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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86286; File No. SR-Phlx-2019-25]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 1019, Adopt a New Rule 1073, Adopt a New Rule 1074, Rule 1080, Adopt a New Rule 1096, and Adopt a New Rule 1097

July 2, 2019

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 June 20, 2019, 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, 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 a proposal to amend Rule 1019, “Acceptance of Bid and Offer,” adopt a new Rule 1073, “Kill Switch,” adopt a new Rule 1074 “Detection of Loss of Communication,” Rule 1080, “Electronic Acceptance of Quotes and Orders,” adopt a new Rule 1096, “Entry and Display of Orders” and adopt a new Rule 1097, “Limitations on Order Entry.”

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

The Exchange proposes several amendments within this rule change: (i) amend Rule 1019, "Acceptance of Bid and Offer"; (ii) adopt a new Rule 1073, "Kill Switch," and Rule 1074 "Detection of Loss of Communication," from relocated rule text from Rule 1080, "Electronic Acceptance of Quotes and Orders,;" (iii) adopt a new Rule 1096, "Entry and Display of Orders"; and (iv) adopt a new Rule 1097, "Limitations on Order Entry." With this proposal, the Exchange intends to create a rule that concerns the requirements for submitting a quote and a separate rule that concerns the requirements for submitting an order. The Exchange also is proposing to relocate rules to reorganize its Rulebook and conform certain rule text within Rule 1097 to rules of other Nasdaq markets.³

Rule 1019, Acceptance of Bid or Offer

Currently, Rule 1019 is titled "Acceptance of Bid or Offer." The Exchange proposes to retitle Rule 1019 as "Entry and Display of Quotes." The Exchange proposes to amend Rule 1019(a) to revise the text of (a) from "All bids or offers for option contracts dealt in on the

³ The Exchange intends to file a separate rule change for each Nasdaq market to amend rules as described herein.

Exchange made and accepted in accordance with these Rules shall constitute binding contracts between the parties thereto but shall be subjected to the exercise by the Board of Directors of the powers in respect thereto vested in said Board by the By-Laws, and to the Rules of the Exchange, and said contracts shall also be subject to the rules of The Options Clearing Corporation and to the exercise by The Options Clearing Corporation of the powers reserved to it in its by-laws and rules” to more simply “All bids or offers for option contracts dealt in on the Exchange made and accepted in accordance with these Rules shall constitute binding contracts between the parties thereto but shall be subjected to applicable requirements and the rules of the Clearing Corporation. The Exchange is proposing to removing the requirement for the Board of Directors to Act and retain the applicability of the rules of the Clearing Corporation.

The Exchange proposes to add a new Rule 1019(b) to describe the current requirements and conditions for submitting quotes. These requirements reflect the current System operation today. The Exchange proposes to memorialize the various requirements for the submission of quotes into the System for greater transparency. The Exchange proposes to provide at new Rule 1019(b), “Quotes are subject to the following requirements and conditions:”. The Exchange proposes to add at Rule 1019(b)(1) that “RSQTs or Remote Specialists may generate and submit option quotations.” Current Rule 1080(k) provides,

Electronic Streaming Quotations. SQTs may generate and submit option quotations if such SQT is physically present on the Exchange floor, and RSQTs may generate and submit option quotations from off the floor of the Exchange, electronically.

Respecting options trading on Phlx XL II, specialists, SQTs and RSQTs who are quoting in an option may also submit Sweeps, which are defined in and governed by Rule 1082.

The Exchange proposes removing this rule text within Rule 1080(k) and memorializing the quoting requirements within Rule 1019. The first paragraph within Rule 1080(k) describes SQTs

and RSQs that stream quotations. These participants are currently defined within Rule 1014(b). This language in the first paragraph of Rule 1080(k) is redundant and unnecessary. The second paragraph of Rule 1080(k) references Sweeps within Phlx Rule 1082, “Firm Quotations,” which describes sweeps within that rule in relation to Quote Exhaust. The Exchange proposes to provide at proposed new Rule 1019(b)(2) that “The System shall time-stamp a quote which shall determine the time ranking of the quote for purposes of processing the quote.” The Exchange notes that all quotes today are time-stamped for purposes of processing quotes. Proposed Rule 1019(b)(3) states that “Specialists, Remote Specialists and ROTs may enter bids and/or offers in the form of a two-sided quote. Only one quote may be submitted at a time for an option series.” The Exchange believes that this information will provide Specialists, Remote Specialists and ROTs with information on submitting a quote. The Exchange notes that bid or offer size may be a “0,” however a price is required to be entered for both the bid and offer to be entered into the System. Further, the Exchange proposes at Rule 1019(b)(4) to provide clarity for entering quotes and proposes to specify, “The System accepts quotes for the Opening Process as specified in Rule 1017.”⁴ The Exchange believes that this information will bring greater transparency to the Rulebook with respect to limitations for submitting quotations into the System.

