

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81352; File No. SR-Phlx-2017-66]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1092, Nullification and Adjustment of Options Transactions Including Obvious Errors

August 8, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 3, 2017, 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 1092, Nullification and Adjustment of Options Transactions including Obvious Errors.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on a date that is within ninety (90) days after the Commission approved a similar proposal filed by Bats BZX on July 6, 2017.

The text of the proposed rule change is available on the Exchange’s Web site 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 and other options exchanges recently adopted a new, harmonized rule related to the adjustment and nullification of erroneous options transactions, including a specific provision related to coordination in connection with large-scale events involving erroneous options transactions.<sup>3</sup> The Exchange believes that the changes the options exchanges implemented with the new, harmonized rule have led to increased transparency and finality with respect to the adjustment and nullification of erroneous options transactions. However, as part of the initial initiative, the Exchange and other options exchanges deferred a few specific matters for further discussion. Specifically, as described in the Initial Filing, the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. Because this initiative required additional exchange and industry discussion as well as additional time for development and implementation, the Exchange and the other options exchanges determined to proceed with the Initial Filing and to undergo a secondary initiative to complete any additional improvements to the applicable rule. In this filing, the Exchange proposes to adopt procedures that will lead to a more objective and uniform way to determine Theoretical Price in the event a reliable NBBO is not available. In addition to this change, the Exchange has proposed two additional minor changes to its rules. The Exchange’s proposal mirrors that of Bats BZX, which the Commission approved

on July 6, 2017,<sup>4</sup> and those that the other options exchanges intend to file.

#### Calculation of Theoretical Price Using a Third Party Provider

Under the harmonized rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the “Theoretical Price” of the option, *i.e.*, the Exchange’s estimate of the correct market price for the option. Pursuant to Rule 1092, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (“NBB”) just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (“NBO”) just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange uses this NBB or NBO as the Theoretical Price.

The Rule also contains various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Rule specifies situations in which there are no quotes or no valid quotes for comparison purposes, when the national best bid or offer (“NBBO”) is determined to be too wide to be reliable, and at the open of trading on each trading day. In each of these circumstances, in turn, because the NBB or NBO is not available or is deemed to be unreliable, the Exchange determines Theoretical Price. Under the current Rule, when determining Theoretical Price, Exchange personnel generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options. Although the Rule is administered by experienced personnel and the Exchange believes the process is currently appropriate, the Exchange recognizes that it is also subjective and could lead to disparate results for a transaction that spans multiple options exchanges.

The Exchange proposes to adopt Commentary .05 to specify how the Exchange will determine Theoretical Price when required by sub-paragraphs

<sup>4</sup> See Securities Exchange Act Release No. 34-81084 (July 6, 2017) (granting approval of Bats BZX proposal), 82 FR 32216 (July 12, 2017); 82 FR 23684 (May 23, 2017) (SR-BatsBZX-2017-035) (notice of filing of Bats BZX proposal).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 34-74919 (May 8, 2015); 80 FR 27766 (May 14, 2015) (SR-PHLX-2015-43) (the “Initial Filing”).

(b)(1)–(3) of the Rule (*i.e.*, at the open, when there are no valid quotes or when there is a wide quote). In particular, the Exchange has been working with other options exchanges to identify and select a reliable third party vendor (“TP Provider”) that would provide Theoretical Price to the Exchange whenever one or more transactions is under review pursuant to Rule 1092 and the NBBO is unavailable or deemed unreliable pursuant to Rule 1092(b). The Exchange and other options exchanges have selected CBOE Livevol, LLC (“Livevol”) as the TP Provider, as described below. As further described below, proposed Commentary .05 would codify the use of the TP Provider as well as limited exceptions where the Exchange would be able to deviate from the Theoretical Price given by the TP Provider.

Pursuant to proposed Commentary .05, when the Exchange must determine Theoretical Price pursuant to the subparagraphs (b)(1)–(3) of the Rule, the Exchange will request Theoretical Price from the third party vendor to which the Exchange and all other options exchanges have subscribed. Thus, as set forth in this proposed language, Theoretical Price would be provided to the Exchange by the TP Provider on request and not through a streaming data feed.<sup>5</sup> This language also makes clear that the Exchange and all other options exchanges will use the same TP Provider.

