

attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

#### Intermarket Competition

In terms of inter-market competition, 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 credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 50% of industry volume.

If the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

#### *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>7</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 (<https://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-NASDAQ-2023-015 on the subject line.

#### *Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NASDAQ-2023-015. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-015 and should be submitted on or before July 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97658; File No. SR-Phlx-2023-22]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Options 8 Rules

June 7, 2023.

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 May 31, 2023, 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 certain rule text within Options 8 related to Phlx's trading floor. Specifically, the Exchange proposes to amend Options 8, Section 26, Trading Halts, Business Continuity and Disaster Recovery; Options 8, Section 28, Responsibilities of Floor Brokers; Options 8, Section 29, Use of Floor Based Management System by Floor

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Market Makers and Lead Market Makers; Options 8, Section 30, Crossing, Facilitation and Solicited Orders; Options 8, Section 32, Types of Floor-Based (non-System) Orders; Options 8, Section 33, Accommodation Transactions; Options 8, Section 34, FLEX Index, Equity, and Currency Options; and Options 8, Section 39, Option Minor Rule Violations and Order and Decorum Regulations.

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

The Exchange proposes to amend various rules within Options 8 related to Phlx's trading floor. Specifically, the Exchange proposes to amend Options 8, Section 26, Trading Halts, Business Continuity and Disaster Recovery; Options 8, Section 28, Responsibilities of Floor Brokers; Options 8, Section 29, Use of Floor Based Management System by Floor Market Makers and Lead Market Makers; Options 8, Section 30, Crossing, Facilitation and Solicited Orders; Options 8, Section 32, Types of Floor-Based (non-System) Orders; Options 8, Section 33, Accommodation Transactions; Options 8, Section 34, FLEX Index, Equity, and Currency Options; and Options. Each change will be discussed below.

#### Automation of FLEX and Cabinet Orders

Today, Phlx permits members and member organizations to transact FLEX

Options<sup>3</sup> and Cabinet Orders<sup>4</sup> on its trading floor.

#### FLEX Options

FLEX Options provide investors with the ability to customize basic option features including expiration date, exercise style, and certain exercise prices. Phlx FLEX Options may be FLEX index, equity, or currency options. Today, Phlx FLEX Options transactions are exposed in open outcry on the trading floor similar to other options that trade on Phlx's trading floor. Today, the Requesting Member<sup>5</sup> initiates a Request-for-Quote ("RFQ") by submitting a ticket to Market Operations staff prior to requesting a quote in open outcry by announcing certain contract terms to the trading crowd of the non-FLEX option.<sup>6</sup> Members may enter, modify, or withdraw FLEX Quotes at any point during the Request Response Time,<sup>7</sup> which is currently set to two minutes, at the Market Operations post. At the expiration of the Request Response Time, the open outcry BBO is identified in accordance with the price and time priority principles set forth by the Exchange. Thereafter, on receipt of an RFQ in proper form, the assigned Lead Market Maker or the Requesting Member shall cause the terms of the RFQ to be disseminated as an administrative message through the Options Price Reporting Authority ("OPRA").<sup>8</sup>

If the Requesting Member has not indicated an intention to cross or act as

<sup>3</sup> The term "FLEX option" means a FLEX option contract that is traded subject to Options 8, Section 34(a). The Exchange proposes to replace the term "FLEX option" with "FLEX Option" in the rule text.

<sup>4</sup> A "cabinet order" is a closing limit order at a price of \$1 per option contract for the account of a Public Customer, firm, Lead Market Maker or ROT. An opening order is not a "Cabinet Order" but may in certain cases be matched with a Cabinet Order pursuant to subsection (a)(iii) of Options 8, Section 33. Only Floor Brokers may represent Cabinet Orders. See Options 8, Section 33(a).

<sup>5</sup> A Requesting Member is a member of the Exchange qualified to trade FLEX Options pursuant to Options 3, Section 34(d) who initiates an RFQ for a FLEX option. See Options 3, Section 34(b)(10).

<sup>6</sup> The contract terms include: (1) underlying index, security or foreign currency; (2) type, size, and crossing intention; (3) in the case of FLEX index options and FLEX equity options, exercise style and settlement type; (4) expiration date; (5) exercise price; and (6) respecting index options, the settlement value. See Options 8, Section 34(c)(1).

<sup>7</sup> The Request Response Time is the minimum period of time established by the Exchange, during which Exchange members participating in FLEX Options may provide FLEX Quotes in response to a Request for Quotes. See Options 8, Section 34(b)(12).

<sup>8</sup> FLEX Quotes must be entered during the Request Response Time within Options 8, Section 34(b)(12) of 15 seconds. All FLEX Quotes may be entered, modified or withdrawn at any point during the request response time. See Options 8, Section 34(c)(2).

principal with respect to any part of the FLEX trade, the member shall promptly accept or reject the displayed BBO; provided, however, that if such a Requesting Member either rejects the BBO or is given a BBO for less than the entire size requested, all FLEX participating members other than the Requesting Member will have an opportunity during the BBO Improvement Interval in which to match, or improve, (as applicable), the BBO pursuant to Options 8, Section 34(c)(3). At the expiration of any such BBO Improvement Interval,<sup>9</sup> which is currently set to 15 seconds, the Requesting Member must promptly accept or reject the BBO(s). If the Requesting Member has indicated an intention to cross or act as principal with respect to any part of the FLEX trade, acceptance of the displayed BBO shall be automatically delayed until the expiration of the BBO Improvement Interval pursuant to Options 8, Section 34(c)(3). Prior to the BBO Improvement Interval, the Requesting Member must indicate at the post the price at which the member expects to trade. In these circumstances, the Requesting Member may participate with all other FLEX-participating members in attempting to improve or match the BBO during the BBO Improvement Interval pursuant to Options 8, Section 34(c)(3). At expiration of the BBO Improvement Interval, the Requesting Member must promptly accept or reject the BBO(s) pursuant to Options 8, Section 34(c)(3). The Requesting Member has no obligation to accept any FLEX bid or offer pursuant to Options 8, Section 34(c)(3). Whenever, following the completion of FLEX bidding and offering responsive to a given RFQs, the Requesting Member rejects the BBO or the BBO size exceeds the FLEX transaction size indicated in the RFQs, members may accept the entire order or the unfilled balance of the BBO pursuant to Options 8, Section 34(c)(3). Once the FLEX Order is executed in open outcry, the FLEX trade is disseminated to OPRA by the Exchange pursuant to Options 8, Section 34(c)(6).

In contrast, as proposed, in order to transact a FLEX Order, a member would enter open outcry trading and announce one of each of the following terms<sup>10</sup>

<sup>9</sup> The BBO Improvement Interval means the minimum period of time, to be established by the Exchange, during which members may submit FLEX Quotes to meet or improve the BBO established during the Request Response Time. See Options 8, Section 34(b)(15).

