving Order already described within Options 3, Section 5(c). A Price Improving Order on NOM displays differently than Phlx's All-Or-None Order and therefore is described differently within Options 3, Section 5(c). Otherwise, NOM has no other non-displayed order types.

<sup>59</sup> See NOM Options 3, Section 5(d).

<sup>60</sup> See Options 5, Section 4 (Order Routing), which describes the repricing of orders for both routable and non-routable orders within Options 5, Section 4(a)(iii)(A), (B) and (C).

Order will retain priority. Price and size are the terms that will determine if the Cancel- Replacement Order retains its priority, as is the case today, other terms and conditions do not amend the priority of the Cancel-Replacement Order.

The Exchange’s proposal is not amending the current System functionality of a Cancel- Replacement Order with respect to the terms that will cause the order to lose priority. Today, and with the proposed change, if a Participant does not change or increase the size of the order, it would not trigger a loss in priority. Options 3, Section 7(a)(1) states only if the size of the order were reduced would a loss of priority occur.<sup>61</sup> Priority is retained if the size of the order does not change or is not increased. The rule is intended to provide transparency regarding changes to a Cancel-Replacement Order which would trigger a loss in priority. Today, and with the proposal, the price of the order may not be changed when submitting a Cancel-Replacement Order; that would be a new order. A similar change was recently made to BX’s Cancel-Replacement Order.<sup>62</sup> Price and size are the terms that will determine if the Cancel-Replacement Order retains its priority, as is the case today, other terms and conditions do not amend the priority of the Cancel-Replacement Order.

The Exchange’s proposal to amend “Limit Orders,” within Options 3, Section 7(a)(3), to add the sentence for marketable limit orders which is currently in BX’s rule does not impose an undue burden on competition. A Limit Order on NOM operates in the same manner as a Limit Order on BX. The Exchange proposes to conform the rule text of NOM’s Limit Order to BX Options 3, Section 7(a)(3) by adding a sentence describing marketable limit orders. BX recently

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<sup>61</sup> Options 3, Section 7(a)(1) provides, “The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained.”

<sup>62</sup> See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

amended its rule to similarly change its description of Limit Order.<sup>63</sup> The proposed text more aptly describes a marketable limit order as compared to the current rule text, which is confusing, but was intended to convey the substance of the proposed text. The new sentence does not substantively amend the current rule text and conforms NOM's description with BX's description.

The Exchange's proposal to amend "Minimum Quantity Orders," within Options 3, Section 7(a)(3), is non-substantive and makes technical edits that do not change the meaning of the term. The Exchange is otherwise not amending the Minimum Quantity Order rule text.

The Exchange's proposal to amend "Market Orders," within Options 3, Section 7(a)(4), does not impose an undue burden on competition. The Exchange's proposes to style "Market Orders" in the singular and change "are" to "is an" and "orders" to "order." These amendments are technical and non-substantive. Market Orders submitted during the opening may be executed, or cancelled if the Market Order is priced through the opening price. The Exchange would only cancel those Market Orders that remained on the Order Book once an option series opened.<sup>64</sup> The pre-established period of time would commence once the intra-day trading session begins for that options series and the order would be cancelled back to the Participant, provided the Participant elected to cancel back its Market Orders. The Exchange's proposal makes clear that while the opening is on-going, and the intra-day trading session has not commenced, the pre-established period of time would not commence.

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<sup>63</sup>

Id.

<sup>64</sup>

See NOM's opening rule at Options 3, Section 8(d)(2), "After the opening, the Exchange shall reject Market Orders, as defined in Options 3, Section 7, and shall notify Participants of the reason for such rejection."

The proposal to note that “Market Orders on the Order Book would be immediately cancelled if an options series halted, provided the Participant designated the cancellation of Market Orders” does not impose an undue burden on competition. Once an options series halts for trading, the Exchange conducts another Opening Process. In the case where a Market Order was resting on the Order Book, and the Participant had designated the cancellation of Market Orders, in the event of a halt, the Market Orders resting on the Order Book would immediately cancel. This proposed rule text is consistent with existing System functionality. The Exchange believes that this additional rule text brings greater clarity to the Market Order type.

The Exchange proposes to amend “Price Improving Orders,” within Options 3, Section 7(a)(5) does not impose an undue burden on competition. The Exchange proposes to style “Price Improving Orders” in the singular and change “are” to “is an” and “orders” to “order” are non-substantive amendments.

The Exchange’s proposal to amend “On the Open Order,” within Options 3, Section 7(a)(6) by removing the words “The term” at the beginning of the sentence and change “shall mean” to “is” are non-substantive amendments.

