For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88728; File No. SR–Phlx–2020–20]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx Rules at Options 3, Section 8, Titled Options Opening Process

April 22, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to a proposal to amend Phlx Rules at Options 3, Section 8, titled ''Options Opening Process.''

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

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 Phlx Rules at Options 3, Section 8, titled ''Options Opening Process.'' The proposal seeks to amend aspects of the current functionality of the Exchange's System regarding the opening of trading in an option series. Each amendment is described below.

Definitions

The Exchange proposes to define the term ''imbalance'' at proposed Options 3, Section 8(a)(xi) as the number of unmatched contracts priced through the Potential Opening Price. The Exchange believes that the addition of this defined term will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This description is consistent with the current System operation. This is a non-substantive rule change. In conjunction with this rule change, the Exchange proposes to remove the text within Options 3, Section 8(k)(A) which seeks to define an imbalance as an unmatched contracts. The Exchange is proposing a description which is more specific than this rule text and is intended to bring greater clarity to the term ''imbalance.''

Eligible Interest

The Exchange proposes to amend Options 3, Section 8(b)(ii) to amend the current phrase, ''The System will aggregate the size of all eligible interest for a particular participant category at a particular price level for trade allocation purposes pursuant to Options 3, Section 10.'' The Exchange proposes to instead provide, ''The System will allocate interest pursuant to Options 3, Section 10.'' The Exchange is proposing this amendment because Options 3, Section 10 explains how the Exchange will aggregate the size of all eligible interest for a particular participant category at a particular price level and the citation to that rule will provide that detail.

All-or-None Orders

The Exchange proposes to amend Options 3, Section 8(b) to remove the phrase ''that can be satisfied'' in relation to All-or-None Orders.[3] The Exchange notes that all All-or-None Orders are considered for execution and in determining the Opening Price throughout the Opening Process. At this point in the Opening Process the Exchange would be unable to determine which All-or-None Orders could be satisfied, so all All-or-None Orders are eligible.

Similarly, the Exchange proposes to amend Options 3, Section 8(h) to remove the phrase ''except All-or-None interest that cannot be satisfied.'' The Exchange proposes to instead provide, ''To calculate the Potential Opening Price, the System will take into consideration all Valid Width Quotes and orders (including Opening Sweeps, including All-or-None interest, for the option series and identify the price at which the maximum number of contracts can trade (''maximum quantity criterion'').'' Similarly, for purposes of determining the Potential Opening Price, the Exchange will consider all All-or-None interest because the Exchange would be unable to determine which All-or-None Orders could be satisfied until the Opening Process concludes.

Valid Width Quotes

The Exchange proposes to amend the requirements for Phlx Electronic Market Makers[4] to enter Valid Width Quotes within Options 3, Section 8(d). Today, a Lead Market Maker is required to enter a Valid Width Quote within two minutes (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website) of the opening trade or quote on the market for the underlying security in the case of equity options or, in the case of index options, within two minutes of the receipt of the opening price in the underlying index (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website), or within two minutes of market opening for the underlying currency in the case of U.S. dollar-settled FCO. Alternatively, the Valid Width Quote of at least two Phlx Electronic Market Makers other than a Lead Market Maker entered within the above-referenced timeframe would also open an option series. Finally, if neither the Lead

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[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An All-or-None Order is a limit order or market order that is to be executed in its entirety or not at all. An All-or None Order may only be submitted by a Public Customer. All-or-None Orders are non-displayed and non-routable. All-or-None Orders are executed in price-time priority among all Public Customer orders if the size contingency can be met. The Acceptable Trade Range protection in Options 3, Section 15(a) is not applied to All-Or-None Orders. *See* Options 3, Section 7(b)(5).

[4] Phlx Electronic Market Makers are defined with Options 3, Section 8 as a Lead Market Maker, Streaming Quote Trader (''SQT'') or Remote SQT (''RSQT'') who is required to submit two sided electronic quotations pursuant to Options 2, Section 5.

Market Maker's Valid Width Quote nor the Valid Width Quotes of two Phlx Electronic Market Makers have been submitted within such timeframe, one Phlx Electronic Market Maker may submit a Valid Width Quote to open the options series.

The Exchange proposes to amend the requirement to submit Valid Width Quotes in an effort to streamline its current process. The Exchange proposes to continue to require a Lead Market Maker to submit a Valid Width Quote, but also would permit the Valid Width Quote of one Phlx Electronic Market Maker other than the Lead Market Maker to open an option series without waiting for the two minute timeframe described above to conclude. This effectively would take the 2 step process for accepting quotes to a one step process. The Exchange believes this proposal would allow the market to open more efficiently as well as enable greater participation by SQTs and RSQTs in the Opening Process. As is the case today, Lead Market Makers are required to ensure each option series to which it is appointed is opened each day by submitting a Valid Width Quote.[5] Moreover, a Lead Market Maker has continuing obligations to quote intra-day pursuant to Options 2, Section 5.

