

should be submitted on or before April 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94573; File No. SR-Phlx-2022-14]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 4 of the Pricing Schedule

April 1, 2022.

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 22, 2022, 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 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) (Excludes SPY).”

Additionally, the Exchange proposes to make a technical amendment and add descriptions of three additional terms within Options 7, Section 1, General Provisions.

The Exchange originally filed SR-Phlx-2022-08 on March 1, 2022. On March 10, 2022, the Exchange withdrew SR-Phlx-2022-08 and submitted SR-Phlx-2022-12. On March 22, 2022, the Exchange withdrew SR-Phlx-2022-12 and submitted this filing.

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

#### 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 Schedule within Options 7, Section 4, “Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY).” Specifically, Phlx proposes to decrease the Professional<sup>3</sup> Floor<sup>4</sup> Options Transaction Charges<sup>5</sup> in multiply-listed Penny and non-Penny Symbols. Additionally, the Exchange proposes amendments to Options 7, Section 1, General Provisions. Each change is described below.

###### Options 7, Section 4

Today, the Exchange assesses Options Transaction Charges in Multiply Listed options, including options overlying equities, ETFs, ETNs and indexes and excluding options in SPY. The Exchange currently assesses the following Floor Options Transaction Charges in multiply-listed Penny and non-Penny Symbols: \$0.25 per contract for a Professional, \$0.35 per contract for a Floor Lead Market Maker<sup>6</sup> and Floor

<sup>3</sup> The term “Professional” applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) 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 Phlx’s Pricing Schedule at Options 7, Section 1(c).

<sup>4</sup> The term “floor transaction” is a transaction that is effected in open outcry on the Exchange’s Trading Floor. See Phlx’s Pricing Schedule at Options 7, Section 1(c).

<sup>5</sup> Floor transaction fees apply to any “as of” or “reversal” adjustments for manually processed trades originally submitted electronically or through FBMS. See Phlx’s Pricing Schedule at Options 7, Section 4, footnote 8.

<sup>6</sup> The term “Floor Lead Market Maker” is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange’s trading floor. See Options 8, Section 2(a)(3).

Market Maker,<sup>7</sup> and \$0.25 per contract for a Broker-Dealer<sup>8</sup> and Firm.<sup>9</sup> Customers<sup>10</sup> are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols.

The Exchange proposes to decrease the Floor Options Transaction Charges for Professionals in multiply-listed Penny and non-Penny Symbols from \$0.25 to \$0.05 per contract. The Exchange believes the decreased Options Transaction Charges will attract a greater amount of Professional orders to Phlx’s Trading Floor.

###### Options 7, Section 1

The Exchange proposes to make a technical amendment within Options 7, Section 1, General Provisions. The Exchange proposes to remove the words “on and” from description of “Market Maker” within Options 7, Section 1(c). Those words are not necessary. The amended description of Market Maker would state, “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 Floor Market Makers.”

The Exchange proposes to add three additional descriptions to Options 7, Section 1(c). Specifically, the Exchange

<sup>7</sup> A Floor Market Maker is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. See Options 8, Section 2(a)(4).

The term “Streaming Quote Trader” or “SQT” is defined in Options 1, Section 1(b)(54) as a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. See Phlx’s Pricing Schedule at Options 7, Section 1(c). The term “Remote Streaming Quote Trader” or “RSQT” is defined in Options 1, Section 1(b)(49) as a Market Maker that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or “RSQTO,” which may also be referred to as a Remote Market Making Organization (“RMO”), is a member organization in good standing that satisfies the RSQTO readiness requirements in Options 2, Section 1(a). See Phlx’s Pricing Schedule at Options 7, Section 1(c).

<sup>8</sup> 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 Phlx’s Pricing Schedule at Options 7, Section 1(c).

<sup>9</sup> The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC. See Phlx’s Pricing Schedule at Options 7, Section 1(c).

<sup>10</sup> 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 Phlx’s Pricing Schedule at Options 7, Section 1(c).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78a.

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

proposes to define the terms “Floor Broker,” “Floor Lead Market Maker,” and “Floor Market Maker.” These terms are currently defined within Options 8, Section 2(a)(2)–(4). The Exchange proposes to add these terms to Options 7, Section 1(c) for greater transparency when referencing the Pricing Schedule.

- The Exchange proposes to define a “Floor Broker” to mean an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders.

- The Exchange proposes to define a “Floor Lead Market Maker” to mean a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange’s Trading Floor.