<sup>10</sup> See proposed Options 8, Section 34(f)(1) which states, "Characteristics of Underlying Interest: (A) any index upon which options currently trade on

within subparagraph (f)(1).<sup>11</sup> Additionally, all other terms of a FLEX Option series, which are the same as those that apply to non-FLEX Options, must be included except that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option). Floor participants would have a reasonable amount of time (which amount of time must be between three seconds and five minutes) from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order (including announcing a crossing transaction pursuant to Options 8, Section 30(a)) to respond with bids or offers. This timeframe would be analogous to the RFQ Process which includes the BBO Improvement Interval. Today, an Options Exchange Official<sup>12</sup> would intervene if they believed that an appropriate amount of time was not allotted for the FLEX Order to trade. The Options Exchange Official would enforce the requirement that the amount of time must be at least three seconds and no more than five minutes based on the complexity of the trade and the responses in the trading crowd when determining if the time was reasonable. For example, based on the number of participants who indicate an interest to participate in the trade and the complexity of the trade, the Options Exchange Official would determine if there was an appropriate amount of time and require more time if necessary. Unlike the current process, an RFQ ticket would not be submitted to the Market Operations post and the RFQ would not be disseminated to OPRA. By contrast, quotes are not disseminated

the Exchange. The applicable index multiplier shall be the same multiplier, in the case of U.S. dollar-denominated FLEX index options, that applies to non-FLEX index options on the same underlying index; (B) any security which is options-eligible pursuant to Options 4, Section 3; or (C) any foreign currency which is options-eligible pursuant to Options 4, Section 3 and which underlies non-FLEX U.S. dollar-settled foreign currency options that are trading on the Exchange.”

<sup>11</sup> See proposed Options 8, Section 34(h).

<sup>12</sup> The term “Option Exchange Official” means an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. A list of individual Options Exchange Officials shall be displayed on the Exchange website. The Chief Regulatory Officer shall maintain the list of Options Exchange Officials and update the website each time a name is added to, or deleted from, the list of Options Exchange Officials. In the event no Options Exchange Official is available to rule on a particular matter, the Chief Regulatory Officer or his/her designee shall rule on such matter. See Options 1, Section 1(b)(38).

with respect to other trades in open outcry today. While a market participant could seek to participate in the trade by calling a floor broker after viewing the FLEX RFQ on OPRA, this is an uncommon scenario.<sup>13</sup> FLEX Orders, unlike standard orders, are less common and the Exchange does not have a similar RFQ process for standard orders that are analogous to those FLEX Orders. This proposed process would align with Cboe, Inc.’s (“Cboe”) process and not require Phlx to disseminate quotes to OPRA while other options floor exchanges have no similar obligations.<sup>14</sup> The Exchange believes that the proposed process is analogous to the current process and provides market participants ample time to respond to requests for a market in a FLEX Order. As the foregoing process demonstrates, Phlx seeks to maintain a competitive trading floor through the administration of its rules which contain processes to ensure that options transactions are exposed in such a way as to permit other floor members an opportunity to participate in price discovery by requiring floor members to seek liquidity in open outcry.

The Exchange proposes several amendments to Options 8, Section 34. First, the Exchange proposes to require FLEX Orders to be reported into Phlx’s Options Floor Based Management System or “FBMS.” FBMS will create an electronic audit trail for FLEX Orders, thereby further automating the execution and reporting of FLEX Options. With this change, members and member organizations will be required to record all FLEX Orders represented in the trading crowd into FBMS.<sup>15</sup> Orders entered into FBMS will be executed based on market conditions at the time of execution and in accordance with Exchange rules. All executed contracts will be reported to OPRA and sent to The Options Clearing Corporation (“OCC”) for clearing, similar to all other equity, equity index and U.S. dollar-settled foreign currency options orders executed on the Exchange’s trading floor. Second, the Exchange proposes to remove its RFQ process including the BBO Improvement Interval Process, as explained above, with this rule change. Third, the Exchange proposes to

<sup>13</sup> See Options 3, Section 34(c)(1) and (2) which explains the RFQ Process to request a quotation and respond.

<sup>14</sup> Cboe does not disseminate via OPRA information respecting open outcry RFQs. See Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 at 308 (January 4, 2012) (SR-Cboe-2011-123).

<sup>15</sup> A FLEX Option series is only eligible for trading if the FLEX Order is represented in open outcry. See proposed Options 8, Section 34(h).

reorganize Options 8, Section 34 to restructure its rule to include additional information which describes current FLEX trading on Phlx. The proposed amendments seek to reorganize Options 8, Section 34 so as to provide a greater amount of information concerning FLEX trading.

The Exchange proposes to add a new Options 8, Section 34(b) titled “Order Types” to address FLEX Order types. This proposed rule text memorializes the Exchange’s current practice as it relates to order types for FLEX trading. Specifically, the Exchange proposes to state that it may determine to make the order types and Time-in-Force, respectively, within Options 8, Section 32 submitted in FLEX Options (“FLEX Orders”) available on a class or System basis. Options 8, Section 32 describes the order types available on the trading floor. Specifically, with respect to complex orders transacted on the trading floor, complex FLEX Orders may have up to the maximum number of legs permitted pursuant to Exchange rules for standard trading. Further, each leg of a complex FLEX Order: (1) must be for a FLEX Option series authorized for FLEX trading with the same underlying equity security or index; (2) must have the same exercise style (American or European); and (3) for a FLEX Index Option, may have a different settlement type (a.m.-settled or p.m.-settled), except each leg must have the same settlement type. Today, Options 8, Section 32 provides that the Exchange may determine to make certain order types and time-in-force, respectively, available on a class or System basis. The Exchange is proposing to add this same rule text within new Options 8, Section 34(b) with respect to FLEX Orders. Today, the Exchange may determine which orders may apply to FLEX trading. The language concerning complex orders is intended to memorialize the manner in which complex orders may trade as FLEX. The proposed rule text explains the manner in which these orders trade today on Phlx. This proposed change is not intended to amend the Exchange’s current practice, which is not currently described within the FLEX rules.

The Exchange proposes to relocate Options 8, Section 34(c)(8), concerning Trading Hours, to new Options 8, Section 34(c) without change. The Exchange proposes to add a new header re-titled “Trading Hours”.

The Exchange proposes to relocate Options 8, Section 34(c)(7), concerning Trading Rotations, to new Options 8, Section 34(d) without change.

The Exchange proposes to adopt rule text similar to Cboe Rule 4.21(a),<sup>16</sup> which describes current permissible series for FLEX Options at new Options 8, Section 34(e). The proposed rule text would state that the Exchange may authorize for trading a FLEX Option class on any equity security or index it may authorize for trading a non-FLEX Option class on that equity security or index pursuant to Options 4, Section 3 and Options 4A, Section 3, respectively, even if the Exchange does not list that non-FLEX Option class for trading. FLEX Option series are not pre-established. A FLEX Option series is eligible for trading on the Exchange upon submission to the System of a FLEX Order for that series pursuant to Options 8, Section 34.