Potential Opening Price

The Exchange proposes to amend Options 3, Section 8(h) to add an introductory sentence to the Potential Opening Process paragraph which provides, ''The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met.'' This paragraph is not intended to amend the function of the Opening Process, rather it is intended to provide context to the process and describe a Potential Opening Price within Options 3, Section 8(h). This is a non-substantive amendment.

An amendment is proposed to Options 3, Section 8(h)(C) to replace the words ''Potential Opening Price calculation'' with the more defined term ''Opening Price.'' The Opening Price is defined within Options 3, Section 8(a)(iii) and provides, ''The Opening Price is described herein in sections (i) and (k).'' The Exchange notes that ''Opening Price'' is the more accurate terms that represents current System functionality as compared to Potential Opening Price. Options 3, Section 8(h)(C) provides that the Potential Opening Price calculation is bounded by the better away market price that may not be satisfied with the Exchange routable interest.'' In fact, the Opening Price is bounded by the better away market price that may not be satisfied with the Exchange routable interest pursuant to sections (i) and (k). The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met. The Potential Opening Price is a less accurate term and the Exchange proposes to utilize the more precise term by changing the words in this sentence to ''Opening Price'' for specificity. This amendment is not substantive, rather it is clarifying.

Opening Quote Range

The Exchange proposes to add a sentence to Options 3, Section 8(j) to describe the manner in which the Opening Quote Range or ''OQR'' is bound. The Exchange proposes to provide, ''OQR is constrained by the least aggressive limit prices within the broader limits of OQR. The least aggressive buy order or Valid Width Quote bid and least aggressive sell order or Valid Width Quote offer within the OQR will further bound the OQR.'' The Exchange previously described[6] the OQR as an additional type of boundary beyond the boundaries mentioned in Options 3, Section 8 at proposed paragraph (i). OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. Although the Exchange applies other boundaries such as the Best Bid or Best Offer (''BBO''), the OQR is outside of the BBO. It is meant to provide a price that can satisfy more size without becoming unreasonable. The Exchange proposes to add rule text within Options 3, Section 8 to describe the manner in which today OQR is bound. This proposed amendment does not change the manner in which Phlx's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price. Below is an example of the manner in which OQR is constrained.

Assume the below pre-opening interest:

Lead Market Maker quotes 4.10 (100) × 4.20 (50)

Order 1: Public Customer Buy 300 @ 4.39

Order 2: Public Customer Sell 50 @ 4.13

Order 3: Public Customer Sell 5 @ 4.37

Opening Quote Range configuration in this scenario is +/−0.18

9:30 a.m. events occur, underlying opens

First imbalance message: Buy imbalance @ 4.20, 100 matched, 200 unmatched

Next 4 imbalance messages: Buy imbalance @ 4.37, 105 matched, 195 unmatched

Potential Opening Price calculation would have been 4.20 + 0.18 = 4.38, but OQR is further bounded by the least aggressive Sell order @ 4.37

Order 1 executes against Order 2 50 @ 4.37

Order 1 executes against Lead Market Maker quote 50 @ 4.37

Order 1 executes against Order 3 5 @ 4.37

Remainder of Order1 cancels as it is through the Opening Price

Lead Market Maker quote purges as its entire offer side volume has been exhausted

Similarly, the Exchange proposes to amend Options 3, Section 8(j)(3) which currently provides, ''If one or more away markets are disseminating a BBO that is not crossed (the Opening Process will stop and an options series will not open if the ABBO becomes crossed pursuant to (d)(v)) and there are Valid Width Quotes on the Exchange that are executable against each other or the ABBO:''. The Exchange proposes to instead state, ''If one or more away markets are disseminating a BBO that is not crossed (the Opening Process will stop and an options series will not open if the ABBO becomes crossed pursuant to (d)(v)) and there are Valid Width Quotes on the Exchange that *cross each other or are marketable against* the ABBO:''. The proposed language more accurately describes the current Opening Process. Valid Width Quotes are not routable and would not execute against the ABBO. This rule text is more specific than ''executable against each other.'' A similar change is also proposed to Options 3, Section 8(j)(4) to replace the words ''are executable against'' with ''cross''. The Exchange believes that the amended rule text adds

[5] Options 3, Section 8(d)(iii) provides, ''The Lead Market Maker assigned in a particular equity or index option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index. The Lead Market Maker assigned in a particular U.S. dollar-settled FCO must enter a Valid Width Quote, in 90% of their assigned series, not later than 30 seconds after the announced market opening. The Lead Market Maker must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to a U.S. dollar-settled FCO, following the announced market opening.''