The Exchange proposes a provision regarding firm quote within proposed Rule 1019(b)(5):

Firm Quote. When quotes in options on another market or markets are subject to relief from the firm quote requirement set forth in the SEC Quote Rule,⁵ orders and quotes will receive an automatic execution at or better than the NBBO based on the best bid or offer in markets whose quotes are not subject to such relief. Such determination may be made by way of notification from another market that

⁴ Rule 1017(d) provides, “Phlx Electronic Market Maker Valid Width Quotes and Opening Sweeps received starting at 9:25 AM are included in the Opening Process. Orders entered at any time before an option series opens are included in the Opening Process.”

⁵ The term “SEC Quote rule” shall mean rule 602 of Regulation NMS under the Securities Exchange Act of 1934, as amended. See Phlx Rule 1082(a)(iii).

its quotes are not firm or are unreliable; administrative message from the Option Price Reporting Authority (“OPRA”); quotes received from another market designated as “not firm” using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm. The Exchange shall maintain a record of each instance in which another exchange’s quotes are excluded from the Exchange’s calculation of NBBO, and shall notify such other exchange that its quotes have been so excluded. Where quotes in options on another market or markets previously subject to relief from the firm quote requirement set forth in the Quote Rule are no longer subject to such relief, such quotations will be included in the calculation of NBBO for such options. Such determination may be made by way of notification from another market that its quotes are firm; administrative message from OPRA; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm.

Phlx Rule 1082 describes Firm Quote for purposes of quote submission. The Exchange proposes to memorialize within its Rules the requirement for the dissemination of quotations pursuant to Reg NMS.⁶ The Exchange is proposing to add the above rule text to provide context as to this restriction for submitting quotes. The Exchange proposes to make clear the manner in which quote relief will occur. Specifically, this proposed rule text indicates the manner in which a determination for quote relief is made. Further, the rule notes the Exchange shall maintain a record of each instance in which another exchange’s quotes are excluded from the Exchange’s calculation of NBBO, and shall notify such other exchange that its quotes have been so excluded. Also, when relief is no longer available, such quotations will be included in the calculation of NBBO for such options. The Exchange notes how the determination is made that relief is no longer available. The proposed rule text adds greater context to the manner in which Firm Quote relief is applied. This rule text represents the current practice.

Similarly, the Exchange proposes to provide the following at proposed new Rule 1019(b)(6):

⁶ 17 CFR §242.602.

Trade-Through Compliance and Locked or Crossed Markets. A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote 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.

Today, quotations may not be executed against prices that trade-through an away market as provided for in the Options Order Protection and Locked/Crossed Market Plan which is also described within Phlx Rules 1083, 1084 and 1086. Also, quotations may not lock or cross an away market. The repricing is provided for today within Phlx Rule 1093.⁷ By stating this limitation in the rule, Specialists and ROTs will have greater clarity as to this limitation. Further, the Exchange is making clear that a quote that would cause a locked or crossed market violation or would cause a trade-through violation will be re-priced. The Exchange would display the quote at one minimum price variation (“MPV”) above (for offers) or below (for bids) the national best price. Repricing quotes is consistent with the Act because the Exchange is not permitted to lock or cross an away market’s quote or order. The Exchange reprices the quotes one MPV inferior to cause the displayed price to reflect the available market on Phlx.

⁷ Phlx Rule 1093(a)(iii)(A) provides that a DNR Order may execute on the Exchange at a price equal to or better than, but not inferior to, the best away market price but, if that best away market remains, the DNR Order will remain in the Phlx Order Book and be displayed at a price one minimum price variation (“MPV”) inferior to that away best bid/offer. If the DNR Order is locking or crossing the ABBO, the DNR Order shall be entered into the Order Book at the ABBO price and displayed one MPV away from the ABBO. Similar language is provided for with respect to the routable orders (FIND and SRCH). Phlx Rule 1093(a)(iii)(B)(4) provides “A FIND Order received after an Opening Process that is marketable against the internal PBBO when the ABBO is inferior to the internal PBBO will be traded at the Exchange at or better than the PBBO price. If the FIND Order has size remaining after exhausting the PBBO, it may: (1) trade at the next PBBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the ABBO price, (2) be entered into the Order Book at its limit price, or (3) if locking or crossing the ABBO, be entered into the Order Book at the ABBO price and displayed one MPV away from the ABBO.” This is also the case for a SRCH Order. See Phlx Rule 1093(a)(iii)(C)(4).

Finally, the Exchange proposes at Rule 1019(b)(7) to provide, “Quotes submitted to the System are subject to the following: minimum increments provided for in Rule 1034, risk protections provided for in Rule 1099 and Quote Exhaust provided for in Rule 1082.” The Exchange is noting herein the manner in which a quote may be rejected by the System to provide market participants with expectations as to the interplay among the various Phlx Rules. Specifically, if the Specialist or ROT does not submit a quotation compliant with Rule 1034, the quote will not be accepted by the System because market participants are required to abide by Rule 1034 which describes the increments with which options series are to be quoted. Rule 1099 provides a list of all protections applicable to quotes that may be rejected. Finally, Specialists and ROTs are subject to the Exchange’s rule regarding quote exhaust within Rule 1082(a)(ii)(B)(3). The Exchange believes that this rule will provide Members with requirements and conditions for submitting quotations and provide transparency as to limitations that cause a quote to be rejected.

