

under the Investment Advisers Act of 1940 (together with the Trust, the “Applicants”).

**Filing Dates:** The application was filed on July 16, 2019 and amended on October 4, 2019 and February 5, 2020.

**Hearing or Notification of Hearing:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission’s Secretary at [Secretaries-Office@sec.gov](mailto:Secretaries-Office@sec.gov) and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on May 12, 2020, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary at [Secretaries-Office@sec.gov](mailto:Secretaries-Office@sec.gov).

**ADDRESSES:** The Commission: [Secretaries-Office@sec.gov](mailto:Secretaries-Office@sec.gov). Applicants: [fundops@cornerstonecapinc.com](mailto:fundops@cornerstonecapinc.com).

**FOR FURTHER INFORMATION CONTACT:** Jay M. Williamson, Senior Counsel, at (202) 551–3393, or David Nicolardi, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission’s website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090.

### Summary of the Application

1. The Adviser serves or will serve as the investment adviser to the Subadvised Series pursuant to an investment advisory agreement with the Trust (each, an “Investment Management Agreement” and, collectively, the “Investment Management Agreements”).<sup>1</sup> The

<sup>1</sup> Applicants request relief with respect to any existing or future series of the Trust and any other existing or future registered open-end management company or series thereof that intends to rely on the requested order and that: (a) is advised by the Adviser, or any person controlling, controlled by or under common control with the Adviser or its successors; (b) uses the multi-manager structure described in the application; and (c) complies with the terms and conditions of the application (each, a “Subadvised Series”). For purposes of the requested order, “successor” is limited to an entity

Adviser provides or will provide the Subadvised Series with continuous and comprehensive investment management services, subject to the supervision of, and policies established by, the Trust’s board of trustees (the “Board”). The Investment Management Agreement permits the Adviser, subject to the approval of the Board, to delegate to one or more Sub-Advisers the responsibility to provide the day-to-day portfolio investment management of each Subadvised Series, subject to the supervision and direction of the Adviser.<sup>2</sup> The primary responsibility for managing the Subadvised Series will remain vested in the Adviser. The Adviser will hire, evaluate, allocate assets to and oversee the Sub-Advisers, including determining whether a Sub-Adviser should be terminated, at all times subject to the authority of the Board.

2. Applicants request an exemption to permit the Adviser, subject to Board approval, to enter into investment sub-advisory agreements with Non-Affiliated Sub-Advisers (each, a “Sub-Advisory Agreement”) and materially amend such Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.<sup>3</sup> Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised Series to disclose (as both a dollar amount and a percentage of the Subadvised Series’ net assets): (a) The aggregate fees paid to the Adviser; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised Series’ shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised Series’ shareholders.

that results from a reorganization into another jurisdiction or a change in the type of business organization.

<sup>2</sup> A “Sub-Adviser” for a Subadvised Series is an investment sub-adviser for that Series that is not an “affiliated person” (as such term is defined in Section 2(a)(3) of the Act) of the Subadvised Series or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to one or more Subadvised Series (each a “Non-Affiliated Sub-Adviser” and collectively, the “Non-Affiliated Sub-Advisers”).

<sup>3</sup> The requested relief will not extend to any sub-adviser which is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series or of its Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Series (“Affiliated Sub-Adviser”).

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Investment Management Agreements will remain subject to shareholder approval while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised Series. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser’s ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised Series.

For the Commission, by the Division of Investment Management, under delegated authority.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88676; File No. SR–Phlx–2020–22]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 6, Section 5, Titled Transfer of Positions

April 17, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on April 16, 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.

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

<sup>2</sup> 17 CFR 240.19b–4.

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

The Exchange proposes to amend Options 6, Section 5, titled "Transfer of Positions." The Exchange also proposes to update certain citations.

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 Options 6, Section 5, titled "Transfer of Positions." The Exchange also proposes to update certain citations. This proposed rule would continue to permit market participants to move positions from one account to another without first exposure of the transaction on the Phlx. The proposed rule change is similar to Cboe Rule 6.7.<sup>3</sup>

Options 6, Section 5 specifies the circumstances under which a member or member organization may effect transfers of positions to permit market participants to move positions from one account to another and to permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Cboe Rule 6.7.