[6] *See* Securities Exchange Commission Release No. 78408 (July 25, 2016), 81 FR 50026 (July 29, 2016) (SR–Phlx–2016–76).

greater transparency to the Opening Process. These are non-substantive amendments.

The Exchange proposes to make a non-substantive change to amend Options 3, Section 8(j)(7) to amend the last sentence to change the phrase ''consider routable'' with ''route routable.'' The Exchange also proposes to replace the phrase ''in price/time priority to satisfy the away market'' with the citation to Options 3, Section 10(a)(1)(A) which describes price/time priority within Options 3, Section 8(j)(7). This is a non-substantive amendment which is intended to bring greater clarity to the Exchange's Rules.

Price Discovery Mechanism

The Exchange proposes to add new rule text to Options 3, Section 8(k)(A)(1) to describe the information conveyed in an Imbalance Message. The Exchange proposes to provide at Options 3, Section 8(k)(A)(1),

> An Imbalance Message will be disseminated showing a ''0'' volume and a $0.00 price if: (i) No executions are possible but routable interest is priced at or through the ABBO; (ii) internal quotes are crossing each other; or (iii) there is a Valid Width Quote, but there is no Quality Opening Market. Where the Potential Opening Price is through the ABBO, an imbalance message will display the side of interest priced through the ABBO.

This rule text is consistent with the current operation of the System. The purpose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. The Exchange believes that explaining the potential scenarios which led to the dissemination of a ''0'' volume, such as (i) when no executions are possible and routable interest is priced at or through the ABBO; (ii) internal quotes are crossing; and (iii) there is a Valid Width Quote, but there is no Quality Opening Market, will provide greater detail to the potential state of the interest available. The Exchange further clarifies in this new rule text, ''Where the Potential Opening Price is through the ABBO, an imbalance message will display the side of interest priced through the ABBO.'' The Exchange believes that this proposed text will bring greater transparency to the information available to market participants during the Opening Process.

The Exchange proposes to amend Options 3, Section 8(k)(C)(2) to remove the phrase ''at the Opening Price'' within the paragraph. The current second sentence of paragraph 8(j)(3)(B) states, ''If during the Route Timer, interest is received by the System which would allow the Opening Price to be within OQR without trading through away markets and without trading through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price, the System will open with trades at the Opening Price and the Route Timer will simultaneously end.'' The Exchange proposes to remove the words ''at the Opening Price'' because while anything traded on Phlx would be at the Opening Price, the trades that are routed away would be at an ABBO price which may differ from the Phlx Opening Price. To avoid any confusion, the Exchange is amending the sentence to remove the reference to the Opening Price. In addition, the Exchange proposes to add the phrase ''and orders'' to Options 3, Section 8(k)(C)(2) which currently only references quotes. During the Price Discovery Mechanism, both quotes and orders are considered.

The Exchange proposes to amend the last sentence of Options 3, Section 8(k)(C)(5) to add the phrase ''if consistent with the Member's instructions'' to the end of the paragraph at Options 3, Section 8(k)(C)(5) to make clear that the instructions provided by a member in terms of order types and routing would be applicable to interest entered during the Opening Process which remains eligible for intra-day trading. This amendment brings greater clarity to the Exchange's Rules.

The Exchange proposes to add an introductory phrase to Options 3, Section 8(k)(D) which provides, ''Pursuant to Options 3, Section 8(k)(C)(6) . . .'' the System will re-price Do Not Route orders (that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur) to a price that is one minimum trading increment inferior to the ABBO, and disseminate the re-priced DNR Order as part of the new PBBO.'' The addition of this sentence is intended to provide a transition from the prior paragraph relating to the routing of orders. The Exchange opens and routes simultaneously during its Opening Process. This sentence is being added to indicate that at this stage in the Opening Process, routable interest would have routed. The manner in which the System will handle orders marked with the instruction ''Do Not Route'' (''DNR Orders'') is described in Options 3, Section 8(k)(D). This rule text is consistent with the behavior of the System. This non-substantive amendment is intended to add greater clarity to the Exchange's Rules. The Exchange also proposes to add a hyphen to the word ''re-price'' in this paragraph.

The Exchange proposes to add a new paragraph at Options 3, Section 8(k)(G) which provides, ''Remaining contracts which are not priced through the Exchange Opening Price after routing a number of contracts to satisfy better priced away contracts will be posted to the Order Book at the better of the away market price or the order's limit price.'' The Exchange notes that this paragraph describes current System behavior. This rule text accounts for orders which have routed away and returned unsatisfied and also accounts for interest that remain unfilled during the Opening Process, provided it was not priced through the Opening Price. This sentence is being included to account for the manner in which all interest is handled and how certain interest rests on the order book once the Opening Process is complete. The Exchange notes that the posted interest will be priced at the better of the away market price or the order's limit price. This additional clarity will bring greater transparency to the Rules and is consistent with the Exchange's current System operation. The Exchange believes that this detail will provide market participants with all possible scenarios that may occur once Phlx opens an options series.