The Exchange proposes to provide at Rule 1019(c), “Quotes will be displayed in the System as described in Rule 1070.” Rule 1070, titled “Data Fees and Trade Information” provides for the available feeds that Members may access on the Exchange. This list represents the available data feeds and the content of those data feeds which are offered today by Phlx.

The amendment to Phlx Rule 1019 to create a list of all the requirements and conditions for submitting quotes on Phlx within one rule is consistent with the Act because it will provide greater transparency to market participants of the applicable requirements. Further, this proposal will make the current rule clear and understandable for market participants thereby protecting investors and the general public. The Exchange notes that while some of these requirements appear in other rules, for ease of reference the requirements are located within a

single rule with this proposal. The proposal reflects the Exchange's current practice with respect to quoting requirements. This proposal will conform this Rule to other Nasdaq affiliated markets filing similar rules.⁸ The Exchange's proposal is intended to provide greater information with respect to Firm Quote within new Rule 1019(b)(5) and regarding trade-through and locked and crossed markets 1019(b)(6). The addition rule text is consistent with the Act because the Exchange is adding detail regarding the method in which orders which are firm or locked and crossed will be handled in the System. The notifications for Firm Quote are made clear with the proposed rule text. The Exchange believes that it is consistent with the Act to specify when quotes are firm and the handling of such quotes by the System for the protection of investors and the general public. The clarity is designed to promote just and equitable principles of trade by notifying all participants engaged in market making of potential outcomes. Today, quotations may not be executed against at prices that trade-through an away market. Also, quotations may not lock or cross an away market. The repricing of quotations is consistent with the Act because repricing prevents the Exchange from disseminating a price which locks or crosses another market. Phlx is required avoiding displaying a quotation that would lock or cross a quotation of another market center at the time it is displayed. Preventing inferior prices from displaying perfects the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Relocation of Kill Switch and Detection of Loss of Communication

The Exchange also proposes to relocate the rule text at Rule 1019(b), Kill Switch, and (c), Detection of Loss of Communication, to new Rules 1073 and 1074, respectively. The relocations are consistent with the Act because the proposed changes are intended to provide

⁸ Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Nasdaq BX, Inc. and Nasdaq Stock Market LLC intend to file similar rules to proposed Phlx Rule 1019.

greater transparency to these rules by making them easier to locate which benefits investors and the public interest. The Exchange is not proposing to amend the Kill Switch or Detection of Loss of Communication rules; this rule change is non-substantive. The Exchange proposes to update internal cross-references.

Rule 1080, Electronic Acceptance of Quotes and Orders

The Exchange proposes to amend Rule 1080(a)(i)(B) to add the following sentence to Specialized Quote Feed (“SQF”), “Specialists, SQTs and RSQTs may only enter interest into SQF in their assigned options series.” The Exchange notes that today these participants may utilize SQF to quote only in their assigned options series.⁹ This proposed rule text is consistent with the Act because it will add greater clarity to the current rule for the protection of investors and the public interest.

The Exchange proposes to delete certain rule text within Rule 1080(c)(ii)(C) and 1080(j) and relocate that language to new Rule 1097, as described below.

The Exchange also proposes to delete Rule 1080(k), as discussed above, and Rule 1080(l) which is currently reserved. These proposed amendments are consistent with the Act because they are simply administrative and non-substantive.

Rule 1096, Entry and Display of Orders

Similar to Rule 1019, which describes requirements for quotes, the Exchange proposes to adopt a new Rule 1096, “Entry and Display of Orders” and describe the current requirements and conditions for entering orders. The Exchange notes that the requirements provided for within this rule represent the current practice. The purpose of Rule 1096 is to memorialize this information within a single rule.

⁹ Rules 501, “Specialist Appointment” and 507 “Application for Approval as an SQT, RSQT, or RSQTO and Assignment in Options” govern option assignments.

The Exchange proposes to state within new Rule 1096(a), “Members can enter orders into the System, subject to the following requirements and conditions:”. The Exchange proposes within new Rule 1096(a)(1), “Members shall be permitted to transmit to the System multiple orders at a single as well as multiple price levels.” The Exchange’s new rule text at 1096(a) proposes to make clear that multiple orders may be transmitted to the System as single or multiple price levels. This is the case today. The Exchange proposes to memorialize the manner in which orders may be submitted to the System to add more detail to its rules. The Exchange proposes at new Rule 1096(a)(2), “The System accepts orders beginning at a time specified by the Exchange and communicated on the Exchange’s web site.” The System accepts orders beginning at a time specified by the Exchange and communicated on the Exchange’s web site.¹⁰

The Exchange proposes new Rule 1096(a)(3), “The System shall time-stamp an order which shall determine the time ranking of the order for purposes of processing the order.” Further, all orders are time-stamped to determine the time ranking of the order for purposes of processing the order within the System. This is also the case today and the Exchange is adding this detail to its rules to describe the time-stamp.