FLEX Options would be subject to certain trading conditions, which exist today and are specified within current Options 8, Section 34(b)(6)(B).<sup>17</sup> The Exchange proposes to remove the rule text within Options 8, Section 34(b)(6)(B) related to the RFQ process, as explained below. As provided in current Options 8, Section 34(b)(6)(B), the Exchange only permits trading in a put or call FLEX Option series that does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX Option series on the

same underlying security or index that is already available for trading. As provided in current Options 8, Section 34(b)(6)(B), this includes permitting trading in a FLEX Option series before a series with identical terms is listed for trading as a non-FLEX Option series. As provided in current Options 8, Section 34(b)(6)(B), if the Exchange lists for trading a non-FLEX Option series with identical terms as a FLEX Option series, the FLEX Option series will become fungible with the non-FLEX Option series. As provided in current Options 8, Section 34(b)(6)(B), the System does not accept a FLEX Order for a put or call FLEX Option series if a non-FLEX Option series on the same underlying security or index with the same expiration date, exercise price, and exercise style is already listed for trading. Further, a FLEX Order for a FLEX Option series may be submitted on any trading day prior to the expiration date. The Exchange abides by these conditions today and proposes to enumerate them within its rules similar to Cboe. The proposed rule text explains the manner in which these orders trade today on Phlx. This proposed change is not intended to amend the Exchange's current practice.

Next, the Exchange proposes to add new rule text to proposed Options 8, Section 34(f) which provides that when submitting a FLEX Order for a FLEX Option series to FBMS, one of each of the terms within current Options 8, Section 34(b) must be included.<sup>18</sup> Options 8, Section 34(b) is being relocated to Options 8, Section 34(f)(1), therefore subparagraph (f)(1) is being referenced in the proposed rule text at Options 8, Section 34(f). The Characteristics of Underlying Interest include: (A) any index upon which options currently trade on the Exchange;<sup>19</sup> (B) any security which is options-eligible pursuant to Options 4, Section 3; or (C) any foreign currency which is options-eligible pursuant to Options 4, Section 3 and which underlies non-FLEX U.S. dollar-settled foreign currency options that are trading on the Exchange.<sup>20</sup> Further, the Exchange proposes to state within Options 8, Section 34(f) that all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index

Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series. This rule text represents the Exchange's current practice. The Exchange states that, to the extent the Exchange lists a micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.

As noted above, current Options 8, Section 34(b)(1) is being relocated to proposed Options 8, Section 34(f)(1) without substantive change. The Exchange proposes to amend the header to "Characteristics of Underlying Interest."

Current Options 8, Section 34(b)(2), concerning Type, is relocated to proposed Options 8, Section 34(f)(2)(A) without substantive change. An "A" is being added to the sentence.

Current Options 8, Section 34(b)(3), concerning Exercise Price, is relocated to proposed Options 8, Section 34(f)(3). The Exchange proposes to reword the current rule text which provides,

(A) with respect to FLEX index options, may be specified in terms of a specific index value number, a percentage of the index value calculated as of the open or close of trading on the Exchange on the trade date, or a method for fixing such number;

(B) with respect to FLEX equity options, may be specified in terms of a specific dollar amount rounded to the nearest \$.10 or a percentage of the underlying security rounded to the nearest minimum increment; or

(C) with respect to FLEX currency options, may be specified in terms of a specific dollar amount rounded to the nearest hundredth of a dollar.

The Exchange proposes to more succinctly state that the Exchange may determine the smallest increment for exercise prices of FLEX Options not to exceed two decimal places. Today, the Exchange has the ability to require that FLEX index options be specified by an index value, number, percentage of index value calculated as of the open or close of trading on the Exchange on the trade date, a method for fixing such number, in terms of a specific dollar amount rounded to the nearest \$.10 or a percentage of the underlying security rounded to the nearest minimum increment, or in terms of a specific

<sup>16</sup> Unlike Cboe Rule 4.21(a), Phlx's subparagraph (e) does not address trading halts for FLEX Options. All options traded on Phlx are subject to Phlx's trading halt rule within Options 3, Section 9. Further, Cboe's rule does not describe intra-day halts.

<sup>17</sup> Current Options 8, Section 34(b)(6)(B) states that provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options shall be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as non-FLEX Options that are already available for trading on the same underlying security or index. FLEX Options shall also be permitted before the options are listed for trading as non-FLEX Options. Once and if the option series are listed for trading as non-FLEX Options, then (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective non-FLEX option series, and (ii) any further trading in the series would be as non-FLEX Options subject to the non-FLEX trading procedures and Rules. However, in the event the Non-FLEX series is added intra-day, a position established under the FLEX trading procedures would be permitted to be closed using the FLEX trading procedures for the balance of the trading day on which the Non-FLEX series is added against another closing only FLEX position. For such FLEX series, the Exchange will make an announcement that the FLEX series is now restricted to closing transactions; a FLEX Request for Quotes ("RFQ") may not be disseminated for any order representing a FLEX series having the same terms as a Non-FLEX series, unless such FLEX option order is a closing order (and it is the day the Non-FLEX series has been added); and only responses that close out an existing FLEX position are permitted. Any transactions in a restricted series that occur that do not conform to these requirements will be nullified by the Exchange.

<sup>18</sup> Such terms are described in proposed new Options 8, Section 34(f)(1), "Characteristics of Underlying Interest."

<sup>19</sup> The applicable index multiplier shall be the same multiplier, in the case of U.S. dollar-denominated FLEX index options, that applies to non-FLEX index options on the same underlying index.

<sup>20</sup> See current Options 8, Section 34(b).

dollar amount rounded to the nearest hundredth of a dollar. At this time, the Exchange proposes to narrow its discretion to provide that it may determine the smallest increment for exercise prices of FLEX Options, not to exceed two decimal places. The Exchange has this authority today, it is electing to narrow its authority to provide the increment in the form of a dollar value.

The Exchange proposes to remove the rule text within Options 8, Section 34(b)(4), related to the RFQ process, as explained below.

Current Options 8, Section 34(b)(5), concerning Exercise style, is relocated to proposed Options 8, Section 34(f)(4) without change.

Current Options 8, Section 34(b)(6)(A), concerning Expiration date style, is relocated to proposed Options 8, Section 34(f)(5) without change. The Exchange added rule text within proposed Options 8, Section 34(e)(1) similar to current Options 8, Section 34(b)(6)(B). The Exchange proposes to remove the rule text within Options 8, Section 34(b)(6)(B) related to the RFQ process, as explained below.