Opening Process Cancel Timer

The Exchange proposes to adopt an Opening Process Cancel Timer within Options 3, Section 8(l), similar to The Nasdaq Options Market LLC's (''NOM'') and Nasdaq BX, Inc's (''BX'') Rules at Options 3, Section 8(c).[7] The Exchange proposes to add a process whereby if an options series has not opened before the conclusion of the Opening Process Cancel Timer, a member may elect to have orders returned by providing written notification to the Exchange. The Opening Process Cancel Timer would be established by the Exchange and posted on the Exchange's website. Similar to NOM and BX, orders submitted through FIX with a TIF of Good-Till-Canceled[8] or ''GTC'' may not

[7] NOM Options 3, Section 8(c) provides, ''Absence of Opening Cross. If an Opening Cross in a symbol is not initiated before the conclusion of the Opening Process Cancel Timer, a firm may elect to have orders returned by providing written notification to the Exchange. These orders include all non GTC orders received over the FIX protocol. The Opening Process Cancel Timer represents a period of time since the underlying market has opened, and shall be established and disseminated by Nasdaq on its website.'' BX Options 3, Section 8 is worded similarly.

[8] A Good Til Cancelled (''GTC'') Order entered with a TIF of GTC, if not fully executed, will remain

be cancelled. Phlx has monitored the operation of the Opening Process to identify instances where market efficiency can be enhanced. The Exchange believes that adopting a cancel timer similar to NOM and BX will increase the efficiency of Phlx's Opening Process. This provision would provide for the return of orders for un-opened options symbols. This enhancement will provide market participants the ability to elect to have orders returned, except for non-GTC orders, when options do not open. It provides members with choice about where, and when, thy can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange. The proposed changes should prove to be very helpful to market participants, particularly those that are involved in adding liquidity during the Opening Cross. These proposed enhancements will allow Phlx to continue to have a robust Opening Process.

Implementation

The Exchange proposes to implement the amendments proposed herein prior to Q3 2020. The Exchange will issue an Options Trader Alert announcing the date of implementation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by enhancing its Opening Process. The Exchange believes that the proposed changes significantly improve the quality of execution of Phlx's opening.

Definitions

The Exchange's proposal to define the term ''imbalance'' at proposed Options 3, Section 8(a)(xi) and remove the text within Options 3, Section 8(j)(1), which seeks to define an imbalance as an unmatched contract, will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This is a non-substantive rule change and represents current System functionality. Today, the term ''imbalance'' is simply defined as unmatched contracts. The proposed definition is more precise in its representation of the current System functionality.

Eligible Interest

The Exchange's proposal to amend Options 3, Section 8(b)(ii) to amend the current phrase, ''The System will aggregate the size of all eligible interest for a particular participant category at a particular price level for trade allocation purposes pursuant to Options 3, Section 10'' to instead provide, ''The System will allocate interest pursuant to Options 3, Section 10'' will bring greater clarity to the rule text. The Exchange is proposing this amendment because Options 3, Section 10 explains how the Exchange will aggregate the size of all eligible interest for a particular participant category at a particular price level and the citation to that rule will provide that detail.

All-or-None Orders

The Exchange's proposal to amend Options 3, Section 8(b) to remove the phrase ''that can be satisfied'' in relation to All-or-None Orders and to amend Options 3, Section 8(h) to remove the phrase ''except All-or-None interest that cannot be satisfied'' are consistent with the Act. The Exchange would include all All-or-None Orders as eligible interest and also consider all All-or-None Orders for purposes of determining the Potential Opening Price, because the Exchange would be unable to determine which All-or-None Orders could be satisfied.

