

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88858; File No. SR-Phlx-2020-26)

May 12, 2020

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Phlx's Pricing Schedule at Options 7, Section 4

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 30, 2020, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, 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 Phlx's Pricing Schedule at Options 7, Section 4, "Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed)." The Exchange also proposes to correct a technical amendment within Options 7, Section 1.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on May 1, 2020.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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

Phlx proposes to amend its pricing within Options 7, Section 4, “Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed)” to: (1) decrease an existing strategy cap for certain strategies; and (2) establish a new daily cap for certain strategies in a single class of options.³ The Exchange also proposes to correct a technical amendment within Options 7, Section 1.

Today, to qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange Trading Floor or as a Floor Qualified Contingent Cross Order.⁴

Currently, the Exchange offers the following strategy caps:

Floor Options Transactions -	Strategy	Qualification	Cap
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³ The term “class of options” means all option contracts of the same type of option covering the same underlying stock or Exchange-Traded Fund Share (in the case of options on a stock or Exchange-Traded Fund Share) or the same underlying foreign currency (in the case of options on a foreign currency). See Options 1, Section 1(b)(9). The Exchange proposes to replace the terms “options class” and “options classes” in the current rule text, within Options 7, Section 4, with the terms “class of options” and “classes of options”, respectively, to conform to the defined term.

⁴ See Phlx’s Pricing Schedule at Options 7, Section 4.

Multiply Listed Options

Lead Market Maker, Market Maker, Professional, Firm and Broker-Dealer	dividend	executed on the same trading day in the same options class when such members are trading: (1) in their own proprietary accounts; or (2) on an agency basis. If transacted on an agency basis, the daily cap will apply per beneficial account.	\$1,100
Lead Market Maker, Market Maker, Professional, Firm and Broker-Dealer	reversal and conversion, merger, short stock interest, jelly roll, and box spread strategies	executed on the same trading day for all options classes in the aggregate when such members are trading (1) in their own proprietary accounts; or (2) on an agency basis. If transacted on an agency basis, the daily cap will apply per beneficial account.	\$1,100
Per member organization	dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies (“Monthly Strategy Cap”)	combined executions in a month when trading in its own proprietary accounts	\$65,000

• Reversal and conversion, jelly roll and box spread strategy executions will not be included in the Monthly Strategy Cap for a Firm. Reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) are included in the Monthly Firm Fee Cap. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Market Maker Cap. NDX and NDXP Options Transactions will be excluded from Strategy Cap pricing.

The Exchange offers strategy caps for various types of strategies, including dividend,⁵

⁵ A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. See Options 7, Section 4.

merger,⁶ short stock interest,⁷ reversal and conversion,⁸ jelly roll⁹ and box spread¹⁰ strategies.

The Exchange proposes to add the phrase “(daily)” next to the daily caps and “(monthly)” next to the monthly cap in the Cap column for clarity. The Exchange also proposes to rename the “Cap” column as “Daily/Monthly Cap.”

The Exchange proposes to amend the strategy cap applicable to Lead Market Makers,¹¹

⁶ A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. See Options 7, Section 4.

⁷ A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. See Options 7, Section 4.

⁸ Reversal and conversion strategies are transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration. See Options 7, Section 4.

⁹ A jelly roll strategy is defined as transactions created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position. See Options 7, Section 4.

¹⁰ A box spread strategy is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively. See Options 7, Section 4.

¹¹ The term “Lead Market Maker” applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Rule Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 7, Section 1.

Market Makers,¹² Professionals,¹³ Firms¹⁴ and Broker-Dealers¹⁵ with respect to reversal and conversion, merger, short stock interest, jelly roll and box spread strategies from \$1,100 to \$1,000. The Exchange believes that its proposal will incentivize members to transact a greater number of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies because the cap for these strategies is being lowered from \$1,100 to \$1,000. As proposed, the Exchange notes that this daily cap applies to strategies that were executed on the same trading day for all classes of options in the aggregate when such members are trading (1) in their own proprietary accounts; or (2) on an agency basis. If transacted on an agency basis, the daily cap will apply per beneficial account. The Exchange also proposes to state within the rule text, after the amended \$1,000 cap and the term “(daily),” “if more than one class of options.” The daily cap applies to executions for all classes of options. The Exchange proposes to add this rule text because it is proposing a new daily cap applicable to executions in a single class of options.

The Exchange proposes to establish a new daily cap of \$700 for reversal and conversion, merger, short stock interest, jelly roll and box spread strategies in a single class of options. Lead

¹² The term “Market Maker” is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as on and Floor Market Makers. See Options 7, Section 1.

¹³ The term “Professional” applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(43) 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). See Options 7, Section 1.

¹⁴ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. See Options 7, Section 1.

¹⁵ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Options 7, Section 1.