The Exchange proposes to add new Rule 1096(a)(4), “Orders submitted to the System are subject to the following: minimum increments provided for in Rule 1034, risk protections provided for in Rule 1099, and the restrictions of any order type as provided for in Rule 1080(b). Orders may execute at multiple prices.” All orders must adhere to other rule requirements such as minimum increments, risk protection rules and order types. Similar to the rule text for quotes, order are currently subject the minimum increment requirements in Rule 1034 and also the risk protections for orders which are listed within current Rule 1099. This rule provides a list of

¹⁰ The Exchange’s website makes the timeframes in which orders may be submitted to the System: http://www.nasdaqtrader.com/content/phlx/phlx_systemtime.pdf.

other requirements which may impact the execution of an order. Finally, orders may execute at multiple prices.

The Exchange proposes to add new Rule 1096(a)(5) the following, “Nullification by Mutual Agreement. Trades may be nullified if all parties participating in the trade agree to the nullification. In such case, one party must notify the Exchange and the Exchange promptly will disseminate the nullification to OPRA. It is considered conduct inconsistent with just and equitable principles of trade for a party to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.” The rule text of new Rule 1096(a)(5) is similar to Nasdaq ISE, LLC (“ISE”) Options 3, Section 4(b). Trades may be nullified today by agreement of the parties. The Exchange believes that it is consistent with the Act to permit parties to agree to a nullification provided the nullification does not violate other exchange rules. The Exchange notes that parties may not agree to a mutual agreement for purposes that would cause another rule to be violated. The Exchange believes that it is consistent with the Act and protection of investors and general public to make clear the expected behavior with respect to nullifications.

Proposed Rule 1096(b) is similar to ISE Options 3, Section 15(a). This proposed rule provides,

NBBO Price Protection. Orders, other than Intermarket Sweep Orders (as defined in Rule 1083(h)), will not be automatically executed by the System at prices inferior to the NBBO (as defined in Rule 1083(j)). There is no NBBO price protection with respect to any other market whose quotations are Non-Firm (as defined in Rule 1083(k)).

The Exchange believes that although Phlx Rule 1084¹¹ makes clear that simple orders may not execute at prices inferior to the NBBO, this rule text will provide that limitation in this proposed list of limitations for ease of reference. The Exchange notes that this NBBO Protection applies to orders and therefore is being discussed within proposed Rule 1096, which applies to all market participants. In contrast, Rule 1019, which applies to quotes entered by those members that conduct market marking, Specialists and ROTs, describes the Firm Quote protections and the interplay of NBBO with respect to quotes. Trade-Through is described in both Rules 1019 and 1096.

Proposed Rule 1096(c) seeks to define the Exchange's best bid and offer as the "PBBO" and distinguish the displayed book from the non-displayed book for reference. The Exchange provides that the System automatically executes eligible orders using the Exchange's displayed best bid and offer ("PBBO"). Phlx also permits members to enter non-displayed orders. The non-displayed orders are available on the Exchange's order book ("internal PBBO"). The Phlx contingency orders, which are non-displayed are exclusively: (i) All-or-None Orders;¹² and (ii) stop orders¹³ (collectively "Non-Displayed Contingency Orders"). Finally, Phlx reprices orders to avoid locking or crossing another market as explained below. Therefore, on Phlx, eligible

¹¹ Phlx Rule 1084 describes the avoidance of trade-through and Rule 1083(h) described ISOs.

¹² An All-or-None Order is a limit or market order that is to be executed in its entirety or not at all. An All-or None Order may only be submitted by a public customer. All-or-None Orders are non-displayed and non-routable. All-or-None Orders are executed in price-time priority among all public customer orders if the size contingency can be met. The Acceptable Trade Range protection in Rule 1099(a) is not applied to All-Or-None Orders. See Phlx Rule 1078.

¹³ A stop order is a limit or market order to buy or sell at a limit price when a trade or quote on the Exchange for a particular option contract reaches a specified price. A stop-market or stop-limit order shall not be triggered by a trade that is reported late or out of sequence or by a complex order trading with another complex order. See Phlx Rule 1080(b).

orders will execute at the best price available, the PBBO or the internal PBBO. The Exchange believes that this information will provide Members with additional information to how the Exchange describes its displayed and non-displayed orders. Further the proposal to add information related to NBBO Protection and define the Exchange's best bid and offer as the "PBBO" and distinguish the displayed book from the non-displayed book for reference will bring greater transparency and clarity to the Exchange's rules. The Exchange disseminates its PBBO which does not contain non-displayed information. The Exchange believes that describing the "internal PBBO" will bring greater transparency to the rule as the Order Book may contain non-displayed orders which may offer better prices than the PBBO. The Exchange believes describing the displayed and non-displayed order book will inform members as to availability of orders on the Order Book and protect investors and the general public by providing additional information about non-displayed order types.

Similar to Rule 1019(b)(6), the Exchange proposes to note at new Rule 1096(d),

Trade-Through Compliance and Locked or Crossed Markets. 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.

Today, orders may not be executed at a price that trades through an away market. Also, orders may not lock or cross an away market. Routable orders must comply with Trade-Through and Locked and Crossed Markets restrictions. The Exchange reprices orders that are non-routable. The Exchange proposes to make clear the manner in which orders are repriced on the order book.