Valid Width Quotes

The Exchange's proposal to amend the requirements within Options 3, Section 8(d) for Phlx Electronic Market Makers to enter Valid Width Quotes by permitting the Valid Width Quote of one Phlx Electronic Market Maker other than the Lead Market Maker to open an option series without waiting for the two minute timeframe is consistent with the Act. This proposal would allow the market to open more efficiently as well as enable greater participation by Phlx Electronic Market Makers in the Opening Process. A Lead Market Maker has continuing obligations to quote throughout the trading day pursuant to Options 2, Section 5. In addition, Lead Market Makers are required to ensure each option series to which it is appointed is opened each day Phlx is open for business by submitting a Valid Width Quote.[11] Primary Market Makers will continue to remain responsible to open an options series, unless it is otherwise opened by a Competitive Market Maker. A Competitive Market Maker also has obligations to quote intra-day, once they commence quoting for that day.[12] The Exchange notes if Electronic Market Makers entered quotes during the Opening Process to open an option series, those quote must qualify as Valid Width Quotes. This ensures that the quotations that are entered are in alignment with standards that help ensure a quality opening. The Exchange believes that allowing one Electronic Market Maker to enter a quotation continues to protect investors and the general public because the Electronic Market Maker will be held to the same standard for entering quotes as a Lead Market Maker and the process will also ensure an efficient and timely opening, while continuing to hold Lead Market Makers responsible for entering Valid Width Quotes during the Opening Process.

Potential Opening Price

The Exchange's proposal to amend Options 3, Section 8(h) to add an introductory sentence to the Potential Opening Process which provides, ''The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met,'' is consistent with the Act. This paragraph is not intended to amend the current function of the Opening Process, rather it is intended to provide context to the process described within Options 3, Section 8(h). The Opening Price is bounded by the better ABBO in this case. This rule text is consistent with the current operation of the System. This is a non-substantive amendment.

Similarly, the proposed amendment to Options 3, Section 8(h)(C) to replace ''Potential Opening Price calculation'' with the more accurate defined term ''Opening Price'' will bring greater clarity to the Exchange's Rule. This amendment is not substantive.

Opening Quote Range

The Exchange's proposal to add a sentence to Options 3, Section 8(j) to describe the manner in which the OQR is bound will bring greater clarity to the manner in which OQR is calculated. OQR is an additional type of boundary beyond the boundaries mentioned within the Opening Process rule. The System will calculate an OQR for a particular option series that will be utilized in the Price Discovery Mechanism if the Exchange has not opened, pursuant to the provisions in

available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close. *See* Options 3, Section 7(c)(4).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* note 5 above.

[12] *See* Options 2, Section 5.

Options 3, Section 8(d)–(i). OQR would broaden the range of prices at which the Exchange may open to allow additional interest to be eligible for consideration in the Opening Process. OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. Although the Exchange applies other boundaries such as the BBO, the OQR provides a range of prices that may be able to satisfy additional contracts while still ensuring a reasonable Opening Price. More specifically, the Exchange's Opening Price is bounded by the OQR without trading through the limit price(s) of interest within OQR, which is unable to fully execute at the Opening Price in order to provide participants with assurance that their orders will not be traded through. The Exchange seeks to execute as much volume as is possible at the Opening Price. The Exchange's method for determining the Potential Opening Price and Opening Price is consistent with the Act because the proposed process seeks to discover a reasonable price and considers both interest present in System as well as away market interest. The Exchange's method seeks to validate the Opening Price and avoid opening at aberrant prices. The rule provides for opening with a trade, which is consistent with the Act because it enables an immediate opening to occur within a certain boundary without the need for the price discovery process. The boundary provides protections while still ensuring a reasonable Opening Price. The Exchange's proposal protects investors and the general public by more clearly describing how the boundaries are handled by the System. This proposed amendment does not change the manner in which Phlx's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price.

The Exchange's proposal to amend Options 3, Section 8(j)(3) to replace the phrase ''that are executable against each other or the ABBO:'' with ''that *cross each other or are marketable against* the ABBO:'' will more accurately describe the current Opening Process. Valid Width Quotes are not routable and would not execute against the ABBO. This rule text is more specific than ''executable against each other.'' The Exchange believes that this rule text adds greater transparency to the Opening Process. This is a non-substantive amendment.

The Exchange's proposal to amend the phrase ''consider routable'' to ''route routable'' and replacing the phrase ''in price/time priority to satisfy the away market'' with the citation to Options 3, Section 10(a)(1)(A), which describes price/time priority within Options 3, Section 8(j)(7), are non-substantive rule changes. These proposals will add greater clarity to the Exchange's Rules.

Price Discovery Mechanism

The Exchange's proposal to add new rule text at Options 3, Section 8(k)(A)(1) to describe the current operation of the System with respect to imbalance messages is consistent with the Act. The propose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. An imbalance process is intended to attract liquidity to improve the price at which an option series will open, as well as to maximize the number of contracts that can be executed on the opening. This process will only occur if the Exchange has not been able to otherwise open an option series utilizing the other processes available in Options 3, Section 8. The Imbalance Timer is intended to provide a reasonable time for participants to respond to the Imbalance Message before any opening interest is routed to away markets and, thereby, maximize trading on the Exchange. The Exchange believes that the proposed rule text provides market participants with additional information as to the imbalance message. The following potential scenarios, which may lead to the dissemination of a ''0'' volume, include (1) when no executions are possible and routable interest is priced at or through the ABBO: (2) internal quotes are crossing; and (3) there is a Valid Width Quote, but there is no Quality Opening Market. The Exchange believes adding this detail will provide greater information as to the manner in which Imbalance Messages are disseminated today. The Exchange's process of disseminating zero imbalance messages is consistent with the Act because the Exchange is seeking to identify a price on the Exchange without routing away, yet which price may not trade through another market and the quality of which is addressed by applying the OQR boundary. Announcing a price of zero will permit market participants to respond to the Imbalance Message, which interest would be considered in determining a fair and reasonable Opening Price.

