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.

In sum, 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.[16]

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–032 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–2022–032. 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–NASDAQ–2022–032 and should be submitted on or before May 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08912 Filed 4–26–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94775; File No. SR–Phlx–2022–17]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rule 3306(a)(3), in Light of Planned Changes to the System as Well as To Address Existing Issues

April 21, 2022.

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 11, 2022, 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 amend Rule 3306(a)(3), in light of planned changes to the System as well as to address existing issues, as described further below.

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

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

Presently, the Exchange is making functional enhancements and improvements to specific Order Types [3] and Order Attributes [4] that are currently only available via the RASH Order entry protocol.[5] Specifically, the Exchange will be upgrading the logic and implementation of these Order Types and Order Attributes so that the features are more streamlined across the Exchange's System and order entry protocols, and will enable the Exchange to process these Orders more quickly and efficiently. Additionally, this System upgrade will pave the way for the Exchange to enhance the OUCH Order entry protocol [6] so that Participants may enter such Order Types and Order Attributes via OUCH, in addition to the RASH Order entry protocol.[7] The Exchange plans to implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute.[8]

To support and prepare for these upgrades and enhancements, the Exchange proposes to amend Rule 3306(a)(3), which governs the entry of Orders, so that it aligns with how the System, once upgraded, will handle the partial cancellation of Orders to reduce their share size. The proposed filing also addresses issues with the existing Rule text and the current implementation of that Rule text by the System.

In pertinent part, existing Rule 3306(a)(3) states as follows, with respect how the Exchange handles partial Order cancellations to reduce share size:

> In addition, a partial cancellation of an Order to reduce its share size will not affect the priority of the Order on the book; provided, however that such a partial cancellation may not be made with respect to a Pegged Order (including a Discretionary Order that is Pegged).

The first clause of this text states the general rule that participants may instruct the Exchange to partially cancel their Orders in order to reduce share size, and when handling such partial cancellation instructions, the Exchange will adjust the size of the Orders without affecting their existing priority. The second clause states an exception to this general rule, which the Exchange intends to mean that when the Exchange processes partial cancellations of Orders with the Pegging Attribute (including Discretionary Orders with Pegging) that participants enter via RASH or FIX (as opposed to OUCH or FLITE), the partially cancelled Orders will lose their priority.

Going forward, planned upgrades will provide for the Exchange to process partial cancellations of all Order Types and Attributes entered through all of its Order Entry Protocols, including RASH, OUCH, FIX, and FLITE, and it will do so without loss of priority, such that the existing exception to the general rule in 3306(a)(3) will no longer be necessary. Thus, the Exchange proposes to eliminate this exception by deleting it from the Rule. This proposal will provide better outcomes to participants by enabling them to reduce the share size of their Orders without the need to sacrifice the priority of their Orders.

The Exchange believes that it is reasonable to allow the partial cancellation of an Order without the Order losing priority because the participant that entered the Order continues to express its willingness to trade at the price entered when the Order first came onto the Book. Moreover, if the Order is displayed, other participants quoting at the same price are aware of the priority of their Orders relative to the partially cancelled Order. While a partial cancellation may provide these other participants with greater opportunities to provide a fill, the Exchange does not believe that it would be reasonable for these participants to jump ahead of an Order with time priority merely because the size of the Order has been reduced. Similarly, if the partially cancelled Order is non-displayed, other participants would have no awareness of its price, its original size, or its reduced size. Again, while other participants at that price may have an increased opportunity to provide a fill when the Order's size is reduced, they would not have an expectation that the priority of their Orders would change vis-à-vis that of an Order that arrived on the Book at an earlier time.

Moreover, the Exchange notes that the proposal will simplify and harmonize the Exchange's processing of partial cancellations across its Order Entry Protocols.