This repricing is described today within Rule 1093(a)(iii)(A), (B) and (C) which describes routing. This rule text is similar to rule text within BX Chapter VI, Section 7(b)(3)(C). Today, orders may not be executed at prices that trades through an away market. Also, orders may not lock or cross an away market. Routable orders must comply with Trade-Through and Locked and Crossed Markets restrictions within Phlx Rule 1084. The Exchange reprices orders that are non-routable. The Exchange's proposal to memorialize rule text related to trade-throughs will make clear the manner in which orders are repriced on the order book and protect investors and general public by further describing this restriction with respect to orders specifically. This repricing is described today within Rule 1093(a)(iii)(A), (B) and (C) which describes routing. The Exchange would re-price an order to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one MPV above (for offers) or below (for bids) the national best price. The Exchange reprices orders one MPV inferior to cause the displayed price to reflect the available market on Phlx.¹⁴ The repricing of orders is consistent with the Act because repricing prevents the Exchange from disseminating a price which locks or crosses another market. Phlx is required avoiding displaying an order that would lock or cross a quotation of another market center at the time it is displayed. Preventing inferior prices from displaying perfects the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Finally, the Exchange proposes to provide at new Rule 1096(e), similar to Rule 1019(c) which states, "Orders will be displayed in the System as described in Rule 1099."

The Exchange's proposal to adopt a new Rule 1096, "Entry and Display of Orders" and describe the current requirements and conditions for entering orders, similar to proposed changes

¹⁴ See Phlx Rule 1086.

to Rule 1019 for quotes is consistent with the Act because it will provide transparency as to manner in which orders may be submitted to the System. The Exchange's new rule reflects the current requirements for submitting orders into the System. Similar to proposed Rule 1019, the Exchange proposes to memorialize requirements and limitations within one rule for ease of reference.

Rule 1097, Limitations on Order Entry

The Exchange proposes to adopt a new Rule 1097, titled "Limitations on Order Entry," and relocate rule text from Rule 1080. The Exchange proposes to adopt rule text within new Rule 1097(a) which rule is similar to ISE Options 3, Section 22(b) as follows:

Limit Orders. Members shall not enter public customer limit orders into the System in the same options series, for the account or accounts of the same or related beneficial owners, in such a manner that the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such options contract on a regular or continuous basis. In determining whether a beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things: the simultaneous or near-simultaneous entry of limit orders to buy and sell the same options contract and the entry of multiple limit orders at different prices in the same options series.

Specifically, Phlx Rule 1080(j) is similar to ISE Options 3, Section 22(b) in that it prohibits public customers,¹⁵ which are equivalent to ISE Priority Customers, from entering limit orders into the Order Book in the same option series in a manner where the public customer is effectively operating as a market maker by holding itself out as willing to buy and sell such options contract on a regular or continuous basis. Both rules are [sic] extend to beneficial owners. Phlx rule [sic] 1080(j) provides, "[i]n determining whether an off floor member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among

¹⁵ For purposes of this rule change, the term "public customer" shall mean a person or entity that is not a broker or dealer in securities and is not a Professional, as that term is defined within Phlx Rule 1000(b)(14).

other things: the simultaneous or near-simultaneous entry of limit orders to buy and sell the same options contract; the multiple acquisition and liquidation of positions in the same options series during the same day; and the entry of multiple limit orders at different prices in the same options series.” This language is the same as ISE’s Options 3, Section 22(b). Because Phlx has a trading floor, the “off floor” references are in Phlx Rule 1080(j) and no such references are in the ISE Rules. Further, Phlx’s Rule 1080(j) provides, “The limitation set forth in this Rule 1080(j) does not apply to the accounts of off-floor broker dealers or Professionals as the term is defined in Rule 1000(b)(14).” Phlx Rule 1080(j) therefore would apply to accounts for public customers, and prevent public customers from conducting business as a market maker. ISE Options 3, Section 22(b) was adopted to limit the ability of Electronic Access Members that are not market makers to compete on preferential terms within ISE’s automated systems,¹⁶ including Priority Customers, who are provided with certain benefits, such as priority of bids and offers. ISE’s Prior Rule Change noted that it did not believe it was necessary to impose Options 3, Section 22 restrictions on the entry of Professional or broker-dealer orders because the same priority does not exist. Both rules therefore apply to same market participants. The Exchange notes that the Phlx and ISE Rules are substantively the same, despite the difference in the rule text.

On Phlx, ROTs (as well as Specialists) are required to register with the Exchange.¹⁷ On Phlx, ROTs are entitled to certain allocations¹⁸ and preferential pricing¹⁹ and are obligated to

¹⁶ See Securities Exchange Act Release No. 63017 (September 29, 2010), 75 FR 61795 (October 6, 2010) (SR-ISE-2010-95) (“Prior Rule Change”).

¹⁷ See Phlx Rule 507.

¹⁸ See Rule 100(g)(vi).