The Exchange's proposal to amend Options 3, Section 8(k)(C)(2) to remove the phrase ''at the Opening Price'' within the paragraph is consistent with the Act because removing the current phrase will avoid confusion. The Exchange notes that anything traded on Phlx would be at the Opening Price, the trades that are routed away would be at an ABBO price which differs from the Phlx Opening Price. To avoid any confusion the Exchange is amending the sentence to remove the reference to the Opening Price. In addition, the Exchange proposes to add the phrase ''and orders'' to Options 3, Section 8(j)(3)(B) which currently only references quotes. During the Price Discovery Mechanism both quotes and orders are considered.

The Exchange's proposal to amend the last sentence of Options 3, Section 8(k)(C)(5) to amend the phrase ''Any unexecuted contracts'' to ''Any unexecuted interest'' will make clear that this includes orders, quotes and sweeps. The Exchange's proposal to add the phrase ''if consistent with the Member's instructions'' to the end of the paragraph at Options 3, Section 8(k)(C)(5) will make clear that the instructions provided by a member in terms of order types and routing would be applicable to interest entered during the Opening Process which remains eligible for intra-day trading. This proposal is consistent with the Act and will add greater clarity to the Exchange's Rules.

The Exchange's proposal to add an introductory phrase to Options 3, Section 8(k)(D) which provides, ''Pursuant to Options 3, Section 8(k)(C)(6),'' is consistent with the Act. The prior paragraph, Options 3, Section 8(k)(C)(6), describes how the System executes and routes orders. This introductory sentence is being added as a transition from the prior paragraph at Options 3, Section 8(k)(C)(6), relating to the routing of orders. All routable interest would have routed and non-routable interest, which does not route, is subsequently described. This introductory paragraph is meant to be informative. This non-substantive amendment is consistent with the Act because it adds greater clarity to the Exchange's Rules.

The Exchange's proposal to add a new paragraph at Options 3, Section 8(k)(G) which provides, ''Remaining contracts which are not priced through the Exchange Opening Price after routing a number of contracts to satisfy better priced away contracts will be posted to the Order Book at the better of the away market price or the order's limit price,'' will bring greater transparency to the handling of orders once an option series is opened for trading. After away interest is cleared by routable interest and the opening cross has occurred, DNR Orders are handled by the System.

DNR Order interest will rest on the Order Book, provided it was not priced through the Opening Price. This rule text accounts for orders which have routed away and returned to Phlx unsatisfied and also accounts for interest that remains unfilled during the Opening Process, provided it was not priced through the Opening Price. The Exchange notes that the posted interest will be priced at the better of the away market price or the order's limit price. This additional clarity will protect investors and the general public by adding greater transparency to the Exchange's current System operation by explaining how all interest is handled during the Opening Process. The Exchange believes that this detail will provide market participants with all possible scenarios that may occur once Phlx opens its options series. This amendment represents the System's current function.

Opening Process Cancel Timer

The Exchange's proposal to adopt an Opening Process Cancel Timer within Options 3, Section 8(l), similar to NOM's and BX's Rules at Options 3, Section 8(c) is consistent with the Act. The Exchange's proposal to add a process whereby if an options series has not opened before the conclusion of the Opening Process Cancel Timer, a member may elect to have orders returned by providing written notification to the Exchange is consistent with the Act. Phlx believes that this amendment will promote just and equitable principles of trade and to protect investors and the public interest by enhancing its Opening Process. Adopting a cancel timer similar to NOM and BX will increase the efficiency of Phlx's Opening Process by providing Members with the ability to elect to have orders returned, except for non-GTC orders. This functionality provides members with choice, when symbols do not open, about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange. The proposed changes should prove to be very helpful to market participants, particularly those that are involved in adding liquidity during the Opening Cross. These proposed enhancements will allow Phlx to continue to have a robust Opening Process.

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. While the Exchange does not believe that the proposal should have any direct impact on competition, it believes the proposal will enhance the Opening Process by making it more efficient and beneficial to market participants. Moreover, the Exchange believes that the proposed amendments will significantly improve the quality of execution of Phlx's Opening Process. The proposed amendments provide market participants more choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this should attract new order flow.

