

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79782; File No. SR-Phlx-2017-01)

January 12, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Cabinet Trading Pilot Program

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 January 4, 2017, NASDAQ PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program in Phlx Rule 1059, Accommodation Transactions, to allow cabinet trading to take place below \$1 per option contract under specified circumstances (the “pilot program”).

The text of the proposed rule change is set forth below. Proposed new language is underlined; proposed deletions are in brackets.

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**NASDAQ PHLX Rules**

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**Options Rules**

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**Rule 1059. Accommodation Transactions**

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

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

(a) - (b) No change.

••• *Commentary:* -----

.01 No change.

**.02 Limit Orders Priced Below \$1:** Limit orders with a price of at least \$0 but less than \$1 per option contract may trade under the terms and conditions in Rule 1059 above in each series of option contracts open for trading on the Exchange, except that:

(a) - (c) No change.

(d) Unless otherwise extended, the effectiveness of the Commentary .02 terminates January 5, [2017]2018, or, upon permanent approval of these procedures by the Securities and Exchange Commission, whichever occurs first.

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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 extend the pilot program in Commentary .02 of Exchange Rule 1059, Accommodation Transactions, which sets forth specific procedures for engaging in cabinet trades, to allow the Commission adequate time to consider permanently allowing transactions to take place on the Exchange in open outcry at a price of at least \$0 but less than \$1 per option contract.<sup>3</sup> Prior to the pilot program, Rule 1059 required that all orders placed in the cabinet were assigned priority based upon the sequence in which such orders were received by the specialist. All closing bids and offers would be submitted to the specialist in writing, and the specialist effected all closing cabinet transactions by matching such orders placed with him. Bids or offers on orders to open for the accounts of customer, firm, specialists and Registered Options Traders ("ROTs") could be made at \$1 per option contract, but such orders could not be placed in and must yield to all orders in the cabinet. Specialists effected all cabinet transactions by matching closing purchase or sale orders which were placed in the cabinet or, provided there was no matching closing purchase or sale order in the cabinet, by matching a closing purchase or sale order in the cabinet with an opening purchase or sale order.<sup>4</sup> All cabinet transactions were reported to the Exchange following the close of each business day.<sup>5</sup> Any (i) member, (ii) member organization, or (iii) other person who was a non-member broker or dealer and who

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<sup>3</sup> Cabinet or accommodation trading of option contracts is intended to accommodate persons wishing to effect closing transactions in those series of options dealt in on the Exchange for which there is no auction market.

<sup>4</sup> Specialists and ROTs are not subject to the requirements of Rule 1014 in respect of orders placed pursuant to this Rule. Also, the provisions of Rule 1033(b) and (c), Rule 1034 and Rule 1038 do not apply to orders placed in the cabinet. Cabinet transactions are not reported on the ticker.

<sup>5</sup> See Exchange Rule 1059.

directly or indirectly controlled, was controlled by, or was under common control with, a member or member organization (any such other person being referred to as an affiliated person) could effect any transaction as principal in the over-the-counter market in any class of option contracts listed on the Exchange for a premium not in excess of \$1.00 per contract.

On December 30, 2010, the Exchange filed an immediately effective proposal that established the pilot program being extended by this filing. The pilot program allowed transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option contract until June 1, 2011.<sup>6</sup> These lower priced transactions are traded pursuant to the same procedures applicable to \$1 cabinet trades, except that pursuant to the pilot program (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also made available for trading in options participating in the Penny Pilot Program.<sup>7</sup> On May 20, 2011, the Exchange filed an immediately effective proposal that extended the pilot program until December 1, 2011 to consider whether to seek permanent approval of the temporary procedure.<sup>8</sup> On November 16, 2011, the Exchange filed an immediately effective proposal that extended the

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<sup>6</sup> Phlx Rule 1059, Commentary .02; See Securities Exchange Act Release No. 63626 (December 30, 2010), 76 FR 812 (January 6, 2011) (SR-Phlx-2010-185).