Market Makers, Market Makers, Professionals, Firms and Broker-Dealers who execute reversal and conversion, merger, short stock interest, jelly roll and box spread strategies on the same trading day in a single class of options will be subject to the daily strategy cap of \$700. The Exchange qualifications, as proposed, executed on the same trading day for all classes of options in the aggregate when such members are trading (1) in their own proprietary accounts; or (2) on an agency basis still apply.¹⁶ For example, if a Lead Market Maker executed reversal and conversion strategies only in AAPL options, and otherwise met the qualifications for a reversal and conversion cap, the proposed \$700 daily cap would apply. If the Lead Market Maker executed reversal and conversion strategies in AAPL and SPY options, and otherwise met the qualifications for a reversal and conversion cap, the proposed \$1,000 daily cap would apply. The Exchange believes that offering a daily cap, when executions are only in a single class of options, will incentivize members to transact a greater number of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies.

The Exchange proposes to amend a cross-reference within the description of the term “Customer” within Options 7, Section 1. Specifically, the Exchange proposes to amend the cross-reference to the term “Professional,” within that description of Customer, from Rule 1000(b)(43) to Options 1, Section 1(b)(45).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁸ in particular, in

¹⁶ If transacted on an agency basis, the daily cap will apply per beneficial account.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁹

Likewise, in NetCoalition v. Securities and Exchange Commission²⁰ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²¹ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”²²

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route

¹⁹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²⁰ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²¹ See NetCoalition, at 534 - 535.

²² Id. at 537.

orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”²³ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange’s proposal to decrease the strategy cap applicable to Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers with respect to reversal and conversion, merger, short stock interest, jelly roll and box spread strategies from \$1,100 to \$1,000 is reasonable because it will incentivize Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers to transact a greater number of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies with the lower cap.

The Exchange’s proposal to decrease the strategy cap applicable to Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers with respect to reversal and conversion, merger, short stock interest, jelly roll and box spread strategies from \$1,100 to \$1,000 is equitable and not unfairly discriminatory because all Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers may qualify for the reversal and conversion, merger, short stock interest, jelly roll and box spread strategy cap provided they transact the requisite amount of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies, wherein the buy and sell side of a transaction originated either from the Exchange Trading Floor or as a Floor Qualified Contingent Cross Order. The Exchange notes

²³ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

that while Customers²⁴ are not offered the strategy caps, Customers are not assessed the Options Transaction Charges within Options 7, Section 4.

The Exchange's proposal to establish a new daily cap of \$700 for reversal and conversion, merger, short stock interest, jelly roll and box spread strategies in a single class of options, with the same qualifications as today, is reasonable. The proposed daily cap will incentivize Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers to execute a greater number of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies for the opportunity to qualify for the new daily cap.

The Exchange's proposal to establish a new daily cap of \$700 for reversal and conversion, merger, short stock interest, jelly roll and box spread strategies in a single class of options, with the same qualifications as today, is equitable and not unfairly discriminatory because all Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers may qualify for the reversal and conversion, merger, short stock interest, jelly roll and box spread daily strategy cap provided they transact the requisite amount of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies, wherein the buy and sell side of a transaction originated either from the Exchange Trading Floor or as a Floor Qualified Contingent Cross Order in a single class of options. The Exchange notes that while Customers are not offered the strategy caps, Customers are not assessed the Options Transaction Charges within Options 7, Section 4.

²⁴ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(b)(45)). See proposed Options 7, Section 1.

The Exchange's proposal to amend a cross-reference within the description of the term "Customer" within Options 7, Section 1 from Rule 1000(b)(43) to Options 1, Section 1(b)(45) is a non-substantive amendment.

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.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

The Exchange's proposal to decrease the strategy cap applicable to Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers with respect to reversal and conversion, merger, short stock interest, jelly roll and box spread strategies from \$1,100 to \$1,000 does not impose an undue burden on competition because all Lead Market Makers,

Market Makers, Professionals, Firms and Broker-Dealers may qualify for the reversal and conversion, merger, short stock interest, jelly roll and box spread strategy cap provided they transact the requisite amount of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies, wherein the buy and sell side of a transaction originated either from the Exchange Trading Floor or as a Floor Qualified Contingent Cross Order. The Exchange notes that while Customers are not offered the strategy caps, Customers are not assessed the Options Transaction Charges within Options 7, Section 4.

The Exchange's proposal to establish a new daily cap of \$700 for reversal and conversion, merger, short stock interest, jelly roll and box spread strategies in a single class of options, with the same qualifications as today, does not impose an undue burden on competition because all Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers may qualify for the reversal and conversion, merger, short stock interest, jelly roll and box spread daily strategy cap provided they transact the requisite amount of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies, wherein the buy and sell side of a transaction originated either from the Exchange Trading Floor or as a Floor Qualified Contingent Cross Order in a single class of options. The Exchange notes that while Customers are not offered the strategy caps, Customers are not assessed the Options Transaction Charges within Options 7, Section 4.

The Exchange's proposal to amend a cross-reference within the description of the term "Customer" within Options 7, Section 1 from Rule 1000(b)(43) to Options 1, Section 1(b)(45) is a non-substantive amendment.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁵

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. Please include File Number SR-Phlx-2020-26 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-Phlx-2020-26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-Phlx-2020-26 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.²⁶

J. Matthew DeLesDernier
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).