- The Exchange propose to define a “Floor Market Maker” to mean a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. The Exchange believes that these amendments to Options 7, Section 1 will bring greater clarity to the Pricing Schedule.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>12</sup> in particular, in 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.”<sup>13</sup>

Likewise, in *NetCoalition v. Securities and Exchange Commission*<sup>14</sup>

(“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.<sup>15</sup> 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.”<sup>16</sup>

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 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’ . . . .”<sup>17</sup> 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.

## Options 7, Section 4

The Exchange’s proposal to decrease the Floor Options Transaction Charges for Professionals in multiply-listed Penny and non-Penny Symbols from \$0.25 to \$0.05 per contract is reasonable because the decreased fee should attract a greater amount of Professional orders to Phlx’s Trading Floor. Today, BOX Exchange LLC (“BOX”) assesses a Professional Customer Fee of \$0.10 per contract in Penny and Non-Penny Symbols for manual transactions.<sup>18</sup> By decreasing its Professional Floor Options Transaction Charge, the Exchange believes it will be able to compete more effectively with BOX for options order flow because of the lower Professional fee.

The Exchange’s proposal to decrease the current Floor Options Transaction Charges for Professionals in multiply-listed Penny and non-Penny Symbols from \$0.25 to \$0.05 per contract is

equitable and not unfairly discriminatory. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols because Customer order flow is unique. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Floor Lead Market Makers and Floor Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that lowering the Professional Floor Options Transaction Charges is similarly beneficial as the lower fees may cause market participants to select Phlx’s Trading Floor as a venue to send Professional order flow, which benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all market participants.

Today, Floor Lead Market Makers and Floor Market Makers are assessed the highest Penny and non-Penny Options Transaction Charges. Customers are not assessed a Penny or non-Penny Options Transaction Charge. Today, Professionals, Broker-Dealers and Firms pay a Floor Options Transaction Charge of \$0.25 per contract. With this proposal, Professionals would continue to be assessed a lower Options Transaction Charges in multiply-listed Penny and non-Penny Symbols as compared to Floor Lead Market Makers and Floor Market Makers. Floor Lead Market Makers and Floor Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a Floor Broker to represent their trading interest on the Trading Floor as compared to a Floor Lead Market Maker or Floor Market Maker that could directly transact such orders on the Trading Floor. Further, the Exchange believes that in order to attract orders from a Professionals, Broker-Dealers or a Firm, via a Floor Broker, the rates must be competitive with rates at other trading floors. With respect to Firms, the Exchange notes that Firms are subject to a Monthly Firm Fee Cap of \$75,000. Firm Floor Option Transaction Charges along with Qualified Contingent Cross Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary

<sup>15</sup> See *NetCoalition*, at 534–535.

<sup>16</sup> *Id.* at 537.

<sup>17</sup> *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)).

<sup>18</sup> In addition to the Professional fee of \$0.10 per contract, BOX assesses the following Penny and Non-Penny Interval Classes manual transactions fees: \$0.25 per contract to Broker Dealers and \$0.35 per contract to Market Makers. BOX does not assess Public Customers or Broker Dealers facilitating a Public Customer a Penny and Non-Penny Interval Classes manual transactions fee. See BOX’s Fee Schedule at Section II.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>13</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>14</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

account.<sup>19</sup> Finally, with respect to Broker-Dealers, today the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.<sup>20</sup> The Exchange notes that both Firms and Broker-Dealers have the ability to reduce their Options Transaction Charges as compared to Professionals.

The Exchange believes it is equitable and not unfairly discriminatory to assess a Professional Floor Options Transaction Charge that is less favorable than Customers but more favorable than Firms, and Broker-Dealers and continue to assess a lower fee as compared to Floor Lead Market Makers, Floor Market Makers. Professionals have access to more information than Customers and therefore are being assessed a less favorable Options Transaction Charge<sup>21</sup> as compared to Customers. While Professionals may have the same technological and informational advantages as Broker-Dealers trading for

their own account,<sup>22</sup> the Exchange believes that lowering the current Professional Floor Options Transaction Charges to range between that of a Customer and other non-Customer participants (Floor Lead Market Makers, Floor Market Makers, Firms, and Broker-Dealers) is equitable and not unfairly discriminatory because the potential increased volume would create better trading opportunities that benefit all market participants.<sup>23</sup> Specifically, greater volume and liquidity from increased order flow could create more trading opportunities and tighter spreads. Finally, assessing lower fees for Professional Customers compared to Floor Lead Market Makers, Floor Market Makers, Firms, and Broker-Dealers is not novel as BOX currently assesses lower fees for Professional Customers as compared to Broker Dealers and Market Makers.<sup>24</sup> Additionally, with respect to Qualified Contingent Cross Fees, Phlx currently assesses Customers and Professional no fee, while a Lead Market Maker, Market Maker, Firm and Broker-Dealer are assessed \$0.20 per contract.<sup>25</sup>

#### Options 7, Section 1

The Exchange's proposal to amend the description of "Market Maker" within Options 7, Section 1(c) is

consistent with the Act. The proposed non-substantive amendment removes unnecessary words.