Current Phlx Options 6, Section 5 lists the circumstances in which a member or member organization may transfer positions off the floor in any class of options listed on its books. The

circumstances currently listed include: (1) The dissolution of a joint account in which the remaining member or member organization assumes the positions of the joint account; (2) the dissolution of a corporation or partnership in which a former nominee of that corporation or partnership assumes the positions; (3) positions transferred as part of a member or member organization's capital contribution to a new joint account, partnership, or corporation; (4) the donation of positions to a not-for-profit corporation; (5) the transfer of positions to a minor under the Uniform Gifts to Minors Act; (6) a merger or acquisition resulting in a continuity of ownership or management; or (7) consolidation of accounts within a member or member organization.

The Exchange proposes to amend Options 6, Section 5(a) which currently provides, "A member or member organization may transfer positions off the floor in any class of options listed on its books if the transfer involves one or more of the following events. . . ." The Exchange proposes to instead state, "Existing positions in options listed on the Exchange of a member or member organization or non-member or non-member organization that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves on or more of the following events.

. . ." The proposed rule text intends to clarify that Options 6, Section 5 does not apply to products other than options listed on the Exchange, consistent with the Exchange's other trading rules.<sup>4</sup> This new rule text also clarifies that a member or member organization must be on at least one side of the transfer. The proposed rule change also clarifies that transferred positions must be on, from, or to the books of a Clearing Member. This language is consistent with how transfers are currently effected. The proposed rule change also clarifies that existing positions of a member or member organization or a non-member or non-member organization may be subject to a transfer, except under specified circumstances in which a transfer may only be effected for positions of a member or member organization.<sup>5</sup>

The Exchange notes transfers of positions in Exchange-listed options may also be subject to applicable laws,

rules, and regulations, including rules of other self-regulatory organizations.<sup>6</sup> Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (g) makes this clear in the rule.

The proposed rule change adds four events where a transfer would be permitted to occur.

- Proposed subparagraph (a)(1) permits a transfer to occur if it, pursuant to Options 9, Section 1 is an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error.

- Proposed subparagraph (a)(2) permits a transfer if it is a transfer of positions from one account to another account where there is no change in ownership involved (*i.e.*, the accounts are for the same Person),<sup>7</sup> provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements. The proposed rule change provides market participants with flexibility to maintain positions in accounts used for the same trading purpose in a manner consistent with their businesses. Such transfers are not intended to be transactions among different market participants, as there would be no change in ownership permitted under the provision, and would also not permit transfers among different trading units for which accounts are otherwise required to be maintained separately.<sup>8</sup>

- Proposed subparagraph (a)(3) similarly permits a transfer if it is a consolidation of accounts<sup>9</sup> where no change in ownership is involved.

- Proposed subparagraph (a)(10) permits a transfer if it is a transfer of positions through operation of law from death, bankruptcy, or otherwise. This provision is consistent with applicable

<sup>6</sup> See proposed paragraph (h).

<sup>7</sup> The Exchange proposes to define the term "Person" within this proposed Rule 1058 as "For purposes of this rule, the term 'Person' shall be defined as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof." This definition is identical to Cboe Rule 1.1.

<sup>8</sup> Various rules (for example, Regulation SHO in certain circumstances) require accounts to be maintained separately, and the proposed rule change is consistent with those rules.

<sup>9</sup> This refers to the consolidation of entire accounts (*e.g.*, combining two separate accounts (including the positions in each account into a single account)).

<sup>3</sup> See Securities and Exchange Act Release No. 88424 (March 19, 2020), 85 FR 16981 (March 25, 2020) (SR-Cboe-2019-035) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers).

<sup>4</sup> Proposed paragraph (h) also clarifies that the transfer procedure only applies to positions in options listed on the Exchange, and that transfers of non-Exchange-listed options and other financial instruments are not governed by Options 6, Section 5.

<sup>5</sup> See proposed subparagraphs (a)(5) and (7).

laws, rules, and regulations that legally require transfers in certain circumstances. This proposed rule change is consistent with the purposes of other circumstances in the current rule, such as the transfer of positions to a minor or dissolution of a corporation.

The Exchange believes these proposed events have similar purposes as those in current Options 6, Section 5, which is to permit market participants to move positions from one account to another and to permit transfers upon the occurrence of significant, non-recurring events.<sup>10</sup> As noted above, the proposed rule change is consistent with current Exchange guidance or rules of other self-regulatory organizations.

The proposed rule change renumbers current subparagraphs (a)(1) through (5) to be proposed subparagraphs (a)(5) through (9) and moves current subparagraph (a)(6) to proposed subparagraph (a)(3), with non-substantive changes.

