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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88390; File No. SR-Phlx-2020-07]

### **Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amendments to Complex Orders**

March 16, 2020.

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 March 4, 2020, 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 amend Options 3, Section 7, “Electronic Acceptance of Quotes and Orders,” Options 3, Section 14, “Complex Orders,” Options 8, Section 17, “Limitations on Members’ Trading Because of Customers’ Orders” and Options 8, Section 32, “Certain Types of Floor-Based (Non-System) Orders Defined.”

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.

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

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

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 3, Section 7, "Electronic Acceptance of Quotes and Orders," Options 3, Section 14, "Complex Orders," Options 8, Section 17, "Limitations on Members' Trading Because of Customers' Orders" and Options 8, Section 32, "Certain Types of Floor-Based (Non-System) Orders Defined." Each change is described below.

Options 3, Section 7 and Options 8, Section 32

The Exchange proposes to amend Options 3, Section 7, titled "Electronic Acceptance of Quotes and Orders" and Options 8, Section 32, titled "Certain Types of Floor-Based (Non-System) Orders Defined" to complete the list of Order Types available for trading on the Exchange by referencing currently available Complex Order types. Options 3, Section 7(b) currently lists all order types that may be electronically submitted to the System. Options 8, Section 32(a) currently lists all order types that may be utilized on the trading floor. The Exchange lists all simple order types in both Options 3, Section 7(b) and Options 8, Section 32(a), but these lists do not include Complex Orders which are currently described within Options 3, Section 14, titled "Complex Orders." The Exchange proposes to amend Options 3,

Section 7(b) and Options 8, Section 32(a) to simply reference that a Complex Order is as described in Options 3, Section 14(a)(i).<sup>3</sup> The Exchange also proposes to amend these rules to simply reference that a Stock-Option Order is as described in Options 3, Section 14(a)(i).<sup>4</sup>

The Exchange believes that adding reference to Complex Orders and Stock-Option Orders to Options 3, Section 7(b) and Options 8, Section 32(a) will make clear to market participants the various types of orders that may be transacted both electronically in the System and on the Exchange's trading floor.

#### Options 3, Section 14

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<sup>3</sup> Options 3, Section 14(a)(i) provides, "a Complex Order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. With respect to Mini Options, a Complex Order is an order involving the simultaneous purchase and/or sale of two or more different Mini Options series in the same underlying security, priced as a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Mini Options may only be part of a Complex Order that includes other Mini Options."

<sup>4</sup> Options 3, Section 14(a)(i) provides, "Except respecting Mini Options, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying security (stock or Exchange Traded Fund Share ("ETF")) coupled with the purchase or sale of options contract(s). The underlying security must be the deliverable for the options component of that Complex Order and represent exactly 100 shares per option for regular way delivery. Stock-option orders can only be executed against other stock-option orders and cannot be executed by the System against orders for the individual components. Member organizations may only submit Complex Orders with a stock/ETF component if such orders comply with the Qualified Contingent Trade Exemption from Rule 611(a) of Regulation NMS. Member organizations submitting such Complex Orders with a stock/ETF component represent that such orders comply with the Qualified Contingent Trade Exemption. Members of FINRA or The Nasdaq Stock Market ("Nasdaq") are required to have a Uniform Service Bureau/Executing Broker Agreement ("AGU") with Nasdaq Execution Services, LLC ("NES") in order to trade Complex Orders containing a stock/ETF component; firms that are not members of FINRA or Nasdaq are required to have a Qualified Special Representative ("QSR") arrangement with NES in order to trade Complex Orders containing a stock/ETF component."

The Exchange recently relocated its Rulebook into a new Rulebook Shell.<sup>5</sup> Prior to that relocation, the Exchange filed a rule proposal<sup>6</sup> which adopted rule text within Phlx Rule 1080(f), which stated, “Orders may not be unbundled, nor may a firm solicit a customer to unbundle an order for this purpose.” The Phlx Rulebook Relocation Rule Change inadvertently removed the rule text in the Prior Rule Change at Rule 1080(f). At this time, the Exchange proposes to restore the Rule 1080(f) rule text within its current rules at Options 3, Section 7(f). Similarly, the Exchange inadvertently deleted rule text within the Prior Rule Change at Rule 1098(b)(v), which stated “Complex Orders may be submitted as: All-or-None Orders, Cancel-Replacement Orders, Directed Orders, Limit Orders or Market Orders as those terms are defined in Rule 1080(b).” At this time, the Exchange proposes to restore the Rule 1098(b)(v) rule text within its current rules at Options 3, Section 14(b)(v).

#### Options 8, Section 17

The Exchange proposes to delete the current rule at Options 8, Section 17, “Limitations on Members’ Trading Because of Customers’ Orders.” The Exchange notes that this rule describes a prohibition against trading ahead of Customer Orders. The Exchange currently has such a prohibition within its rules at General 9, Section 1(a) which provides, “Prohibition Against Trading Ahead of Customer Orders. Phlx members and persons associated with a member shall comply with FINRA Rule 5320 as if such Rule were part of Phlx's rules.” The Exchange notes that General 9, Section 1 applies to all Phlx members including members transacting options on the trading floor. The Exchange believes that Options 8, Section 17 is redundant because a trading ahead prohibition already exists in the Rules and applies to the

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<sup>5</sup> See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (“Phlx Rulebook Relocation Rule Change”).