The Exchange’s proposal to amend “Intermarket Sweep Order” or “ISO” Orders, within Options 3, Section 7(a)(7), with the exception of Options 3, Section 7(a)(7)(1), which is being retained by re-lettered as “A,” and addition of rule text does not impose an undue burden on competition. The new rule text is similar to BX Options 3, Section 7(a)(6).<sup>65</sup>

An ISO Order is a Limit Order, as noted in the current text and Options 5, Section 1, continues to be referenced in the proposed text. The Exchange continues to note that the orders are not routable. The additional text is more precise than the current rule text and describes

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<sup>65</sup> BX’s rule describes the PRISM mechanism, while NOM has no auction mechanisms.

current functionality. The Exchange further proposes to state, “ISOs may be entered on the Order Book.” That is also the case today. The remainder of the current rule text is not necessary as Options 5, Section 1(8) is cited. Removing the current rule text and replacing it with text which describes the proper time-in-force designation will make clear what is acceptable on NOM today. This rule text is not proposed to change the functionality of an ISO Order. The Exchange believes the proposed description does not impose an undue burden on competition, rather it provides a more succinct description.

Today, ISOs may have any time-in-force designation, except WAIT, and further requires that ISOs with a time-in-force designation of GTC are treated as having a time-in-force designation of Day. The Exchange proposes to remove the WAIT time-in-force within this proposed rule change, as described in more detail below, and, therefore, the WAIT order type no longer needs to be cited. NOM’s System does not treat an ISO with a time-in-force designation of GTC as having a time-in-force designation of Day, as provided for within NOM’s current rule at Options 3, Section 7(a)(6), rather those orders are treated as GTC. The current sentence is being removed because it is inaccurate. The proposed sentence does not impose an undue burden on competition because it accurately describes the System functionality. The Exchange does not believe that an ISO with a time-in-force designation of GTC was ever treated as having a time-in-force designation of Day, the rule text was simply inaccurate.

The Exchange’s proposal to amend “One-Cancels-the-Other Order” within renumbered Options 3, Section 7(a)(8) does not impose an undue burden on competition because the changes are technical in nature and non-substantive.

The Exchange’s amendment to “All-or-None Order,” within renumbered Options 3, Section 7(a)(9), is non-substantive and does not change the meaning of the term.

The Exchange's amendment to "Post-Only Orders," within renumbered Options 3, Section 7(a)(10), is non-substantive and does not change the meaning of the term.

The Exchange's proposal to amend the "On the Open Order," or "OPG" Order, within Options 3, Section 7(b)(1), to note that OPGs may not route, does not impose an undue burden on competition. The System would not route an OPG Order today. This order type functions in the same way as BX's OPG Order at Options 3, Section 7(b)(1).<sup>66</sup> The Exchange is adding rule text to make clear the manner in which an OPG Order would be treated, which is similar to how a BX OPG Order is treated today.

The Exchange's proposal to amend an "Immediate-Or-Cancel" Order or "IOC," within Options 3, Section 7(b)(2), does not impose an undue burden on competition. The Exchange's proposal replaces the current description with Phlx's description at Options 3, Section 7(c)(2) as these order types are identical. The Exchange's proposal to state that an Immediate-or-Cancel Order or "IOC" Order is a Market Order or Limit Order to be executed in whole or in part upon receipt will bring greater clarity to the rule. Further the Exchange's proposal to add that any portion not so executed is cancelled is consistent with the current description. The Exchange proposes to replace this description with rule text similar to BX Options 3, Section 7(b)(2)<sup>67</sup> as

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<sup>66</sup> BX Options 3, Section 7(b)(1) provides, "An Opening Only order ("OPG") is entered with a TIF of "OPG". This order can only be executed in the Opening Process pursuant to Options 3, Section 8. This order type is not subject to any protections listed in Options 3, Section 15. Any portion of the order that is not executed during the Opening Process is cancelled. OPG orders may not route."

<sup>67</sup> BX Options 3, Section 7(b)(2) provides, "Immediate-or-Cancel" or "IOC" is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. (A) Orders entered with a TIF of IOC are not eligible for routing. (B) IOC orders may be entered through FIX or SQF, provided that an IOC Order entered by a Market Maker through SQF is not subject to the Limit Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2), respectively; (C) Orders entered into the Price Improvement Auction ("PRISM") Mechanism are

these order types are identical, except that NOM has the OTTO protocol and BX does not, and also as mentioned previously NOM has no auctions. Additionally, BX's rule addresses limitations in order protections that do not exist today on NOM. Today, IOC Orders entered through OTTO or SQF do not route; only orders entered through FIX may route. The SQF interface is a quoting interface, the Exchange does not route quotes. With respect to OTTO, orders submitted by NOM Market Makers over this interface are treated as quotes and similarly do not route.