The Exchange's proposal to define the terms "Floor Broker," "Floor Lead Market Maker," and "Floor Market Maker" within Options 7, Section 1(c) is consistent with the Act. The addition of these terms, which are currently defined within Options 8, Section 2(a)(2)–(4), will bring greater transparency to the Pricing Schedule.

#### 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.

Moreover, the proposal is designed to encourage market participants to execute a greater amount of Professional orders on Phlx's Trading Floor. To the extent that the proposed change attracts additional Professional orders to Phlx's Trading Floor, this increased order flow would continue to make the Exchange a more competitive venue for order execution.

#### Intra-Market Competition

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

The Exchange's proposal to decrease the Floor Options Transaction Charges for Professionals in multiply-listed Penny and non-Penny Symbols from

<sup>19</sup> See Options 7, Section 4, which states, "Firms are subject to a maximum fee of \$75,000 ('Monthly Firm Fee Cap'). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Firm Fee Cap. NDX, NDXP, and XND Options Transactions will be excluded from the Monthly Firm Fee Cap. Reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) will be included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap. Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap."

<sup>20</sup> See Options 7, Section 4, which states, "... In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ('BD-Customer Facilitation'), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. NDX, NDXP, and XND Options Transactions will be excluded from each of the waivers set forth in the above paragraph."

<sup>21</sup> Customers are not assessed Options Transaction Charges for multiply-listed options in Penny and non-Penny Symbols.

<sup>22</sup> A Professional by definition enters 390 orders per day on average over a calendar month which the Exchange believes exceeds the number of retail Customer orders in a single day.

<sup>23</sup> The Exchange notes that BOX assesses the same fees for Professionals and Broker-Dealers for non-auction transactions within Section I, A of BOX's Fee Schedule, PIP and COPIP transactions within Section I, B of BOX's Fee Schedule, Facilitation and Solicitation transactions within Section I, C of BOX's Fee Schedule, and Complex Orders within Section III, A of BOX's Fee Schedule. See BOX's Fee Schedule. BOX has stated in prior rule changes that, "Professional Customers, while Public Customers by virtue of not being Broker Dealers, generally engage in trading activity more similar to Broker Dealer proprietary trading accounts (submitting more than 390 standard orders per day on average)." See Securities Exchange Act Release No. 73547 (November 6, 2014), 79 FR 67520 at 67523 (November 13, 2014) (SR-BOX-2014-25) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility). Notwithstanding this justification, BOX assesses lower Professional manual transactions as compared to Broker-Dealers and Market Makers.

<sup>24</sup> BOX assess a Professional a manual fee of \$0.10 per contract in Penny and Non-Penny Interval Classes, while assessing \$0.25 per contract to Broker Dealers and \$0.35 per contract to Market Makers for manual transactions in Penny and Non-Penny Interval Classes. See BOX's Fee Schedule at Section II.

<sup>25</sup> See Options 7, Section 4 which states, "QCC Transaction Fees for a Lead Market Maker, Market Maker, Firm and Broker-Dealer are \$0.20 per contract. Customers and Professionals are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e)."

\$0.25 to \$0.05 per contract does not create an undue burden on competition. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols because Customer order flow is unique. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Floor Lead Market Makers and Floor Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that lowering the Professional Floor Options Transaction Charges is similarly beneficial as the lower fees may cause market participants to select Phlx's Trading Floor as a venue to send Professional order flow, which benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all market participants.

Today, Floor Lead Market Makers and Floor Market Makers are assessed the highest Penny and non-Penny Options Transaction Charges. Customers are not assessed a Penny or non-Penny Options Transaction Charge. Today, Professionals, Broker-Dealers and Firms pay a Floor Options Transaction Charge of \$0.25 per contract. With this proposal, Professionals would continue to be assessed a lower Options Transaction Charges in multiply-listed Penny and non-Penny Symbols as compared to Floor Lead Market Makers and Floor Market Makers. Floor Lead Market Makers and Floor Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a Floor Broker to represent their trading interest on the Trading Floor as compared to a Floor Lead Market Maker or Floor Market Maker that could directly transact such orders on the Trading Floor. Further, the Exchange believes that in order to attract orders from a Professionals, Broker-Dealers or a Firm, via a Floor Broker, the rates must be competitive with rates at other trading floors. With respect to Firms, the Exchange notes that Firms are subject to a Monthly Firm Fee Cap of \$75,000. Firm Floor Option Transaction Charges along with Qualified Contingent Cross Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary

account.<sup>26</sup> Finally, with respect to Broker-Dealers, today the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.<sup>27</sup> The Exchange notes that both Firms and Broker-Dealers have the ability to reduce their Options Transaction Charges as compared to Professionals.