The Exchange proposes to remove the RFQ feature, including the BBO Improvement Interval, from its FLEX Options which process was described above in detail. With the automation of FLEX Options to enable FLEX to be entered into FBMS, similar to all other options transactions executed on the Exchange's trading floor including cabinet as explained below, the Exchange is disabling the RFQ feature, including the BBO Improvement Interval. The Exchange notes that Cboe removed its RFQ feature for FLEX Orders.<sup>21</sup> Similarly, Phlx proposes to remove its RFQ feature, including the BBO Improvement Interval.<sup>22</sup>

The Exchange believes the current open outcry RFQ process, including the BBO Improvement Interval, for FLEX Orders is substantially similar to the current open outcry process for non-

FLEX Orders described within Options 8, Sections 22, 23, and 24 at Supplementary Material .01, and therefore believes completely aligning the two processes is appropriate.<sup>23</sup>

As noted herein, today, FLEX Quotes must be entered during the Request Response Time, which is currently set to two minutes. Phlx FLEX Options transactions are exposed in open outcry on the trading floor similar to other options that trade on Phlx's trading floor. Thereafter, during the BBO Improvement Interval, which is set to 15 seconds, floor members may submit FLEX Quotes to meet or improve the BBO established during the Request Response Time. The Exchange proposes within Options 3, Section 34(h) to provide floor participants with a reasonable amount of time to respond with bids and offers, which would be between three seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order. This time would include announcing a crossing transaction pursuant to Options 3, Section 30(a). The Exchange believes that the proposed rule text permits FLEX Options to trade substantially similar to the current RFQ process, including the BBO Improvement Interval, in which a Floor Broker requests a market and provides Market Makers in the crowd with time to respond with a market. The Exchange believes that eliminating the RFQ process, which is not contemplated in non-FLEX Option open outcry trading, would have minimal (if any) impact on how a Floor Broker may request a market on the Exchange's trading floor with respect to FLEX Options. The initial process permits members the ability to enter, modify or withdraw FLEX Quotes at the Market Operations post during the Request Response Time, which is currently set to two minutes, after a quote was requested in open outcry. The proposed new process would continue to permit members the opportunity to enter, modify or withdraw FLEX Quotes in open outcry, without the need to submit FLEX Quotes at the Market Operations Post. Further, with respect to the BBO Improvement Interval, members continue to have an opportunity to match, or improve, (as applicable), the BBO. Today, the BBO Improvement Interval is 15 seconds. Members will also have the ability to cross any part of

the FLEX trade pursuant to Options 8, Section 30(a)(2), as is the case today. The proposed timeframe of between three seconds and five minutes is appropriate to ensure there is at least a minimum amount of time for Market Makers to conduct the same activities that take place today with the RFQ process and the BBO Improvement Interval, given the unique terms of FLEX Options. Cboe Rule 5.72(d)(1) provides its floor participants the same timeframe to respond with bids and quotes as the Exchange's proposal.

Once a Floor Broker has received a market from the crowd, the Floor Broker may then represent its order on the trading floor in open outcry (after systematizing it, which it must do prior to representing an order on the trading floor) and elect to trade against the best prices or not, or announce an intention to cross at a specific price.<sup>24</sup> As discussed above, this is substantially similar to the current RFQ process, including the BBO Improvement Interval. Currently, the Exchange has set a crossing entitlement for facilitations and solicitations of FLEX Orders in all classes to be 40%.<sup>25</sup> The 40% crossing entitlement would apply to FLEX Orders as it applies today for all other crossing orders executed on the Exchange's trading floor. As provided for in proposed Options 8, Section 34(h), trading of FLEX Options is subject to all other Options 8 Rules applicable to the trading of options on the Exchange, unless otherwise provided in this Rule.

Current Options 8, Section 30(a) specifies that an Options Floor Broker who holds orders to buy and sell the same option series may cross such orders, must request bids and offers for such options series, and make all persons in the trading crowd aware of the request. Further, Options 8, Section 30(a) states that after providing an opportunity for such bids and offers to be made, the Floor Broker must bid and offer at prices differing by the minimum increment and must improve the market by bidding above the highest bid or offering below the lowest offer. If such

<sup>24</sup> See current Options 8, Section 30 which describes procedures for crossing orders on the Exchange's trading floor.

<sup>25</sup> Current Supplementary Material .02(iii) to Options 8, Section 30 prescribes the percentage of the order which a Floor Broker is entitled to cross in equity, index and U.S dollar settled foreign currency options, after all Public Customer orders that were (1) on the limit order book and then (2) represented in the trading crowd at the time the market was established have been satisfied, is 40% of the remaining contracts in the order if the order is traded at or between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market.

<sup>21</sup> See Securities Exchange Act 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR-Cboe-2019-084) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Rules Regarding the Trading of Flexible Exchange Options, and Move Those Rules From the Currently Effective Rulebook to the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges).

<sup>22</sup> The Exchange notes that the minimum size requirements for an RFQ is also being removed within Options 8, Section 34(b)(8) as the Exchange would no longer have the RFQ process. The Exchange notes that one contract is the minimum size for options trading on Phlx and will remain the minimum size for FLEX Options trading on FLEX. See Options 3, Section 2.

<sup>23</sup> A Floor Broker may also initially represent an order to the trading crowd, and then receives bids or offers, as appropriate, and trade. However, this is an uncommon scenario. See Options 8, Section 28.

higher bid or lower offer is not taken, the Floor Broker may cross the orders at such higher bid or lower offer by announcing in public outcry that he is crossing and giving the quantity and price. All such orders are not deemed executed until entered into and executed through the FBMS.<sup>26</sup> The Exchange believes the proposed rule change will have a minimal (if any) impact on the crossing of FLEX Orders in open outcry.

The proposed allocation is substantially similar to the allocation for non-FLEX trading in open outcry, excluding the provisions that are inapplicable to FLEX trading, and to the current allocation for FLEX trading in open outcry. With respect to allocation for a FLEX Order as well as non-FLEX Orders, best-priced responses will continue to have first priority, however if a Customer order were at the same price, the Customer would have priority over a non-Customer.<sup>27</sup> With respect to responses at the same price, because there is no electronic trading of FLEX Options on Phlx, there can be no priority Customer orders resting in the order book that would receive first priority at the same price. Therefore, the Customer priority rules of Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. Additionally, no Market Makers are appointed in FLEX Options, so there will be no participation entitlement applicable to FLEX trading. Therefore, the Market Maker entitlements described in Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. The crossing participation would continue to the next priority level in each of those respective rules. Therefore, members of the trading crowd who established the market will have priority over all other orders that were not represented in the trading crowd at the time that the market was established and will maintain priority over such orders except for orders that improve upon the market.<sup>28</sup> With respect to the order book, Defined Participation<sup>29</sup> shall be equal where

<sup>26</sup> There is an exception where there is a provisional execution using the Snapshot feature of FBMS (as described in Options 8, Section 28(i)); bids and offers can be withdrawn pursuant to Options 8, Section 22(c) or (d).

<sup>27</sup> See current Options 8, Section 25(a)(1) and Supplementary Material .02 of Options 8, Section 30.

<sup>28</sup> See Supplementary Material .02(vii) of Options 8, Section 30.

<sup>29</sup> "Defined Participation" is the portion of the Remainder of the Order to which a crowd participant is entitled. "Remainder of the Order" means the portion of an Initiating Order that remains following the allocation of contracts to

size is the same, otherwise participants are allocated based on size.<sup>30</sup> Therefore, the proposed rule change will have minimal (if any) impact on the allocation of responses in open outcry trades of FLEX Orders.