The Exchange's proposal to amend the TIF of "DAY" at Options 3, Section 7(b)(3) to conform the description of a TIF of "DAY" to Phlx Options 3, Section 7(c)(1)<sup>68</sup> does not impose an undue burden on competition. The Exchange believes the current text describing NOM's Day TIF is unnecessarily verbose and proposes to remove this language. A DAY Order on Phlx functions in the same way as a DAY Order on NOM. The proposal is not amending the System functionality of a DAY Order. The Phlx rule text is more succinct in describing this order type. Similar changes were recently made on BX.<sup>69</sup>

The Exchange's proposal to amend the TIF of "Good Til Cancelled" or "GTC" at Options 3, Section 7(b)(4) does not impose an undue burden on competition. The Exchange proposes to conform the rule text to Phlx Options 3, Section 7(c)(4).<sup>70</sup> The Exchange is not

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considered to have a TIF of IOC. By their terms, these orders will be: (1) executed after an exposure period, or (2) cancelled.

<sup>68</sup> Phlx Options 3, Section 7(c)(1) provides, "Day. If not executed, an order entered with a TIF of "Day" expires at the end of the day on which it was entered. All orders by their terms are Day Orders unless otherwise specified. Day orders may be entered through FIX."

<sup>69</sup> See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

<sup>70</sup> Phlx Options 3, Section 7(c)(4) provides, "A Good Til Cancelled ("GTC") Order entered with a TIF of GTC, if not fully executed, will remain available for potential display

amending the manner in which the System function with respect to GTC Orders. GTC Orders, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open, as specified by the Exchange, until market close, as is the case today. Also, today, a GTC Order may only be entered through FIX. A GTC Order on Phlx functions in the same way as a GTC Order on NOM. The Exchange believes that the amended rule text will bring greater transparency to its rules.

The Exchange's proposal to no longer offer a TIF of "WAIT" does not impose an undue burden on competition because it will remove an order type that is not in demand on NOM and simply the offerings provided by NOM. If the Exchange desires to offer this TIF in the futures, it would file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act.<sup>71</sup> The Exchange has provided notice of its intention to remove the TIF of "WAIT".<sup>72</sup> BX previously offered a WAIT order type recently and discontinued this order types because it was not being utilized to a great extent.<sup>73</sup>

The Exchange's proposal to note, within NOM Options 3, Section 7(c), the various routing options which are available does not impose an undue burden on competition.

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and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close."

<sup>71</sup> 15 U.S.C. 78s(b)(1).

<sup>72</sup> See Options Trader Alert #2020 – 26.

<sup>73</sup> See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

### Options 3, Section 15

The Exchange believes its proposal to clarify that Anti-Internalization will not apply during an opening does not impose an undue burden on competition as it would provide more specificity on how this functionality currently operates. A similar change was recently made to BX's Rules.<sup>74</sup> The Exchange notes that the same procedures used during an opening are used to reopen an option series after a trading halt, and therefore proposes to specify that Anti-Internalization will not apply during the opening (i.e., the opening and halt reopening processes). During the opening, Market Makers are able to observe the primary market and then determine how they would like to quote. They are not required to quote in the opening on NOM. Therefore, Anti-Internalization is unnecessary during an opening due to the high level of control that Market Makers exercise over their quotes during this process.

### Options 3, Section 23

The Exchange's proposal to amend Options 3, Section 23, Data Feeds and Trade Information, to update its descriptions of the ITTO data feed does not impose an undue burden on competition because the updated descriptions will bring greater transparency to the Exchange's rules and more closely align with current System operation.

The Exchange's proposal will make clear that order imbalance information is provided for both an opening and re-opening process. Today, a re-opening process initiates after a trading halt has occurred intra-day. Also, the Exchange's proposal notes the specific information that would be provided, namely the size of matched contracts and size of the imbalance. The Exchange believes that this additional context to imbalance messages will provide market

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<sup>74</sup> See Securities Exchange Act Release No. 89759 (September 3, 2020). 85 FR 55877 (September 10, 2020) (SR-BX-2020-023).

participants with more complete information about what is contained in the data feed. The Exchange notes that this information is available today and the rule text is being amended to make clear what information is currently provided.

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 Act<sup>75</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>76</sup>

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.

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<sup>75</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>76</sup> 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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-083 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-NASDAQ-2020-083. 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-NASDAQ-2020-083, 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.<sup>77</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>77</sup> 17 CFR 200.30-3(a)(12).