Proposed Options 6, Section (b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment.<sup>11</sup> No position may net against another position (“netting”), and no position transfer may result in preferential margin or haircut treatment.<sup>12</sup> Netting occurs when long positions and short positions in the same series “offset” against each other, leaving no or a reduced position. For example, if a member or member organization wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the proposed Rule, the member or member organization could not transfer the offsetting series, as they would net against each other and close the positions.<sup>13</sup>

However, netting is permitted for transfers on behalf of a Market Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market Maker nominees are trading for the same member or member organization, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they

cannot easily clear into the same Market Maker account at the Clearing Corporation. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a “universal account”) at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market Maker may have a nominee with an appointment in class XYZ on Phlx, and have another nominee with an appointment in class XYZ on ISE, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Phlx transactions and another for ISE transactions) at the Clearing Corporation rather into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market Maker’s universal account in this circumstance to achieve this purpose.

#### Transfer Price

Currently Options 6, Section 5(c) provides, in part, that “members and member organizations must transfer positions pursuant to this Rule at the same prices that appear on the books of the transferring member or member organization, and the transfer must indicate the date when the original trade was made. In the course of transferring positions, no position shall net itself against another position.” The Exchange instead proposes to state within Options 6, Section 5(c) that the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which a transfer is effected may be: (1) The original trade prices of the positions that appear on the books of the trading Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading on the transfer date; (3) mark-to-market prices of the

positions at the close of trading on the trade date prior to the transfer date;<sup>14</sup> or (4) the then-current market price of the positions at the time the transfer is effected.<sup>15</sup> The proposed rule text regarding permissible transfer prices provides market participants with flexibility to determine the transfer price at which the transfer may be effected. The Exchange proposes the four options noted above with respect to the transfer price.

This proposed rule change provides market participants that effect transactions with flexibility to select a transfer price based on circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

#### Prior Written Notice

Current Phlx Options 6, Section 5(b) provides, “members and member organizations must notify the Exchange in writing prior to effecting an off the floor transfer. The written notification must indicate the positions to be transferred and the reason for the transfer.” Proposed Options 6, Section 5(d) requires a member or member organization and its Clearing Member (to the extent that the member or member organization is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting a transfer from or to the account of a member or member organization(s).<sup>16</sup> The notice must indicate: The Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange.<sup>17</sup> The proposed notice will continue to ensure the Exchange is

<sup>14</sup> For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

<sup>15</sup> See Choe Rule 6.7(c).

<sup>16</sup> This notice provision applies only to transfers involving a member’s or member organization’s positions and not to positions of non-member and non-member organization parties, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

<sup>17</sup> See Choe Rule 6.7(d).

<sup>10</sup> See proposed paragraph (g).

<sup>11</sup> See Phlx Options 6, Section 5(c).

<sup>12</sup> For example, positions may not transfer from a customer, joint back office, or firm account to a Market Maker account. However, positions may transfer from a Market Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

<sup>13</sup> See Choe Rule 6.7(b).

aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules. The proposed rule text requires additional information with respect to the prior written notification that is required to effect a transfer.

Additionally, requiring notice from the member or member organization(s) and its Clearing Member(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of a transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Section 10(b). Notwithstanding submission of written notice to the Exchange, member or member organizations and Clearing Members that effect transfers that do not conform to the requirements of proposed Section 10(b) will be subject to appropriate disciplinary action in accordance with the Rules.

#### Records

Current Phlx Rule at Options 6, Section 5(c) provides, in part, Each member or member organization that is a party to a transfer of positions must make and retain records stating the nature of the transaction, the name of the counter-party, and any other information required by the Exchange. Proposed Options 6, Section 5(e) requires each member or member organization and each Clearing Member that is a party to a transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the member or member organization or Clearing Member provide.<sup>18</sup> The records requirement is enhanced to require additional information that must be maintained by members, member organizations and each Clearing Member that is a party to a transfer.

#### Presidential Exemption

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the

exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the member or member organization (with respect to the member's or member organization's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer, the President or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.<sup>19</sup>

#### Routine, Recurring Transfers

The Exchange proposes within Options 6, Section 5(g) that the transfer procedure set forth in Options 6, Section 5 is intended to facilitate non-routine, nonrecurring movements of positions.<sup>20</sup> The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

#### Exchange-Listed Options

The Exchange proposes within Options 6, Section 5(h) notes that the transfer procedure set forth in Options 6, Section 5 is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.<sup>21</sup>

#### Updating Citations

The Exchange recently relocated its rules into a new Rulebook Shell.<sup>22</sup> Certain rule citations within General 2,

Section 4; Options 2, Section 6; Options 7, Section 4; Options 8, Section 28; Section 39, B-6 and C-2 were inadvertently not updated. The Exchange proposes to update those citations and also remove an unnecessary header within General 9, Section 58.<sup>23</sup>

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>24</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>25</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.