<sup>7</sup> Prior to the pilot, the \$1 cabinet trading procedures were limited to options classes traded in \$0.05 or \$0.10 standard increments. The \$1 cabinet trading procedures were not available in Penny Pilot Program classes because in those classes, an option series could trade in a standard increment as low as \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier). The pilot allows trading below \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier) in all classes, including those classes participating in the Penny Pilot Program.

<sup>8</sup> See Securities Exchange Act Release No. 64571 (May 31, 2011), 76 FR 32385 (June 6, 2011) (SR-Phlx-2011-72).

pilot program until June 1, 2012.<sup>9</sup> On May 29, 2012, the Exchange filed an immediately effective proposal that extended the pilot program until December 1, 2012.<sup>10</sup> On November 1, 2012, the Exchange filed an immediately effective proposal that extended the pilot program until June 1, 2013.<sup>11</sup> On May 8, 2013, the Exchange filed an immediately effective proposal that extended the pilot program until January 5, 2014.<sup>12</sup> On December 4, 2013, the Exchange filed an immediately effective proposal that extended the pilot program until January 5, 2015.<sup>13</sup> On January 2, 2015, the Exchange filed an immediately effective proposal that extended the pilot program until January 5, 2016.<sup>14</sup> On December 9, 2015, the Exchange filed an immediately effective proposal that extended the pilot program until January 5, 2017.<sup>15</sup> The Exchange now proposes an extension of the pilot program to allow additional time to consider its effects while the pilot program continues uninterrupted.

The Exchange believes that allowing a price of at least \$0 but less than \$1 will continue to better accommodate the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number

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<sup>9</sup> See Securities Exchange Act Release No. 65852 (November 30, 2011), 76 FR 76212 (December 6, 2011) (SR-Phlx-2011-156).

<sup>10</sup> See Securities Exchange Act Release No. 67106 (June 4, 2012), 77 FR 34108 (June 8, 2012) (SR-Phlx-2012-74).

<sup>11</sup> See Securities Exchange Act Release No. 68201 (November 9, 2012), 77 FR 68871 (November 16, 2012) (SR-Phlx-2012-131).

<sup>12</sup> See Securities Exchange Act Release No. 69583 (May 15, 2013), 78 FR 30380 (May 22, 2013) (SR-Phlx-2013-53).

<sup>13</sup> See Securities Exchange Act Release No. 71096 (December 17, 2013), 78 FR 77538 (December 23, 2013) (SR-Phlx-2013-120).

<sup>14</sup> See Securities Exchange Act Release No. 74012 (January 7, 2015), 80 FR 1688 (January 13, 2015) (SR-Phlx-2015-03).

<sup>15</sup> See Securities Exchange Act Release No. 76671 (December 16, 2015), 80 FR 79642 (December 22, 2015) (SR-Phlx-2015-103).

of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of \$100 and the underlying stock might now be trading at \$30. In such an instance, there might not otherwise be a market for that person to close-out its position even at the \$1 cabinet price (e.g., the series might be quoted no bid).

The Exchange hereby seeks to extend the pilot period for such \$1 cabinet trading until January 5, 2018. The Exchange seeks this extension to allow the procedures to continue without interruption.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>16</sup> in general, and with Section 6(b)(5) of the Act,<sup>17</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

Specifically, the Exchange believes that allowing for liquidations at a price less than \$1 per option contract pursuant to the pilot program will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where cabinet trades are not otherwise permitted. The Exchange believes the extension is of sufficient length to allow the Commission to assess the impact of the Exchange's authority to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option in accordance with its attendant obligations and conditions.

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<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposal does not raise any issues of intra-market competition because it applies to all options participants in the same manner.

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>18</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>19</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>20</sup> normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>21</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested a waiver of the 30-day operative delay so that the pilot program may continue without interruption. The Commission believes

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6)(iii).

that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the pilot and allowing members to continue to benefit from the program. Therefore, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>22</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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-01 on the subject line.

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<sup>22</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2017-01. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-Phlx-2017-01 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>23</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).