¹⁹ See Phlx’s Pricing Schedule at Options 8.

submit Valid Width Quotes during the opening²⁰ and quotes intra-day.²¹ The Exchange believes that public customers that desire to make markets on Phlx should register with the Exchange. The Exchange also notes that ROTs are restricted from entering orders on Phlx as described within Rule 1080(b). The Exchange also proposes to amend the title from “Limitations on Orders” to “Limit Orders.” The Exchange notes that the term “Phlx XL” is the same as the defined term “System.”²² Finally, the Exchange proposes to remove the final sentence, “Notwithstanding the foregoing, the limitation in Rule 1080(j) above will continue to apply to all-or-none orders submitted by Professionals to the Exchange.” Rule 1078 notes that All-or-None Orders may be only be entered by Public Customers. This order type was recently amended and therefore this limitation is unnecessary.²³

The Exchange proposes to relocate rule text from current Rule 1080(c)(ii)(C)(2) to proposed Rule 1097(b). Current Rule 1080(c)(ii)(C)(2) provides,

Principal Transactions: Order Entry Firms may not execute as principal against orders on the limit order book they represent as agent unless: (a) agency orders are first exposed on the limit order book for at least one (1) second, (b) the Order

²⁰ See Phlx Rule 1017.

²¹ See Phlx Rule 1081.

²² The term “System” shall mean the automated system for order execution and trade reporting owned and operated by the Exchange which comprises: (A) an order execution service that enables members to automatically execute transactions in System Securities; and provides members with sufficient monitoring and updating capability to participate in an automated execution environment; (B) a trade reporting service that submits “locked-in” trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the Options Price Reporting Authority (“OPRA”) for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a “locked-in” trading environment; and (C) the data feeds described at Rule 1070. See Phlx Rule 1000(b)(45).

²³ See Securities Exchange Act Release No. 85262 (March 7, 2019), 84 FR 9192 (March 13, 2019)(SR-Phlx-2019-03).

Entry Firm has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such order, (c) the Order Entry Firm proceeds in accordance with the crossing rules contained in Rule 1064, (d) the orders are entered into Price Improvement XL or "PIXL" pursuant to Rule 1087, (e) the orders are entered into the Complex Order Live Auction or "COLA" pursuant to Rule 1080, Commentary .02(c)(ii)(e), or (f) orders entered into the Qualified Contingent Cross or "QCC" mechanism pursuant to Rules 1080(o).

This rule provides for the exposure of orders entered on Phlx. Specifically, with respect to orders entered as where a Phlx member is acting as agent and principal on an order, the order must be exposed for one second prior to execution to allow an opportunity for price improvement. The Exchange has filed for certain functionalities which are exceptions to the general standard of one second exposure. These functionalities have provisions which describe the manner in which orders can be entered into the Price Improvement XL or "PIXL" mechanism²⁴ the Complex Order Live Auction or "COLA"²⁵ pursuant to Rule 1098(e); or the Qualified Contingent Cross or "QCC" mechanism.²⁶ Further, Phlx Rule 1064 permits members to cross orders provided certain contingencies are met. This rule is intended to encourage price discovery and price improvement of all orders entered on Phlx. The Exchange proposes to utilize the broader term "members" instead of the specific term "Order Entry Firms"²⁷ as this rule applies to all members. The Exchange has updated the current rule references.

The Exchange proposes to delete the rule text from current Rule 1080(c)(ii)(C)(2) and (3) which provides,

²⁴ See Phlx Rule 1087.

²⁵ See Rule 1098(e) or (f).

²⁶ See Rule 1088.

²⁷ The term "Order Entry Firms" is described in Rule 1080(c)(ii) as a member organization of the Exchange that is able to route orders to AUTOM. Replacing the term "Order Entry Firm" with "member" does not change the meaning on the sentence.

Solicitation Orders. Order Entry Firms must expose orders they represent as agent for at least one (1) second before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders, except for: (a) orders entered into PIXL pursuant to Rule 1087, (b) orders entered into COLA pursuant to Rule 1080, Commentary .02(c)(ii)(e), or (c) orders entered into the QCC mechanism pursuant to Rules 1080(o).

(3) It shall be a violation of Rule 1080(c)(ii)(C) for any Exchange member or member organization to be a party to any arrangement designed to circumvent Rule 1080(c)(ii)(C) by providing an opportunity for a customer, member, member organization, or non-member broker-dealer to execute immediately against agency orders delivered to the Exchange, whether such orders are delivered via AUTOM or represented in the trading crowd by a member or a member organization, except for: (a) orders entered into PIXL pursuant to Rule 1087, (b) orders entered into COLA pursuant to Rule 1080, Commentary .02(c)(ii)(e), or (c) orders entered into the QCC mechanism pursuant to Rules 1080(o).

This language is repetitive of language currently within current Rule 1080(c)(ii)(C)(1). Current Rule 1080(c)(ii)(C)(1) requires exposure similar to of one second and describes the same behavior as current Rule 1080(c)(ii)(C)(2) and (3) and lists the same exceptions. The Exchange does not believe that this rule text is necessary or covers a scenario that is not contemplated by current Rule 1080(c)(ii)(C)(2) and (3). The Exchange believes that this rule was merely the inverse of the rule for principal transactions.

