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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88581; File No. SR-Phlx-2020-17]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Phlx’s Pricing Schedule at Options 7, Section 4

April 7, 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 March 30, 2020, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Phlx’s Pricing Schedule at Options 7, Section 4, “Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed).”

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Phlx proposes to amend its pricing within Options 7, Section 4, “Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed)” to permit the strategy caps, which currently apply to the buy and sell side of a transaction that originate from the Exchange floor, to also apply to Floor Qualified Contingent Cross Orders.

Phlx open outcry trading closed on March 17, 2020 due to measures taken by the Exchange to prevent the spread of the Coronavirus Disease (COVID-19).³ Phlx intends to permit Floor Brokers, on a temporary basis, to access and utilize, in a limited capacity, the Floor Based Management System (FBMS) from a remote location other than the Phlx Trading Floor. Phlx will permit, pursuant to Options 8, Section 32, to make all order types unavailable, with the exception of Section 32(e) Floor Qualified Contingent Cross Orders (“QCC”), for execution

³ See Options Trader Alert #2020 – 7.

within FBMS.⁴ Today, Phlx applies the below strategy caps to the buy and sell side of a transaction, which must originate from the Exchange floor:

Floor Options Transactions - Multiply Listed Options	Strategy	Qualification	Cap
Lead Market Maker, Market Maker, Professional, Firm and Broker-Dealer	dividend	executed on the same trading day in the same options class when such members are trading: (1) in their own proprietary accounts; or (2) on an agency basis. If transacted on an agency basis, the daily cap will apply per beneficial account.	\$1,100
Lead Market Maker, Market Maker, Professional, Firm and Broker-Dealer	reversal and conversion, merger, short stock interest, jelly roll, and box spread strategies	executed on the same trading day for all options classes in the aggregate when such members are trading (1) in their own proprietary accounts; or (2) on an agency basis. If transacted on an agency basis, the daily cap will apply per beneficial account.	\$1,100
Per member organization	dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies ("Monthly Strategy Cap")	combined executions in a month when trading in its own proprietary accounts	\$65,000

• Reversal and conversion, jelly roll and box spread strategy executions will not be included in the Monthly Strategy Cap for a Firm. Reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) are included in the Monthly Firm Fee Cap. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Market Maker Cap. NDX and NDXP Options Transactions will be excluded from Strategy Cap pricing.

⁴ Floor QCC transactions do not require exposure in open outcry. Additionally, Floor Brokers may also place orders on the limit order book electronically through the FBMS pursuant to Options 8, Section 28(g).

In light of the recent closure of open outcry, the Exchange proposes to apply the strategy caps within Options 7, Section 4 to qualifying strategies executed as Floor QCC Orders. The Exchange offers strategy caps for various types of strategies, including dividend,⁵ merger,⁶ short stock interest,⁷ reversal and conversion,⁸ jelly roll⁹ and box spread¹⁰ strategies. The Exchange proposes to amend the rule text within Options 7, Section 4 to provide, “To qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange Trading Floor or as a Floor Qualified Contingent Cross Order.” The Exchange is changing “floor” to “Trading Floor” to be more specific. The Exchange believes that this proposal will allow members to

⁵ A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. See Options 7, Section 4.

⁶ A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. See Options 7, Section 4.

⁷ A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. See Options 7, Section 4.

⁸ Reversal and conversion strategies are transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration. See Options 7, Section 4.

⁹ A jelly roll strategy is defined as transactions created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position. See Options 7, Section 4.

¹⁰ A box spread strategy is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively. See Options 7, Section 4.

avail themselves of the strategy caps within Options 7, Section 4 to the extent that they execute qualifying strategies as Floor QCC Orders, as open outcry is unavailable.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹³

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁴ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁵ As the court emphasized, the Commission “intended in Regulation NMS that

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

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

¹⁴ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁵ See NetCoalition, at 534 - 535.

‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.’¹⁶

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁷ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange’s proposal to permit qualifying strategies executed as Floor QCC Orders to qualify for a strategy cap is reasonable. Since Phlx’s open outcry trading is currently unavailable, members are unable to qualify for strategy caps by transacting qualifying strategies that originate from the Trading Floor. Members are able to execute Floor QCC Orders through a remote connection to FBMS as Floor QCC Orders do not require exposure in open outcry. Floor QCC Orders are distinct from Qualified Contingent Cross orders submitted electronically.¹⁸ The Exchange continues to permit strategy caps to apply to Trading Floor members only with this proposal. The Exchange’s proposal to amend Options 7, Section 4 to extend the criteria to qualify for a strategy cap to Floor QCC Orders that qualify as a strategy will allow members to benefit from the strategy caps within Options 7, Section 4.

¹⁶ Id. at 537.

¹⁷ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁸ See Options 3, Section 7(b)(8).

The Exchange's proposal to permit qualifying strategies executed as Floor QCC Orders to qualify for a strategy cap is equitable and not unreasonably discriminatory. Any member who transacts a qualifying strategy as a Floor QCC Order will be entitled to cap their strategies as provided for within Options 7, Section 4, provided the cap qualifications within Options 7, Section 4 are met.

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

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

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-market Competition

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

The Exchange's proposal to permit qualifying strategies executed as Floor QCC Orders to qualify for a strategy cap does not impose an undue burden on competition. Any member who

transacts a qualifying strategy as a Floor QCC Order will be entitled to cap their strategies as provided for within Options 7, Section 4, provided the cap qualifications within Options 7, Section 4 are met.

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.¹⁹

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 e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2020-17 on the subject line.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2020-17. This file number should be included on the subject line if e-mail 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-2020-17 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,

Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).

[FR Doc. 2020-07655 Filed: 4/10/2020 8:45 am; Publication Date: 4/13/2020]