Additionally, the proposed Rule change will address ambiguities in the existing Rule text. The existing Rule text does not state expressly the Exchange's current practice of restricting the loss of priority following a partial cancellation to Pegged Orders when such Orders are entered through RASH or FIX. The existing language suggests that partial cancellations of these Orders cause a loss of priority in all cases, regardless of the Exchange's Order Entry Protocol utilized to enter the Orders. In fact, the Exchange does process partial cancellations of these Orders without loss of priority when the Orders are entered through OUCH and FLITE. The proposed Rule change will address this issue by providing for consistent handling of partial cancellations across all Orders and all applicable and available Order Entry Protocols and by eliminating exceptions in the existing Rule text.

Similarly, the existing Rule is ambiguous as to the intended scope of its exception to the general rule for ''Pegged Orders.'' Although the Rule

[3] An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See* Equity 1, Section 1(e).

[4] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See id.*

[5] The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows member organizations to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. *See http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.*

[6] The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from member organizations, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for member organizations to send Orders and receive status updates on those Orders. *See https://www.nasdaqtrader.com/Trader.aspx?id=OUCH.*

[7] The Exchange designed the OUCH protocol to enable member organizations to enter Orders quickly into the System. As such, the Exchange developed OUCH with simplicity in mind, and it therefore lacks more complex order handling capabilities. By contrast, the Exchange specifically designed RASH to support advanced functionality, including discretion, random reserve, pegging and routing. Once the System upgrades occur, then the Exchange intends to propose further changes to its Rules to permit participants to utilize OUCH, in addition to RASH, to enter order types that require advanced functionality.

[8] The Exchange notes that its sister exchange, The Nasdaq Stock Market, LLC (''Nasdaq''), recently filed a similar proposed rule change with the Commission, *see* Securities Exchange Act Release No. 34–94492 (March 23, 2022), 87 FR 18405 (March 30, 2022) (SR–NASDAQ–2022–020), and that Nasdaq BX, Inc. plans to do the same in parallel with the Exchange.

states that the exception applies to ''Pegged Orders (including a Discretionary Order that is Pegged),'' the Exchange does not intend for Orders with Midpoint Pegging to be part of this exception, and it applies the Rule accordingly. In other words, the Exchange processes partial cancellations for Orders with Midpoint Pegging (*i.e.,* Non-Display Orders assigned the Midpoint Peg Attribute and Midpoint Peg Post-Only Orders) without loss of priority. The Exchange recognizes that the Rule text does not specifically address Orders with Midpoint Pegging. Again, the proposed Rule change will eliminate this issue going forward because the Exchange will adopt consistent handling of partial cancellations across all Orders and available and applicable Order Entry Protocols.

The Exchange intends to implement the foregoing changes during the Second Quarter of 2022. The Exchange will issue an Equity Trader Alert at least 7 days in advance of implementing the changes.

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, 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 believes that its proposed amendment to Rule 3306(a)(3) is consistent with the Act. Eliminating the exception to the general Rule providing for the Exchange to process partial cancellations without loss of priority will benefit participants by enabling them to reduce the share size of their Orders without the need to sacrifice the priority of their Orders.

The Exchange believes that it is reasonable to allow the partial cancellation of an Order without the Order losing priority because the participant that entered the Order continues to express its willingness to trade at the price entered when the Order first came onto the Book. Moreover, if the Order is displayed, other participants quoting at the same price are aware of the priority of their Orders relative to the partially cancelled Order. While a partial cancellation may provide these other participants with greater opportunities to provide a fill, the Exchange does not believe that it would be reasonable for these participants to jump ahead of an Order with time priority merely because the size of the Order has been reduced. Similarly, if the partially cancelled order is non-displayed, other participants would have no awareness of its price, its original size, or its reduced size. Again, while other participants at that price may have an increased opportunity to provide a fill when the Order's size is reduced, they would not have an expectation that the priority of their Orders would change vis-à-vis that of an Order that arrived on the Book at an earlier time.

Moreover, the proposal will simplify and harmonize the Exchange's processing of partial cancellations across its Order Entry Protocols. This proposed amendment reflects planned upgrades that will allow the Exchange to process partial cancellation of Orders entered through all pertinent and available Order Entry Protocols without loss of priority.