Specifically, the Exchange believes the proposed transfer rule is consistent with the Section 6(b)(5)<sup>26</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>27</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting the transfers in very limited circumstances, such as where there is no change in beneficial ownership, a transfer by operation of law or an adjustment or transfer in connection with the correction of a bona fide error, is reasonable to allow a member or member organization to accomplish certain goals efficiently. The Exchange currently permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations or mergers. For example, a member or member organization that is undergoing a structural change and a one-time movement of positions may require a

<sup>23</sup> The header "SUPPLEMENTARY INFORMATION REGARDING RULE 605" is unnecessary as the language which follows explains the text.

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> *Id.*

<sup>19</sup> See Cboe Rule 6.7(f).

<sup>20</sup> See Cboe Rule 6.7(g).

<sup>21</sup> See Cboe Rule 6.7(h).

<sup>22</sup> See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) ("Phlx Rulebook Relocation Rule Change").

<sup>18</sup> See Cboe Rule 6.7(e).

transfer of positions or a member or member organization that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a member or member organization may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts—even if there is no change in beneficial ownership as a result of the transfer—is inconsistent with the purposes for which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (f) to proposed Options 6, Section 5 that the transfer of positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

The Exchange believes the proposed rule change benefits investors, as it adds transparency to the Rules. The purpose of the additional circumstances in which market participants may conduct transfers is consistent with the purpose of the circumstances currently permitted in the proposed rule. Therefore, the proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will ensure the Exchange is able to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a-3 and 17a-4 under the Act.

Similar to Cboe Rule 6.7, the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions

and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(f) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. These standards within proposed Options 6, Section 5(f) are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within Options 6, Section 5(f) which are intended to protect investors and the general public. While Cboe grants an exemption to the President (or senior-level designee),<sup>28</sup> the Exchange has elected to grant an exemption to Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated with the organization as senior-level individuals.

#### Updating Citations

Updating rule citations and removing unnecessary text will bring greater clarity to the Rulebook.

#### *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 that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose an undue burden on intra-market competition as the transfer procedure may be utilized by any member or member organization and the rule will apply uniformly to all members or

member organizations. Use of the transfer procedure is voluntary, and all members or member organizations may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a member or member organization that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will ensure the Exchange is aware of transfers and would be able to monitor and review the transfers to ensure the transfer falls within the proposed rule.

Adopting an exemption, similar to Cboe Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to Options 6, Section 5(a) prohibition if, in his or her judgment, does not impose an undue burden on competition. Circumstances where, due to unusual or extraordinary circumstances such as the market value of the Person's positions would be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, would be taken into consideration in each case where, in the judgment of the Exchange's Chief Executive Officer or President (or senior-level designee), market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change will impose an undue burden on inter-market competition. The proposed position transfer procedure is not intended to be a competitive trading tool. The proposed rule change permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions. As provided for in proposed Options 6, Section 5(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(a) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of

<sup>28</sup> See Cboe Rule 6.7(f).

a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Rule 6.7. The Exchange believes having similar rules related to transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

#### Updating Citations

The updates to the rule citations and removal of unnecessary rule text are non-substantive rule changes.

#### 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)(iii) of the Act<sup>29</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>30</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>31</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission notes that waiver of the operative delay would provide members with the ability to request a transfer, for

limited, non-recurring types of transfers, without the need for exposing those orders on the Exchange, similar to Cboe.<sup>32</sup> The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>33</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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-2020-22 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-2020-22. 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/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-2020-22 and should be submitted on or before May 14, 2020.

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

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

[FR Doc. 2020-08591 Filed 4-22-20; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88677; File No. SR-NYSE-2019-54]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Permit the Exchange To List and Trade Exchange Traded Products

April 17, 2020.

On October 3, 2019, New York Stock Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade Exchange Traded Products that have a component NMS Stock listed on the Exchange or that are based on, or represent an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. The proposed rule change was published for

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>30</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.

<sup>31</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>32</sup> See CBOE Rule 6.7.

<sup>33</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>34</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.