This proposal simplifies the process pursuant to which FLEX Orders would execute on the Exchange in open outcry. As demonstrated above, the general open outcry trading rules are substantially similar to the current open outcry RFQ procedure, including the BBO Improvement Interval, for FLEX Options. However, the proposed rule change eliminates the terminology that applies only to FLEX trading. Floor participants are familiar with the general open outcry trading procedures, and therefore, by aligning the open outcry trading process for FLEX Options with that of non-FLEX Options, and permitting FLEX trading in the same manner as non-FLEX trading on the Exchange's trading floor, the Exchange believes the proposed rule change may encourage members to submit FLEX Orders for execution on Phlx.

In line with the Exchange's proposal to remove the RFQ process, including the BBO Improvement Interval, the Exchange proposes to delete Options 8, Section 34(b)(4), (b)(6)(B), (b)(7), (b)(8), (b)(10)–(15) and (c) which describe the RFQ process. Further, the Exchange proposes to systematize the FLEX Options trading process so that it mirrors the trading process of all other orders entered on the Exchange's trading floor whereby trades are reported to FBMS. To that end, the proposal will require a Floor Broker to systematize a FLEX Order in the same manner as Floor Brokers systematize non-FLEX Orders. The Exchange believes the proposed rule change will result in a more efficient open outcry trading process for FLEX Orders, as a Floor Broker can request a market as soon as it gets that request from a customer. This may ultimately result in more timely executions for customers. This new process would eliminate the requirement to submit an RFQ ticket to the Market Operations post and the requirement to respond to such order at the Market Operations post.<sup>31</sup> The Exchange desires to remove these manual processes and, instead, permit all responses to take place in open outcry verbally, thereby obviating the

customers that are on parity in accordance with Options 8, Section 25.

<sup>30</sup> See Options 8, Section 25(c)(3)(B).

<sup>31</sup> The Exchange proposes to remove the rule text within Options 8, Section 26(g)(3)(F)(1)(d) which provides, "FLEX Trade tickets must be sent by email to the Phlx Correction Post," because the process will require trades to be reported to FBMS.

need to submit paper responses at the trading post. The Exchange believes the proposed rule change may reduce confusion regarding how FLEX Orders may trade in open outcry, given that any minor differences between the two processes that exist today are being eliminated with the proposed automation.

The Exchange proposes to relocate Options 8, Section 34(b)(5), concerning Exercise Style, to Options 8, Section 34(f)(4) without change.

The Exchange proposes to relocate Options 8, Section 34(b)(6)(A), concerning Expiration Date, to Options 8, Section 34(f)(5) without change. The Exchange proposes to capitalize "Date" in the title. As noted above, the Exchange created a new Options 8, Section 34(e)(1) which incorporated provisions similar to those within Options 8, Section 34(b)(6)(B), except for rule text related to the RFQ process which is being deleted.

The Exchange proposes to relocate Options 8, Section 34(b)(9), concerning Settlement, to Options 8, Section 34(f)(6) and remove current subsection (iii).<sup>32</sup> The Exchange will only permit the settlement value to be specified as a.m.-settled or p.m.-settled. The Exchange will not permit the settlement value to be specified as the index value reported as an average over a specified time period.

The Exchange proposes to relocate Options 8, Section 34(d), which describes FLEX simple orders and FLEX Complex Orders, to Options 8, Section 34(g) without substantive change. The Exchange proposes to change references to the terms "ROT" and "Registered Options trader" within this rule text to "Market Maker" within proposed Options 8, Section 29(d) and Section 34(d) and (i). In 2020, the Exchange amended the term "ROT" to "Market Maker"<sup>33</sup> throughout the Phlx Rulebook.

The Exchange proposes to add a new Options 8, Section 34(h), similar to Cboe Rule 5.72(a) and (b), to describe FLEX Options trading. As is the case today, trading of FLEX Options is subject to all other Options 8 Rules applicable to the trading of options on the Exchange, unless otherwise provided in this Rule.

<sup>32</sup> Current Options 8, Section 34(b)(9)(A)(iii) states, "respecting FLEX index options, the settlement value may be specified as the index value reported at the: . . . (iii) as an average over a specified period of time, within parameters established by the Exchange."

<sup>33</sup> See Securities Exchange Act 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03)(Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell) ("Rulebook Relocation").

Also, as is the case today, a FLEX Option series is only eligible for trading if the FLEX Order is represented in open outcry. With respect to simple FLEX Orders, a FLEX Order for a FLEX option series submitted to the System must include all terms for a FLEX option series set forth in subparagraphs (e) and (f) of Options 8, Section 34 (including that a non-FLEX option series with identical terms is not listed for trading), size, side of the market, and a bid or offer price, subject to the order entry requirements set forth in Options 8, Section 32. This proposed rule text represents the Exchange's current practice. With respect to complex FLEX Orders, a FLEX Order for a FLEX option complex strategy submitted to the System must satisfy the criteria for a complex FLEX Order set forth in subparagraph (b) of Options 8, Section 34, and include size, side of the market, and a net debit or credit price. Additionally, each leg of the FLEX Option complex strategy must include all terms for a FLEX Option series set forth in subparagraphs (e) and (f) of Options 8, Section 34 (including that a non-FLEX Option series with identical terms is not listed for trading), subject to the order entry requirements set forth in subparagraph (a) of Options 8, Section 34. This proposed rule text represents the Exchange's current practice.

The Exchange proposes to relocate Options 8, Section 34(e), concerning Position Limits, to Options 8, Section 34(i). The Exchange proposes to update a rule citation to reflect the changes proposed herein with the reorganization of the rule to reflect the relocated rule text.

The Exchange proposes to relocate rule text within Options 8, Section 34(f), concerning Exercise Limits, to proposed Options 8, Section 34(j) without change.

Finally, the Exchange proposes to relocate rule text from Options 8, Section 34(g) and (h) into new Options 8, Section 26(g)(3)(F)(1)(d), Options 8, Section 34(k)(1) and (2) respectively, without substantive change.<sup>34</sup> The Exchange also proposes to update rule citations within this section to account for the reorganization of the rule to reflect the relocated rule text.

Finally, the Exchange proposes corresponding changes to reflect the proposed change to automate FLEX Options within Options 8, Section 28(f), Section 29(f), Section 32(g), Section 39, A-1, B-7, and C-2.

## Cabinet Options

Cabinet Orders are bids and offers (whether opening or closing) at a price of \$1 per option contract for the account of a Public Customer, firm, Lead Market Maker, Market Maker or Floor Market Maker. Cabinet Orders may only be executed on the Exchange's trading floor in open outcry pursuant to Options 8 Rules.<sup>35</sup> Today, Phlx reports cabinet trades to OCC within 90 seconds.<sup>36</sup> Today, Floor Brokers must submit the designated cabinet transaction form to the Nasdaq Market Operations staff for clearance within ninety seconds of execution. Phlx then immediately reports the cabinet trade to OCC.