Assessing a Professional Floor Options Transaction Charge that is less favorable than Customers but more favorable than Firms, and Broker-Dealers and continuing to assess a lower fee as compared to Floor Lead Market Makers, Floor Market Makers does not impose an undue burden on competition. Professionals have access to more information than Customers and therefore are being assessed a less favorable Options Transaction Charge<sup>28</sup> as compared to Customers. While Professionals may have the similar technological and informational advantages as Broker-Dealers trading for their own account,<sup>29</sup> the Exchange believes that lowering the current Professional Floor Options Transaction Charges to range between that of a Customer and other non-Customer participants (Floor Lead Market Makers, Floor Market Makers, Firms, and Broker-Dealers) does not impose an undue burden on competition because the potential increased volume would create better trading opportunities that benefit all market participants.<sup>30</sup> Specifically, greater volume and liquidity from increased order flow could create more trading opportunities and tighter spreads. Finally, assessing lower fees for Professional Customers compared to Floor Lead Market Makers, Floor Market Makers, Firms, and Broker-Dealers is not novel as BOX currently assesses lower fees for Professional Customers as compared to Broker Dealers and Market Makers.<sup>31</sup> Additionally, with respect to Qualified Contingent Cross Fees, Phlx currently assesses Customers and Professional no fee, while a Lead Market Maker, Market

Maker, Firm and Broker- Dealer are assessed \$0.20 per contract.<sup>32</sup>

#### Options 7, Section 1

The Exchange's proposal to amend the description of "Market Maker" within Options 7, Section 1 does not impose an undue burden on competition. The proposed non-substantive amendment removes unnecessary words.

The Exchange's proposal to define the terms "Floor Broker," "Floor Lead Market Maker," and "Floor Market Maker" within Options 7, Section 1(c) does not impose an undue burden on competition. The addition of these terms, which are currently defined within Options 8, Section 2(a)(2)-(4), will bring greater transparency to the Pricing Schedule.

#### 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.<sup>33</sup>

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

#### IV. Solicitation of Comments

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

##### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2022-14 on the subject line.

<sup>32</sup> See note 26 above.

<sup>33</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>26</sup> See note 20 above.

<sup>27</sup> See note 21 above.

<sup>28</sup> See note 22 above.

<sup>29</sup> See note 23 above.

<sup>30</sup> See note 24 above.

<sup>31</sup> See note 25 above.

*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–2022–14. This file number should be included on the subject line if email 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–2022–14, and should be submitted on or before April 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2022–07340 Filed 4–6–22; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–94585; File No. SR–NYSE–2022–18]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Period for Specified Commentaries to Rules 7.35A and 7.35C and Temporary Rule Relief in Rule 36.30**

April 1, 2022.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”) <sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that on March 29, 2022, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to extend the temporary period for specified Commentaries to Rules 7.35A and 7.35C and temporary rule relief in Rule 36.30, to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2022. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

**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 self-regulatory organization 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 those 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 parts of such statements.

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

**1. Purpose**

The Exchange proposes to extend the temporary period for specified Commentaries to Rules 7.35A and 7.35C and temporary rule relief to Rule 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2022. The current temporary period that these Rules are in effect ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on March 31, 2022.

**Background**

To slow the spread of COVID–19 through social-distancing measures, on March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.<sup>4</sup> On May 14, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to reopen the Trading Floor on a limited basis on May 26, 2020 to a subset of Floor brokers, subject to safety measures designed to prevent the spread of COVID–19.<sup>5</sup> On June 15, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to begin the second phase of the Trading Floor reopening by allowing DMMs to return on June 17, 2020, subject to safety measures designed to prevent the spread of COVID–19.<sup>6</sup> Consistent with these safety measures, both DMMs and Floor broker firms continue to operate with reduced staff on the Trading Floor.

**Proposed Rule Change**

Beginning in March 2020, the Exchange modified its rules to add Commentaries to Rules 7.35, 7.35A,

<sup>4</sup> Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination. The Exchange's current rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110>.

<sup>5</sup> See Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR–NYSE–2020–47) (Notice of filing and immediate effectiveness of proposed rule change).

<sup>6</sup> See Securities Exchange Act Release No. 89086 (June 17, 2020) (SR–NYSE–2020–52) (Notice of filing and immediate effectiveness of proposed rule change).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.

<sup>34</sup> 17 CFR 200.30–3(a)(12).