As noted above, the proposed TP Provider selected by the Exchange and other options exchanges is Livevol. The Exchange proposes to codify this selection in proposed paragraph (d) to Commentary .05. As such, the Exchange would file a rule proposal and would provide notice to the options industry of any proposed change to the TP Provider.

The Exchange and other options exchanges have selected Livevol as the proposed TP Provider after diligence into various alternatives. Livevol has, since 2009, been the options industry leader in providing equity and index options market data and analytics services.<sup>6</sup> The Exchange believes that Livevol has established itself within the options industry as a trusted provider of such services and notes that it and all other options exchanges already

<sup>5</sup> Though the Exchange and other options exchanges considered a streaming feed, it was determined that it would be more feasible to develop and implement an on demand service and that such a service would satisfy the goals of the initiative.

<sup>6</sup> The Exchange notes that in 2015, Livevol was acquired by CBOE Holdings, Inc., the ultimate parent company of the Chicago Board Options Exchange (“CBOE”) and C2 Options Exchange (“C2”).

subscribe to various Livevol services. In connection with this proposal, Livevol will develop a new tool based on its existing technology and services that will supply Theoretical Price to the Exchange and other options exchanges upon request. The Theoretical Price tool will leverage current market data and surrounding strikes to assist in a relative value pricing approach to generating a Theoretical Price. When relative value methods are incapable of generating a valid Theoretical Price, the Theoretical Price tool will utilize historical trade and quote data to calculate Theoretical Price.

Because the purpose of the proposal is to move away from a subjective determination by Exchange personnel when the NBBO is unavailable or unreliable, the Exchange intends to use the Theoretical Price provided by the TP Provider in all such circumstances. However, the Exchange believes it is necessary to retain the ability to contact the TP Provider if it believes that the Theoretical Price provided is fundamentally incorrect and to determine the Theoretical Price in the limited circumstance of a systems issue experienced by the TP Provider, as described below.

As proposed, to the extent an Official<sup>7</sup> of the Exchange believes that the Theoretical Price provided by the TP Provider is fundamentally incorrect and cannot be used consistent with the maintenance of a fair and orderly market, the Official shall contact the TP Provider to notify the TP Provider of the reason the Official believes such Theoretical Price is inaccurate and to request a review and correction of the calculated Theoretical Price. For example, if an Official received from the TP Provider a Theoretical Price of \$80 in a series that the Official might expect to be instead in the range of \$8 to \$10 because of a recent corporate action in the underlying, the Official would request that the TP Provider review and confirm its calculation and determine whether it had appropriately accounted for the corporate action. In order to ensure that other options exchanges that may potentially be relying on the same Theoretical Price that, in turn, the Official believes to be fundamentally incorrect, the Exchange also proposes to promptly provide notice to other options exchanges that the TP Provider has been contacted to review and correct the calculated Theoretical Price at issue and to include a brief

<sup>7</sup> For purposes of the Rule, an Official is an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. See Rule 1092(a)(3).

explanation of the reason for the request.<sup>8</sup> Although not directly addressed by the proposed Rule, the Exchange expects that all other options exchanges once in receipt of this notification would await the determination of the TP Provider and would use the corrected price as soon as it is available. The Exchange further notes that it expects the TP Provider to cooperate with, but to be independent of, the Exchange and other options exchanges.<sup>9</sup>

The Exchange believes that the proposed provision to allow an Official to contact the TP Provider if he or she believes the provided Theoretical Price is fundamentally incorrect is necessary, particularly because the Exchange and other options exchanges will be using the new process for the first time. Although the exchanges have conducted thorough diligence with respect to Livevol as the selected TP Provider and would do so with any potential replacement TP Provider, the Exchange is concerned that certain scenarios could arise where the Theoretical Price generated by the TP Provider does not take into account relevant factors and would result in an unfair result for market participants involved in a transaction. The Exchange notes that if such situations do indeed arise, to the extent practicable the Exchange will also work with the TP Provider and other options exchanges to improve the TP Provider’s calculation of Theoretical Price in future situations. For instance, if the Exchange determines that a particular type of corporate action is not being appropriately captured by the TP Provider when such provider is generating Theoretical Price, while the Exchange believes that it needs the ability to request a review and correction of the Theoretical Price in connection with a specific review in order to provide a timely decision to market participants, the Exchange would share information regarding the specific situation with the TP Provider and other options exchanges in an effort to improve the Theoretical Price service for future use. The Exchange notes that it does not anticipate needing to rely on this provision frequently, if at all, but