Definitions

With respect to the amendment to the definition of ''imbalance'' at proposed Options 3, Section 8(a)(xi) as the number of unmatched contracts priced through the Potential Opening Price. The Exchange believes that the addition of this defined term will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This description is consistent with the current System operation. This is a non-substantive rule change.

Eligible Interest

The Exchange's proposal to amend Options 3, Section 8(b)(ii) will bring greater clarity to the rule text. This proposal does not impose an undue burden on competition. The Exchange is proposing this amendment because Options 3, Section 10 explains how the Exchange will aggregate the size of all eligible interest for a particular participant category at a particular price level and the citation to that rule will provide that detail.

All-or-None Orders

The Exchange's proposal to amend Options 3, Section 8(b) to remove the phrase ''that can be satisfied'' in relation to All-or-None Orders and to amend Options 3, Section 8(h) to remove the phrase ''except All-or-None interest that cannot be satisfied'' does not impose an undue burden on competition. The Exchange would include all All-or-None Orders as eligible interest and also consider all All-or-None Orders for purposes of determining the Potential Opening Price, because the Exchange would be unable to determine which All-or-None Orders could be satisfied. Only Public Customers may submit All-or-None Orders.[13]

[13] *See* note 3 above.

Valid Width Quotes

The Exchange's proposal to amend the requirements within Options 3, Section 8(d) for Phlx Electronic Market Makers to enter Valid Width Quotes by permitting the Valid Width Quote of one Phlx Electronic Market Maker other than the Lead Market Maker to open an option series without waiting for the two minute timeframe does not impose an undue burden on competition. This proposal would allow the market to open more efficiently as well as enable greater participation by Phlx Electronic Market Makers in the Opening Process. Lead Market Makers continue to remain obligated to open their appointed options series. Electronic Market Maker may participate in the Opening Process, as is the case today, provided they enter Valid Width Quotes, which is intended to ensure a quality opening. The Exchange does not believe this proposal would burden the ability of market participants who enter quotes to participate in the Opening Process.

Potential Opening Price

The Exchange's proposal to amend Options 3, Section 8(h) to add an introductory sentence to the Potential Opening Process does not impose an undue burden on competition. This paragraph is not intended to amend the current function of the Opening Process, rather it is intended to provide context to the process described within Options 3, Section 8(h). The Opening Price is bounded by the better ABBO in this case. This rule text is consistent with the current operation of the System. This is a non-substantive amendment.

Similarly, the proposed amendment to Options 3, Section 8(h)(C) to replace ''Potential Opening Price calculation'' with the more accurate defined term ''Opening Price'' will bring greater clarity to the Exchange's Rule. This amendment is not substantive.

Opening Quote Range

The Exchange's proposal to add a sentence to Options 3, Section 8(j) to describe the manner in which the OQR is bound does not impose an undue burden on competition. OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. The Exchange's method seeks to validate the Opening Price and avoid opening at aberrant prices for the protection of all investors. This proposed amendment does not change the manner in which Phlx's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price.

The Exchange's proposal to amend Options 3, Section 8(j)(3) to replace the phrase ''that are executable against each other or the ABBO:'' with ''that *cross each other or are marketable against* the ABBO:'' does not impose an undue burden on competition, rather, this proposal will more accurately describe the current Opening Process. Valid Width Quotes are not routable and would not execute against the ABBO. This rule text is more specific than ''executable against each other.'' The Exchange believes that this rule text adds greater transparency to the Opening Process. This is a non-substantive amendment.

The Exchange's proposal to amend the phrase ''consider routable'' to ''route routable'' and replacing the phrase ''in price/time priority to satisfy the away market'' with the citation to Options 3, Section 10(a)(1)(A), which describes price/time priority within Options 3, Section 8(j)(7), are non-substantive rule changes. These proposals will add greater clarity to the Exchange's Rules.

Price Discovery Mechanism

The Exchange's proposal to add new rule text at Options 3, Section 8(k)(A)(1) to describe the current operation of the System with respect to imbalance messages does not impose an undue burden on competition. The propose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. All market participants are able to respond to an imbalance messages and have their interest considered in determining a fair and reasonable Opening Price.

The Exchange's proposal to amend Options 3, Section 8(k)(C)(2) to remove the phrase ''at the Opening Price'' within the paragraph does not impose an undue burden on competition, rather, removing the current phrase will avoid confusion. In addition, the Exchange's proposal to add the phrase ''and orders'' to Options 3, Section 8(j)(3)(B) which currently only references quotes does not impose an undue burden on competition. During the Price Discovery Mechanism both quotes and orders are considered.