At this time, the Exchange proposes to require Cabinet Orders to be reported into FBMS. Similar to the proposal for FLEX Orders, FBMS will create an electronic audit trail for Cabinet Orders, thereby further automating the execution and reporting of Cabinet Orders. With this change, members and member organizations will be required to record all Cabinet Orders represented in the trading crowd into FBMS. All executed contracts will be reported to OPRA and sent to OCC for clearing similar to all other equity, equity index and U.S. dollar-settled foreign currency options orders executed on the Exchange's trading floor.

In line with this proposed change, the Exchange proposes to amend Options 8, Section 33(a)(2) to provide that Floor Brokers shall enter Cabinet Orders into The Options Floor Based Management System pursuant to Options 3, Section 29. The Exchange proposes to remove the verbiage in Options 8, Section 33 which relates to the use of Cabinet forms, which are part of the Exchange's manual process.

The Exchange proposes replacing the word "he" with "the Floor Broker" within Options 8, Section 33(a)(3)(A) to clarify which market participant was being referenced.

In line with the proposed change, the Exchange proposes to amend Options 8, Section 33(a)(4) to specify that the Floor Broker must enter the Cabinet Order into FBMS.

The Exchange proposes to remove the rule text within Options 8, Section 33(d)(3) which relates to the use of forms which would no longer be relevant.

The Exchange proposes to update citations within Options 8, Section 33(e), which refer FLEX rules within Options 8, Section 34 which rules are being relocated. The updated citations

mirror those changes proposed to new Options 8, Section 34(k)(2).

## Technical Amendment

The Exchange proposes to amend rule citations within Options 8, Section 30(d) to correct references to subparagraphs, (i) and (ii) to properly cite (1) and (2), respectively.

## Implementation

The Exchange proposes to implement this rule change on or before March 29, 2024. The Exchange will announce an implementation date by issuing an Options Trader Alert.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>37</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>38</sup> 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.

The Exchange's proposal to automate FLEX Order and Cabinet Orders, so that members and member organizations will be required to record all FLEX Orders and Cabinet Orders represented in the trading crowd into FBMS, is consistent with the Act. The Exchange believes removing the requirement for members and member organizations to manually enter FLEX Orders into the Exchange's electronic audit trail and submit manual Cabinet Order forms and, instead require members and member organizations to enter these orders into FBMS, similar to all other orders executed on the trading floor, will reduce the administrative burden on floor participants and therefore removes impediments to and perfects the mechanisms of a free and open market.

Also, because FLEX Orders and Cabinet Orders will be reported and processed like all other open outcry trades, market participants will not be impacted nor have to take on any additional reporting or processing burden. In addition, the Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because having an electronic audit trail of all FLEX Orders and Cabinet Orders will provide a complete and accurate record of these transactions and better facilitate regulatory oversight. In particular, the Exchange believes the proposed rule

<sup>34</sup> The Exchange proposes to re-letter the remainder of that section to account for the removed rule text.

<sup>35</sup> See Options 8, Section 33(a). Only Floor Brokers may represent Cabinet Orders.

<sup>36</sup> See Options 8, Section 33(a)(5).

<sup>37</sup> 15 U.S.C. 78f(b)

<sup>38</sup> 15 U.S.C. 78f(b)(5).

change will remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest because the proposal more closely aligns the handling of FLEX Orders and Cabinet Orders with the handling of all other options transacted on Phlx's trading floor.

Specifically, with respect to FLEX Options, the proposed open outcry process is closely aligned with the current open outcry trading process for non-FLEX Options, but is still similar to the FLEX trading processes in place today. The proposed rule change merely eliminates many of the differences between FLEX and non-FLEX trading to eliminate potential confusion for market participants given the current differences, while implementing trading processes with which market participants are more familiar. As a result, the Exchange believes the proposed rule change will have minimal impact on the trading of FLEX Options, and possibly increase participation in FLEX Options, which could add liquidity to the Exchange's FLEX market, which ultimately benefits investors. By permitting FLEX Options to trade in a manner similar to non-FLEX Options, the Exchange believes this further improves a comparable alternative to the OTC market in customized options. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

The Exchange believes the current open outcry RFQ process, including the BBO Improvement Interval, for FLEX Orders is substantially similar to the current open outcry process for non-FLEX Orders described within Options 8, Section 24 at Supplementary Material .01, and therefore believes completely aligning the two processes is appropriate. Phlx FLEX Options transactions are exposed in open outcry on the trading floor similar to other options that trade on Phlx's trading floor. Today, the initial process permits members the ability to enter, modify or withdraw FLEX Quotes at the Market Operations post during the Request Response Time, which is currently set to two minutes, after a quote was requested in open outcry. Thereafter, during the BBO Improvement Interval, which is set to 15 seconds, members may submit FLEX Quotes to meet or

improve the BBO established during the Request Response Time. The Exchange's proposal within Options 3, Section 34(h) to provide floor participants with a reasonable amount of time to respond with bids and offers is consistent with the Act. The proposed timeframe of between three seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order would allow FLEX Options to trade substantially similar to the current RFQ process, including the BBO Improvement Interval. The proposed new process would continue to permit members the opportunity to enter, modify or withdraw FLEX Quotes in open outcry, without the need to submit FLEX Quotes at the Market Operations Post. Members would continue to have an opportunity to match, or improve, (as applicable), the BBO as is the case today during the BBO Improvement Interval. With the proposal members would have the ability to cross any part of the FLEX trade pursuant to Options 8, Section 30(a)(2), as is the case today. The proposed timeframe of between three seconds and five minutes is appropriate to ensure there is at least a minimum amount of time for Market Makers to conduct the same activities that take place today with the RFQ process and the BBO Improvement Interval, given the unique terms of FLEX Options. The Exchange believes that eliminating the RFQ process, including the BBO Improvement Interval, which is not contemplated in non-FLEX Option open outcry trading, would have minimal (if any) impact on how a Floor Broker may request a market on the Exchange's trading floor with respect to FLEX Options. The Exchange believes it is appropriate to continue to ensure there is at least a minimum amount of time for Market Makers to respond give the unique terms of FLEX Options.

The proposed timeframe, which is analogous to the RFQ Process which includes the BBO Improvement Interval, is consistent with the Act and removes impediments to and perfects the mechanism of a free and open market by creating an appropriate timeframe to seek liquidity. Today, an Options Exchange Official would intervene if they believed that an appropriate amount of time was not allotted for the FLEX Order to trade. The Options Exchange Official would enforce the requirement that the amount of time must be at least three seconds and no more than five minutes based on the complexity of the trade and the responses in the trading crowd when determining if the time was reasonable.

For example, based on the number of participants who indicate an interest to participate in the trade and the complexity of the trade, the Options Exchange Official would determine if there was an appropriate amount of time and require more time if necessary. Unlike the current process, an RFQ ticket would not be submitted to the Market Operations post and the RFQ would not be disseminated to OPRA.