<sup>8</sup> See proposed paragraph (b) to Commentary .05.

<sup>9</sup> The Exchange expects any TP Provider selected by the Exchange and other options exchanges to act independently in its determination and calculation of Theoretical Price. With respect to Livevol specifically, the Exchange again notes that Livevol is a subsidiary of CBOE Holdings, Inc., which is also the ultimate parent company of multiple options exchanges. The Exchange expects Livevol to calculate Theoretical Price independent of its affiliated exchanges in the same way it will calculate Theoretical Price independent of non-affiliated exchanges.

believes the provision is necessary nonetheless to best prepare for all potential circumstances. Further, the Theoretical Price used by the Exchange in connection with its rulings will always be that received from the TP Provider and the Exchange has not proposed the ability to deviate from such price.<sup>10</sup>

Pursuant to proposed paragraph (c) to Commentary .05, an Official of the Exchange may determine the Theoretical Price if the TP Provider has experienced a systems issue that has rendered its services unavailable to accurately calculate Theoretical Price and such issue cannot be corrected in a timely manner. The Exchange notes that it does not anticipate needing to rely on this provision frequently, if at all, but believes the provision is necessary nonetheless to best prepare for all potential circumstances. Further, consistent with existing text in Rule 1092(e)(4), the Exchange has not proposed a specific time by which the service must be available in order to be considered timely.<sup>11</sup> The Exchange expects that it would await the TP Provider's services becoming available again so long as the Exchange was able to obtain information regarding the issue and the TP Provider had a reasonable expectation of being able to resume normal operations within the next several hours based on communications with the TP Provider. More specifically with respect to Livevol, Livevol has business continuity and disaster recovery procedures that will help to ensure that the Theoretical Price tool remains available or, in the event of an outage, that service is restored in a timely manner.

The Exchange also notes that if a wide-scale event occurred, even if such event did not qualify as a "Significant Market Event" pursuant to Rule 1092(e), and the TP Provider was unavailable or otherwise experiencing difficulty, the Exchange believes that it and other options exchanges would seek to coordinate to the extent possible. In particular, the Exchange and other options exchanges now have a process, administered by the Options Clearing Corporation, to invoke a discussion amongst all options exchanges in the event of any widespread or significant

market events. The Exchange believes that this process could be used in the event necessary if there were an issue with the TP Provider.

The Exchange also proposes to adopt language in paragraph (d) of Commentary .05 to Rule 1092 to disclaim the liability of the Exchange and the TP Provider in connection with the proposed Rule, the TP Provider's calculation of Theoretical Price, and the Exchange's use of such Theoretical Price. Specifically, the proposed rule would state that neither the Exchange, the TP Provider, nor any affiliate of the TP Provider (the TP Provider and its affiliates are referred to collectively as the "TP Provider"), makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of the TP Provider pursuant to Commentary .05. The proposed rule would further state that the TP Provider does not guarantee the accuracy or completeness of the calculated Theoretical Price and that the TP Provider disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such Theoretical Price. Finally, the proposed Rule would state that neither the Exchange nor the TP Provider shall have any liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the use of such Theoretical Price or arising out of any errors or delays in calculating such Theoretical Price. This proposed language is modeled after existing language in Exchange Rules regarding "reporting authorities" that calculate indices.<sup>12</sup>

In connection with the proposed change described above, the Exchange proposes to modify Rule 1092 to state that the Exchange will rely on paragraph (b) and Commentary .05 when determining Theoretical Price.