<sup>6</sup> See Securities Exchange Act Release No. 87691 (December 9, 2019), 84 FR 68197 (December 13, 2019) (SR-Phlx-2019-52) (“Prior Rule Change”).

options trading floor. The Exchange proposes to reserve Options 8, Section 17.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by amending its rules to provide greater transparency.

### Options 3, Section 7 and Options 8, Section 32

The Exchange's proposal to amend Options 3, Section 7, titled "Electronic Acceptance of Quotes and Orders" and Options 8, Section 32, titled "Certain Types of Floor-Based (Non-System) Orders Defined" to complete the list of Order Types by referencing existing Complex Order types is consistent with the Act. Options 3, Section 7(b) currently lists all order types that may be electronically submitted to the System. Options 8, Section 32(a) currently lists all order types that may be utilized on the trading floor. However, these lists do not include Complex Orders which are described within Options 3, Section 14, titled "Complex Orders." The Exchange believes amending Options 3, Section 7(b) and Options 8, Section 32(a) to reference Complex Orders and Stock-Option Orders, which are currently described in Options 3, Section 14(a)(i), will make clear to market participants the various types of orders that may be transacted both electronically in the System and on the Exchange's trading floor.

### Options 3, Section 14

The Exchange's proposal to restore inadvertently deleted rule text within Options 3, Section 7(f) and Section 14(b)(v) from a Prior Rule Change will correct Phlx's rules to reflect

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

previously adopted rule text that was inadvertently omitted when it adopted its shell Rulebook as explained above.<sup>9</sup>

Options 8, Section 17

The Exchange’s proposal to delete the current rule at Options 8, Section 17, “Limitations on Members’ Trading Because of Customers’ Orders” is consistent with the Act because this rule is redundant. General 9, Section 1(a) and Options 8, Section 17 both contain a prohibition against trading ahead of Customer Orders. The Exchange proposes to delete the redundant rule text within Options 8, Section 17. The rule text within General 9, Section 1 applies to all Phlx members, including members transacting options on the trading floor. The deletion of Options 8, Section 17 is a non-substantive amendment to eliminate redundancy within the rules.

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

The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intra-market competition as explained below.

Options 3, Section 7 and Options 8, Section 32

The Exchange’s proposal to amend Options 3, Section 7, titled “Electronic Acceptance of Quotes and Orders” and Options 8, Section 32, titled “Certain Types of Floor-Based (Non-System) Orders Defined” to complete the list of Order Types by referencing Complex Order types, which are currently described in Options 3, Section 14(a)(i), does not impose an undue burden on inter-market or intra-market competition. The Exchange is referencing Complex Orders and Stock-Options Orders within Options 3, Section 14(a)(i) within the Options 3, Section 7(b) and Options 8, Section 32(a) lists of order types for greater transparency as to the various types of orders that may be transacted both electronically in the System and on the

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<sup>9</sup> See notes 5 and 6 above.

Exchange's trading floor.

Options 3, Section 14

The Exchange's proposal to restore inadvertently deleted rule text within Options 3, Section 7(f) and Section 14(b)(v) does not impose an undue burden on inter-market or intra-market competition, rather restoring the rule text will correct the current Phlx Rules to reflect previously adopted rule text, as explained herein.

Options 8, Section 17

The Exchange's proposal to delete the current rule at Options 8, Section 17, "Limitations on Members' Trading Because of Customers' Orders" does not impose an undue burden on inter-market or intra-market competition. A prohibition against trading ahead of Customer Orders, is currently contained within General 9, Section 1(a) and applies to all Phlx members, including members transacting business on the trading floor. The deletion of Options 8, Section 17 is a non-substantive amendment to avoid redundancy within the rules.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> Because the 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, if consistent with the protection of

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange believes that the proposal to amend Options 3, Section 7, titled “Electronic Acceptance of Quotes and Orders” and Options 8, Section 32, titled “Certain Types of Floor-Based (Non-System) Orders Defined” to include Complex Orders and Stock-Options Orders, which are described within Options 3, Section 14, will make clear to market participants the various types of orders that may be transacted both electronically in the System and on the Exchange’s trading floor. The Exchange also notes that the proposal to restore inadvertently deleted rule text from a Prior Rule Change within Options 3, Section 7(f) and Section 14(b)(v) will correct the current Phlx Rules to include previously adopted rule text as described above and views this as a non-substantive rule change. In addition, the Exchange states that deleting Options 8, Section 17, “Limitations on Members’ Trading Because of Customers’ Orders” is a non-substantive amendment designed to eliminate a redundant prohibition in Phlx’s Rules, and

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

notes that a prohibition against trading ahead of Customer Orders on the options floor is currently contained within General 9, Section 1(a) and applies to all Phlx members, including members transacting business on the trading floor. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change 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-2020-07 on the subject line.

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<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission 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-2020-07. 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-2020-07, 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>17</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>17</sup> 17 CFR 200.30-3(a)(12), (59).

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