Additionally, the Exchange would no longer disseminate RFQ Quotes to OPRA as part of this proposal. The Exchange believes that not disseminating RFQ Quotes is consistent with the Act and removes impediments to and perfects the mechanism of a free and open market by aligning the process to transact FLEX Orders with the current process to transact other orders in open outcry. By contrast, quotes are not disseminated with respect to other trades in open outcry today. While a market participant could seek to participate in the trade by calling a floor broker after viewing the RFQ on OPRA, this is an uncommon scenario. The Exchange notes that the RFQ message has not provided any additional liquidity under the current process for FLEX Orders. Today, the RFQ message for FLEX Orders is the only administrative message disseminated to OPRA on the Exchange's trading floor. The Exchange does not otherwise disseminate an administrative message for other transactions on the Exchange's trading floor; only executed orders are disseminated to OPRA for non-FLEX Orders on the trading floor and for electronic transactions on Phlx. The Exchange believes that the open outcry process will continue to provide a competitive market for FLEX Orders and that the proposed process will provide an opportunity for the trading crowd to provide liquidity. FLEX Orders, unlike standard orders, are less common and the Exchange does not have a similar RFQ process for standard orders that are analogous to those FLEX Orders. This proposed process would align with Cboe's process and not require Phlx to disseminate quotes to OPRA while other options floor exchanges have no similar obligations.<sup>39</sup>

The proposed allocation is substantially similar to the allocation for non-FLEX trading in open outcry, excluding the provisions that are inapplicable to FLEX trading, and to the current allocation for FLEX trading in open outcry. With respect to allocation

<sup>39</sup> Cboe does not disseminate via OPRA information respecting open outcry RFQs. See Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 at 308 (January 4, 2012) (SR-Cboe-2011-123).

for a FLEX Order as well as non-FLEX Orders, best-priced responses will continue to have first priority, however if a Customer order were at the same price, the Customer would have priority over a non-Customer.<sup>40</sup> With respect to responses at the same price, because there is no electronic trading of FLEX Options on Phlx, there can be no priority Customer orders resting in the order book that would receive first priority at the same price. Therefore, the Customer priority rules of Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. Additionally, no Market Makers are appointed in FLEX Options, so there will be no participation entitlement applicable to FLEX trading. Therefore, the Market Maker entitlements described in Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. The crossing participation would continue to the next priority level in each of those respective rules. Therefore, members of the trading crowd who established the market will have priority over all other orders that were not represented in the trading crowd at the time that the market was established and will maintain priority over such orders except for orders that improve upon the market.<sup>41</sup> With respect to the order book, Defined Participation shall be equal where size is the same, otherwise participants are allocated based on size.<sup>42</sup> Therefore, the proposed rule change will have minimal (if any) impact on the allocation of responses in open outcry trades of FLEX Orders.

The Exchange's proposal to reword rule text concerning Exercise Price located within proposed Options 8, Section 34(f)(3) is consistent with the Act and does not expand the Exchange's current discretion. Today, the Exchange has the ability to require that FLEX index options be specified by an index value, number, percentage of index value calculated as of the open or close of trading on the Exchange on the trade date, a method for fixing such number, in terms of a specific dollar amount rounded to the nearest \$.10 or a percentage of the underlying security rounded to the nearest minimum increment, or in terms of a specific dollar amount rounded to the nearest hundredth of a dollar. In fact, the proposal narrows the Exchange's

discretion to provide that it may determine the smallest increment for exercise prices of FLEX Options, not to exceed two decimal places. The Exchange has this authority today, it is electing to narrow its authority to provide the increment in the form of a dollar value. The proposal protects investors and the public interest by amending the rule text within proposed Options 8, Section 34(f)(3) to succinctly define the bounds of the Exchange's discretion.

The Exchange's proposal to amend Options 8, Section 34(f) to provide that all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series is consistent with the Act. The Exchange states that, to the extent the Exchange lists a micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.

The proposal eliminates the terminology that applies only to FLEX trading. Floor participants are familiar with the general open outcry trading procedures, and therefore, by aligning the open outcry trading process for FLEX Options with that of non-FLEX Options, and permitting FLEX trading in the same manner as non-FLEX trading on the Exchange's trading floor, the Exchange believes the proposed rule change may encourage members to submit FLEX Orders for execution on Phlx. The Exchange believes the proposed rule change may reduce confusion regarding how FLEX Orders may trade in open outcry, given that any minor differences between the two processes that exist today are being eliminated. The Exchange believes that, with this proposal, floor participants will have the necessary time to respond in open with markets to FLEX Orders, similar to other Non-FLEX Orders which are transacted in open outcry.

The Exchange believes the proposed rule change will permit executions of FLEX Orders to continue to be completed in a timely fashion, while providing the crowd with sufficient time to price the unique terms of FLEX Options. The proposed amendments

will enable floor participants to compete vigorously and potentially provide price improvement for FLEX Orders, as they do for non-FLEX Orders, as they will be encouraged to submit their best-priced bids and offers during the auctions to have the opportunity to execute against the FLEX Order.

Finally, reorganizing the FLEX rules and adding greater specificity to the rule will provide market participants with greater information on FLEX Options which removes impediments to and perfect the mechanism of a free and open market. The organization of the Options 8, Section 34 is intended to provide floor participants with greater information which represents the manner in which FLEX Options are transacted today on Phlx.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange's proposal to automate FLEX Orders and Cabinet Orders does not impose an undue burden on intra-market competition because FLEX Orders and Cabinet Orders will be reported and processed similar to all other open outcry trades. Further, market participants will not be impacted by this proposal. Members will not have additional reporting or processing burdens as a result of the proposal.

The proposed amendments to FLEX Options do not impose an undue burden on inter-market competition as the Exchange seeks to automate its current FLEX and Cabinet processes. The removal of the RFQ Process, including the BBO Improvement Interval, is similar to Cboe.<sup>43</sup>

Furthermore, with respect to the amendments to FLEX Options, the Exchange does not believe that the proposed rule change will impose any burden on competition because the proposed open outcry process is closely aligned with the current open outcry trading process for non-FLEX Options. The proposed process continues to be similar to the FLEX trading processes in place today. The proposed rule change merely eliminates many of the differences between FLEX and non-FLEX trading, which removes potential confusion for market participants given the current differences, while implementing trading processes with which market participants are more familiar. As a result, the Exchange believes the proposed rule change will

<sup>40</sup> See current Options 8, Section 25(a)(1) and Supplementary Material .02 of Options 8, Section 30.

<sup>41</sup> See Supplementary Material .02(vii) of Options 8, Section 30.

<sup>42</sup> See Options 8, Section 25(c)(3)(B).

<sup>43</sup> See *supra* note 21.

have minimal impact on the trading of FLEX Options, and possibly increase participation in FLEX Options, which could add liquidity to the Exchange's FLEX market, which ultimately benefits investors. Any member or member organization may transact FLEX Options.