The Exchange proposes new rule text at proposed Rule 1097(c)(1) which is the same rule text within ISE Options 3, Section 22 at Supplementary Material .01 and is similar to rule text at Phlx Rule 1087(f), related to PIXL. Rule 1097(b)(1) would provide,

This Rule prevents a member from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the Member was already bidding or offering on the book. However, the Exchange recognizes that it may be possible for an member to establish a relationship with a customer or other person (including affiliates) to deny agency orders the opportunity to interact on the Exchange and to realize similar economic benefits as it would achieve by executing agency orders as principal. It will be a violation of this Rule for a member to be a party to any arrangement designed to circumvent this Rule by providing an opportunity for a customer or other person (including affiliates) to regularly execute

against agency orders handled by the member immediately upon their entry into the System.

The Exchange believes that specifically noting this prohibition within the proposed rule will assist members in understanding the type of behavior that would violate Exchange rules when executing agency orders. Specifically, today pursuant to Phlx Rule 707, “Conduct Inconsistent with Just and Equitable Principles of Trade,” it would be violative for members to execute agency orders to increase its economic gain from trading against the order without first giving other trading interest on Phlx an opportunity to either trade with the agency order or to trade at the execution price when the member was already bidding or offering on the book. The Exchange proposes to make clear with this Rule that members may not gain by failing to expose orders submitted on an agency basis. The Exchange is promoting transparency of orders to prevent members from seeking price discovery and potentially preventing price improvement which may result from exposing an order.

The Exchange proposes to add a new rule at 1097(c) which provides, “Prior to or after submitting an order to Phlx, a member cannot inform another member or any other third party of any of the terms of the order for purposes of violating Rule 1095.” Similar rule text is contained in The Nasdaq Options Market LLC (“NOM”) Rules.²⁸ The Exchange believes that adding this language will better inform participants that Rule 1097 prohibits such behavior. The Exchange desires to conform the language in this rule to that of affiliated Nasdaq markets.

The Exchange’s proposal to adopt a new Rule 1097 will conform proposed Rule 1097 to other Nasdaq affiliated markets filing similar rules.²⁹ The Exchange’s proposal to add rule text

²⁸ See NOM Rules at Chapter VII, Section 12 at Commentary .04.

²⁹ Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Nasdaq BX, Inc. and Nasdaq Stock Market LLC are adopting similar rules to proposed Phlx Rule 1097.

to describe potential violations of this rule will bring greater clarity to current limitations that exist when entering orders. Proposed Rule 1097 is consistent with the Act because it provides one rule for ease of reference which list the current limitations within Rule 1080 and some additional limitations. The Exchange believes the proposed rule will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will continue to make clear the requirement to expose orders as well as present more specific limitations on order entry which would violate Phlx Rules. Providing members with more information as to the type of behavior that is violative with respect to order exposure will prevent inadvertent violations of Exchange rules and ensure that orders are subject to appropriate price discovery.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,³¹ 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 as provided for within the purpose section.

Phlx proposes amendments to Phlx Rule 1019 to create a list of all the requirements and conditions for submitting quotes on Phlx within one rule is consistent with the Act because it will provide greater transparency to market participants of the applicable requirements. The Exchange's proposal is intended to provide greater information with respect to Firm Quote within new Rule 1019(b)(5) and regarding trade-through and locked and crossed markets

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

1019(b)(6). The addition rule text is consistent with the Act because the Exchange is adding detail regarding the method in which orders which are firm or locked and crossed will be handled in the System. The notifications for Firm Quote are made clear with the proposed rule text. The Exchange believes that it is consistent with the Act to specify when quotes are firm and the handling of such quotes by the System for the protection of investors and the general public. The clarity is designed to promote just and equitable principles of trade by notifying all participants engaged in market making of potential outcomes. Today, quotations may not be executed against at prices that trade-through an away market. Also, quotations may not lock or cross an away market. The repricing of quotations is consistent with the Act because repricing prevents the Exchange from disseminating a price which locks or crosses another market. Phlx is required avoiding displaying a quotation that would lock or cross a quotation of another market center at the time it is displayed. Preventing inferior prices from displaying perfects the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Similar to Rule 1019, which describes requirements for quotes, the Exchange proposes to adopt a new Rule 1096, "Entry and Display of Orders" and describe the current requirements and conditions for entering orders. The Exchange notes that the requirements provided for within this rule represent the current practice. The purpose of Rule 1096 is to memorialize this information within a single rule to provide a list of other requirements which may impact the execution of an order. Trades may be nullified today by agreement of the parties. The Exchange believes that it is consistent with the Act to permit parties to agree to a nullification provided the nullification does not violate other exchange rules. The Exchange notes that parties may not agree to a mutual agreement for purposes that would cause another rule to be violated. The

Exchange believes that it is consistent with the Act and protection of investors and general public to make clear the expected behavior with respect to nullifications.

Today, orders may not be executed at a price that trades through an away market. Also, orders may not lock or cross an away market. Routable orders must comply with Trade-Through and Locked and Crossed Markets restrictions. The repricing of orders is consistent with the Act because repricing prevents the Exchange from disseminating a price which locks or crosses another market. Phlx is required avoiding displaying an order that would lock or cross a quotation of another market center at the time it is displayed. Preventing inferior prices from displaying perfects the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange's proposal to adopt a new Rule 1096, "Entry and Display of Orders" and describe the current requirements and conditions for entering orders, similar to proposed changes to Rule 1019 for quotes is consistent with the Act because it will provide transparency as to manner in which orders may be submitted to the System. The Exchange's new rule reflects the current requirements for submitting orders into the System. Similar to proposed Rule 1019, the Exchange proposes to memorialize requirements and limitations within one rule for ease of reference.