Additionally, the proposed Rule change is consistent with the Act because it will eliminate ambiguities in the existing Rule text that do not fully reflect the Exchange's intended meaning or application of the Rule. As noted above, the existing Rule text does not state that the Exchange limits the loss of priority for partially cancelled Orders to Pegged Orders when such Orders are entered through RASH or FIX. The existing language suggests that partial cancellations of these Orders lose priority in all cases, regardless of the Exchange's Order Entry Protocol utilized to enter the Orders. In fact, the Exchange does process partial cancellations of these Orders without loss of priority when the Orders are entered through OUCH or FLITE. The proposed Rule change will address this issue by providing for consistent handling of partial cancellations across all applicable and available Orders and Order Entry Protocols and by eliminating exceptions in the existing Rule text.

Similarly, the existing Rule does not reflect the Exchange's intent that Orders with Midpoint Pegging are not included in this exception, even though it applies the Rule in this manner. In other words, the Exchange processes partial cancellations for Midpoint Pegging Orders without loss of priority. The Exchange recognizes that the Rule text does not specifically address Orders with Midpoint Pegging. Again, the proposed Rule change will eliminate this issue going forward because the Exchange will adopt consistent handling of partial cancellations across all Orders and applicable and available Order Entry Protocols.

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

The Exchange does not believe that its proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and Order Entry Protocols as well as those that amend and clarify the Exchange's Rules regarding its Order Types and Attributes, are pro-competitive because they bolster the efficiency, integrity, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, the proposed changes will not unduly burden intra-market competition among various Exchange participants. The Exchange's proposal to allow the partial cancellation of an Order without the Order losing priority will not impact intra-market competition because the participant that entered the Order continues to express its willingness to trade at the price entered when the Order first came onto the Book. Moreover, if the Order is displayed, other participants quoting at the same price are aware of the priority of their Orders relative to the partially cancelled Order. While a partial cancellation may provide these other participants with greater opportunities to provide a fill, the Exchange does not believe that it would be reasonable for these participants to jump ahead of an Order with time priority merely because the size of the Order has been reduced. Similarly, if the partially cancelled Order is non-displayed, other participants would have no awareness of its price, its original size, or its reduced size. Again, while other participants at that price may have an increased opportunity to provide a fill when the Order's size is reduced, they would not have an expectation that the priority of their Orders would change vis-à-vis that of an Order that arrived on the Book at an earlier time.

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.

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

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

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 [11] and Rule 19b–4(f)(6) thereunder.[12]

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*. Please include File Number SR–Phlx–2022–17 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–2022–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2022–17 and should be submitted on or before May 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08913 Filed 4–26–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 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.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94773; File No. SR–ISE–2022–10]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change To Amend ISE Options 4, Section 5, Series of Options Contracts Open for Trading

April 21, 2022.

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 11, 2022, Nasdaq ISE, LLC (''ISE'' 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 amend Options 4, Section 5, ''Series of Options Contracts Open for Trading.'' Specifically, this proposal seeks to amend Supplementary Material .07 to Options 4, Section 5.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/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 Options 4, Section 5, ''Series of Options Contracts Open for Trading.'' Specifically, the Exchange proposes to amend Supplementary Material .07 to Options 4, Section 5 to account for conflicts between different provisions within the Short Term Options Series Rules.

In 2021, ISE amended Options 4, Section 5 to limit the intervals between strikes in equity options listed as part of the Short Term Option Series Program, excluding Exchange-Traded Fund Shares and ETNs, that have an expiration date more than twenty-one days from the listing date (''Strike Interval Proposal'').[3] The Strike Interval Proposal adopted a new Supplementary Material .07 to Options 4, Section 5 which included a table that intended to

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91930 (May 18, 2021), 86 FR 27907 (May 24, 2021) (SR–ISE–2021–09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 4, Section 5, ''Series of Options Contracts Open for Trading'' To Limit Short Term Options Series Intervals Between Strikes).