Eliminating the RFQ Process and the BBO Improvement Interval in favor of a reasonable timeframe of between three seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order to respond with bids or offers does not impose an undue burden on competition. The proposed timeframe, which is analogous to the RFQ Process which includes the BBO Improvement Interval, creates an appropriate timeframe to seek liquidity. Today, an Options Exchange Official would intervene if they believed that an appropriate amount of time was not allotted for the FLEX Order to trade. Based on the number of participants who indicate an interest to participate in the trade and the complexity of the trade, the Options Exchange Official would determine if there was an appropriate amount of time and require more time if necessary. The Exchange believes that eliminating the RFQ process, including the BBO Improvement Interval, which is not contemplated in non-FLEX Option open outcry trading, would have minimal (if any) impact on how a Floor Broker may request a market on the Exchange's trading floor with respect to FLEX Options.

The Exchange's proposal to no longer disseminate RFQ Quotes to OPRA as part of this proposal does not impose an intra-market burden on competition because the proposal aligns the process to transact FLEX Orders with the current process to transact other orders in open outcry. The RFQ message has not provided any additional liquidity under the current process for FLEX Orders. Today, the RFQ message for FLEX Orders is the only administrative message disseminated to OPRA on the Exchange's trading floor. The Exchange does not otherwise disseminate an administrative message for other transactions on the Exchange's trading floor; only executed orders are disseminated to OPRA for non-FLEX Orders on the trading floor and for electronic transactions on Phlx. The Exchange believes that the open outcry process will continue to provide a competitive market for FLEX Orders and that the proposed process will provide an opportunity for the trading crowd to provide liquidity. By contrast, quotes are not disseminated with respect to

other trades in open outcry today. While a market participant could seek to participate in the trade by calling a floor broker after viewing the RFQ on OPRA, this is an uncommon scenario. FLEX Orders, unlike standard orders, are less common and the Exchange does not have a similar RFQ process for standard orders that are analogous to those FLEX Orders. The Exchange's proposal to no longer disseminate RFQ Quotes to OPRA as part of this proposal does not impose an inter-market burden on competition because the proposed process would align Phlx's process with Cboe's process and not require Phlx to disseminate quotes to OPRA while other options floor exchanges have no similar obligations.<sup>44</sup>

The Exchange's proposal to reword rule text concerning Exercise Price located within proposed Options 8, Section 34(f)(3) does not impose an undue burden on competition because it does not expand the Exchange's current discretion. The proposal narrows the Exchange's authority to provide the increment in the form of a dollar value not to exceed two decimal places.

The Exchange's proposal to amend Options 8, Section 34(f) to provide that all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series does not impose an undue burden on competition. In the event that the Exchange were to list a micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.

#### *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.

<sup>44</sup> Cboe does not disseminate via OPRA information respecting open outcry RFQs. See Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 at 308 (January 4, 2012) (SR-Cboe-2011-123).

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>45</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>46</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 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-2023-22 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-Phlx-2023-22. 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/>

<sup>45</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>46</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

*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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2023-22, and should be submitted on or before July 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>47</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-12573 Filed 6-12-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-17, OMB Control No. 3235-0018]

### Submission for OMB Review; Comment Request; Extension: Rule 15b6-1 and Form BDW

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 15b6-1 (17 CFR 240.15b6-1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Registered broker-dealers use Form BDW (17 CFR 249.501a) to withdraw from registration with the Commission, the self-regulatory organizations, and the states. On average, the Commission estimates that it would take a broker-dealer approximately one hour to complete and file a Form BDW to withdraw from Commission registration as required by Rule 15b6-1. The Commission estimates that approximately 411 broker-dealers withdraw from Commission registration annually<sup>1</sup> and, therefore, file a Form BDW via the internet with the Central Registration Depository, a computer system operated by the Financial Industry Regulatory Authority, Inc. that maintains information regarding registered broker-dealers and their registered personnel. The 411 broker-dealers that withdraw from registration by filing Form BDW would incur an aggregate annual reporting burden of approximately 411 hours.<sup>2</sup>

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent by July 13, 2023 to (i) [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: June 7, 2023.

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-12570 Filed 6-12-23; 8:45 am]

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<sup>1</sup> This estimate is based on Form BDW data collected over the past three years for fully registered broker-dealers. This estimate is based on the numbers of forms filed; therefore, the number may include multiple forms per broker-dealer if the broker-dealer's initial filing was incomplete. In fiscal year (from 10/1 through 9/30) 2020, 499 broker-dealers withdrew from registration. In fiscal year 2021, 417 broker-dealers withdrew from registration. In fiscal year 2022, 318 broker-dealers withdrew from registration.  $(499 + 417 + 318) / 3 = 411$  (rounded down from 411.33).

<sup>2</sup>  $(411 \times 1 \text{ hour}) = 411 \text{ hours}$ .

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-34941; File No. 812-15474]

### Credit Suisse Asset Management, LLC., et al.; Notice of Application and Temporary Order

June 7, 2023.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

**SUMMARY OF APPLICATION:** Applicants have applied for an order exempting them from section 9(a) of the Act with respect to the Injunction (as defined below) entered against Credit Suisse Securities (USA) LLC ("CSSU"), Credit Suisse First Boston Mortgage Securities Corp. ("CSFB"), and DLJ Mortgage Capital, Inc. ("DLJ"), and together with CSSU and CSFB, the "Settling Entities" and each a "Settling Entity") on October 24, 2022, by the Superior Court of New Jersey ("New Jersey Court"), in connection with a consent order between the Settling Entities and the Acting Attorney General of New Jersey, on behalf of the Acting Chief of the New Jersey Bureau of Securities ("Bureau") until the Commission takes final action on an application for a time-limited order exempting them from section 9(a) of the Act ("Time-Limited Exemption"). Upon the expiration of the Time-Limited Exemption, Applicants will be disqualified from engaging in Fund Servicing Activities (defined below). Applicants, on behalf of UBS Covered Persons (defined below), also have applied for a temporary exemption from section 9(a) of the Act until the Commission takes final action on an application for a permanent order exempting them from section 9(a) of the Act (the "Permanent Order"). The temporary order is set forth herein (the "Temporary Order" and, together with the Time-Limited Exemption and the Permanent Order, the "Orders").

**APPLICANTS:** Credit Suisse Securities (USA) LLC ("CSSU"), Credit Suisse First Boston Mortgage Securities Corp. ("CSFB"), DLJ Mortgage Capital, Inc. ("DLJ"), Credit Suisse Asset Management, LLC ("CSAM"), Credit Suisse Asset Management Limited ("CSAML") and Credit Suisse AG ("CSAG").<sup>1</sup>

<sup>1</sup> CSAG is a party to the application solely for purposes of making the representations and agreeing to the conditions in the application that apply to it. For such purpose, it is included in the

<sup>47</sup> 17 CFR 200.30-3(a)(12).