The Exchange's proposal to amend the last sentence of Options 3, Section 8(k)(C)(5) to amend the phrase ''Any unexecuted contracts'' to ''Any unexecuted interest'' does not impose an undue burden on competition, rather, it will make clear that this includes orders, quotes and sweeps. The Exchange's proposal to add the phrase ''if consistent with the Member's instructions'' to the end of the paragraph at Options 3, Section 8(k)(C)(5) does not impose an undue burden on competition. This rule text will make clear that the instructions provided by a member in terms of order types and routing would be applicable to interest entered during the Opening Process which remains eligible for intra-day trading.

The Exchange's proposal to add an introductory phrase to Options 3, Section 8(k)(D) which provides, ''Pursuant to Options 3, Section 8(k)(C)(6),'' does not impose an undue burden on competition. The prior paragraph, Options 3, Section 8(k)(C)(6), describes how the System executes and routes orders. This introductory sentence is being added as a transition from the prior paragraph at Options 3, Section 8(k)(C)(6), relating to the routing of orders. This is a non-substantive amendment.

The Exchange's proposal to add a new paragraph at Options 3, Section 8(k)(G) which provides, ''Remaining contracts which are not priced through the Exchange Opening Price after routing a number of contracts to satisfy better priced away contracts will be posted to the Order Book at the better of the away market price or the order's limit price,'' does not impose an undue burden on competition, rather this proposal will bring greater transparency to the handling of orders once an option series is opened for trading. This rule text accounts for orders which have routed away and returned to Phlx unsatisfied and also accounts for interest that remains unfilled during the Opening Process, provided it was not priced through the Opening Price. This additional clarity will explain how all interest is handled during the Opening Process.

Opening Process Cancel Timer

The Exchange's proposal to adopt an Opening Process Cancel Timer within Options 3, Section 8(l), similar to NOM's and BX's Rules at Options 3, Section 8(c) does not impose an undue burden on competition. Adopting a cancel timer similar to NOM and BX will increase the efficiency of Phlx's Opening Process for all market participants. All market participants will have the ability to elect to have orders returned, except for non-GTC Orders, when symbols do not open. This feature provides Members with choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange.

The remainder of the proposed rule text is intended to bring greater transparency to the Opening Process rule while also adding additional detail and clarity and therefore does not have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2020–20 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2020–20. 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–2020–20 and should be submitted on or before May 19, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08939 Filed 4–27–20; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88721; File No. SR–C2–2020–004]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Remove Its Optional Daily Risk Limits Pursuant to Rule 6.14

April 22, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2020, Cboe C2 Exchange, Inc. (the "Exchange" or "C2") 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 Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe C2 Exchange, Inc. (the "Exchange" or "C2") proposes to remove its optional daily risk limits pursuant to Rule 6.14. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, 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 remove the optional daily risk limit settings for Users in Rule 6.14(c)(4).[5] The daily risk limits are voluntary functionality. Pursuant to current Rule 6.14(c)(4), if a User enables this functionality they may establish one or more of the following values for each of its ports, which the System aggregates (for simple and complex orders) across all of a User's ports (*i.e.,* applies on a firm basis): (i) Cumulative notional booked bid value ("CBB"); (ii) cumulative notional booked offer value ("CBO"); (iii) cumulative notional executed bid value ("CEB"); and (iv) cumulative notional executed offer value ("CEO"). The User may then establish a limit order notional cutoff, a market order notional cutoff, or both, each of which it may establish on a net basis, gross basis, or both. If a User exceeds a cutoff value, the System cancels or rejects all incoming limit orders or market orders, respectively. If a User establishes a limit order notional cutoff but does not establish (or sets as zero) the market order notional cutoff, the System cancels or rejects all market orders. The System calculates a notional cutoff on a gross basis by summing CBB, CBO, CEB, and CEO. The System calculates a notional cutoff on a net basis by summing CEO and CBO, then subtracting the sum of CEB and CBB, and then taking the absolute value of the resulting amount. This functionality does not apply to bulk messages.

The Exchange proposes to remove the daily limit risk mechanism because use of this mechanism on Users' ports is infrequent. Indeed, no Users currently have the daily risk limit enabled on a port connected to the Exchange. Because so few Users enable this functionality for their ports, the Exchange believes the current demand does not warrant the Exchange resources necessary for ongoing System support for the risk mechanism (*e.g.,* the System must maintain and apply algorithms that track and calculate gross and net notional exposure). The Exchange again notes that the use of the daily risk limit is voluntary. The Exchange will continue to offer to Users

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] As a result of the proposed rule change, the Exchange also updates the subsequent paragraph numbering in current subparagraphs (c)(5) through (c)(10).