The Exchange's proposal to adopt a new Rule 1097 will conform proposed Rule 1097 to other Nasdaq affiliated markets filing similar rules.³² The Exchange's proposal to add rule text to describe potential violations of this rule will bring greater clarity to current limitations that exist when entering orders. Proposed Rule 1097 is consistent with the Act because it provides one rule for ease of reference which list the current limitations within Rule 1080 and some additional limitations. The Exchange believes the proposed rule will promote just and equitable

³² Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Nasdaq BX, Inc. and Nasdaq Stock Market LLC are adopting similar rules to proposed Phlx Rule 1097.

principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will continue to make clear the requirement to expose orders as well as present more specific limitations on order entry which would violate Phlx Rules. Providing members with more information as to the type of behavior that is violative with respect to order exposure will prevent inadvertent violations of Exchange rules and ensure that orders are subject to appropriate price discovery.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that other options markets have similar rules with respect to order and quote entry and the requirements to expose orders. The implementation of such rules may vary across options markets. Despite the variation in implementation, the Exchange does not believe this proposal creates an undue burden on inter-market competition because the requirements for order exposure are consistent with respect to all markets as well as the ability to submit quotes and orders on all options markets.

Rule 1019, Acceptance of Quote and Orders

The Exchange's proposal to add Rule 1019(b) to describe the current requirements and conditions for submitting quotes does not impose an undue burden on competition and all Specialists and ROTs are subject to these requirements today. The Exchange is memorializing its current practice by reflecting the various requirements and limitations for quote entry in one rule for ease of reference and clarity. The Exchange is also proposing to conform this rule to similar rules across other Nasdaq affiliated exchanges.

Rule 1080, Electronic Acceptance of Quotes and Orders

The Exchange's proposal to amend Rule 1080(a)(i)(B) to add the following sentence to Specialized Quote Feed ("SQF"), "Specialists, SQTs and RSQTs may only enter interest into SQF in their assigned options series" is consistent with the Act because it will make clear the manner in which quotes may be submitted to the System.

The Exchange's proposal to remove rule text within Rule 1080(k) and memorializing the quoting requirements within Rule 1019 does not impose an undue burden on competition and all Specialists and ROTs are subject to these requirements today.

Rule 1096, Entry and Display of Orders

The Exchange's proposal to adopt a new Rule 1096, "Entry and Display of Orders" and describe the current requirements and conditions for entering orders, similar to proposed changes to Rule 1019 for quotes does not impose an undue burden on competition because it applies uniformly to all members. This rule memorializes the manner in which orders may be submitted to the System and provides transparency as to manner in which orders may be submitted to the System. The Exchange's new rule text memorializes the current requirements for submitting orders into the System. Similar to proposed Rule 1019, the Exchange proposes to memorialize requirements and limitations within one rule for ease of reference. The Exchange is also proposing to conform this rule to similar rules across other Nasdaq affiliated exchanges.

Adding new rules for "Nullification by Mutual Agreement and new Rule 1096(a)(5) does not impose an undue burden on competition as these rules apply to all members today and would be considered conduct violate of Rule 707, "Conduct Inconsistent with Just and Equitable Principles of Trade."

Rule 1097, Limitations on Order Entry

The Exchange's proposal to adopt a new Rule 1097, titled "Limitations on Orders," and

relocate rule text from current Rule 1080 will conform proposed Rule 1097 to other Nasdaq affiliated markets filing similar rules.³³ This rule will apply uniformly to all members. The Exchange' proposal add new rule text at proposed Rule 1097(c)(1) which is the same rule text within ISE Options 3, Section 22 at Supplementary Material .01 and is similar to rule text at Rule 1087(f) related to PIXL will provide members greater transparency as to the type of behavior that would violate Exchange rules when executing agency orders. Additionally, adding a new rule at 1097(d), similar to rule text is contained in NOM Rules,³⁴ will better inform participants that Rule 1097 prohibits such behavior. The Exchange desires to conform the language in this rule to that of affiliated Nasdaq markets.

Relocation of Kill Switch and Detection of Loss of Communication

The Exchange's proposal to relocate the rule text at Rule 1019(b), Kill Switch, and (c), Detection of Loss of Communication, to new Rules 1073 and 1074, respectively does not impose an undue burden on competition. The relocations are non-substantive and intended to provide greater transparency to these rules by making them easier to locate.

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

³³ Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Nasdaq BX, Inc. and Nasdaq Stock Market LLC intend to adopt similar rules to proposed Phlx Rule 1097.

³⁴ See NOM Rules at Chapter VII, Section 12 at Commentary .04.

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.³⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2019-25 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.

³⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁶ 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.

All submissions should refer to File Number SR-Phlx-2019-25. 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-Phlx-2019-25, 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.³⁷

Eduardo A. Aleman,

Deputy Secretary.

³⁷ 17 CFR 200.30-3(a)(12).

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