#### No Valid Quotes—Market Participant Quoting on Multiple Exchanges

As described above, one of the times where the NBB or NBO is deemed to be unreliable for purposes of Theoretical Price is when there are no quotes or no valid quotes for the affected series. In addition to when there are no quotes, the Exchange does not consider the following to be valid quotes: (i) All quotes in the applicable option series

published at a time where the last NBB is higher than the last NBO in such series (a "crossed market"); (ii) quotes published by the Exchange that were submitted by either party to the transaction in question; and (iii) quotes published by another options exchange against which the Exchange has declared self-help. In recognition of today's market structure where certain participants actively provide liquidity on multiple exchanges simultaneously, the Exchange proposes to add an additional category of invalid quotes. Specifically, in order to avoid a situation where a market participant has established the market at an erroneous price on multiple exchanges, the Exchange proposes to consider as invalid the quotes in a series published by another options exchange if either party to the transaction in question submitted the quotes in the series representing such options exchange's best bid or offer. Thus, similar to being able to ignore for purposes of the Rule the quotes published by the Exchange if submitted by either party to the transaction in question, the Exchange would be able to ignore for purposes of the rule quotations on other options exchanges by that same market participant.

In order to continue to apply the Rule in a timely and organized fashion, however, the Exchange proposes to initially limit the scope of this proposed provision in two ways. First, because the process will take considerable coordination with other options exchanges to confirm that the quotations in question on an away options exchange were indeed submitted by a party to a transaction on the Exchange, the Exchange proposes to limit this provision to apply to up to twenty-five (25) total options series (*i.e.*, whether such series all relate to the same underlying security or multiple underlying securities). Second, the Exchange proposes to require the party that believes it established the best bid or offer on one or more other options exchanges to identify to the Exchange the quotes which were submitted by such party and published by other options exchanges. In other words, as proposed, the burden will be on the party seeking that the Exchange disregard their quotations on other options exchanges to identify such quotations. In turn, the Exchange will verify with such other options exchanges that such quotations were indeed submitted by such party.

Below are examples of both the current rule and the rule as proposed to be amended.

<sup>10</sup> To the extent the TP Provider has been contacted by an Official of the Exchange, reviews the Theoretical Price provided but disagrees that there has been any error, then the Exchange would be bound to use the Theoretical Price provided by the TP Provider.

<sup>11</sup> In the context of a Significant Market Event, the Exchange may determine, "in consultation with other options exchanges . . . that timely adjustment is not feasible due to the extraordinary nature of the situation." See Rule 1092(e)(4).

<sup>12</sup> See, *e.g.*, Rule 1102A, which relates to index options potentially listed and traded on the Exchange and disclaims liability for a reporting authority and their affiliates.

### Example 1—Current Rule, Member Erroneously Quotes on One Exchange Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (“Market Maker A”) is quoting in twenty series of options underlying security ABCD on the Exchange (and only the Exchange).
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes in all twenty series to buy options at \$1.00 and to sell options at \$1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is  $\$1.00 \times \$1.05$  (with the Exchange representing the NBBO based on Market Maker A’s quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A’s quotes at \$1.00.
- Assume Market Maker A submits to the Exchange a timely request for review of the trades with Member A as potentially erroneous transactions to buy.

#### Result

- Based on the Exchange’s current rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A’s quotations invalid pursuant to Rule 1092(b)(2).
- As there were no other valid quotes to use as a reference price, the Exchange would then determine Theoretical Price.
- Assume the Exchange determines a Theoretical Price of \$0.05.
- The execution price of \$1.00 exceeds the \$0.25 minimum amount set forth in the Exchange’s table to determine whether an obvious error has occurred (*i.e.*,  $\$0.05 + \$0.25 = \$0.30$ ) so any execution at or above this price is an obvious error.
- Accordingly, the executions in all series would be adjusted by the Exchange to executions at \$0.20 per contract (Theoretical Price of \$0.05 plus \$0.15) to the extent the incoming orders submitted by Member A were non-Customer orders.
- The executions in all series would be nullified to the extent the incoming orders submitted by Member A were Customer orders.

### Example 2—Current Rule, Member Erroneously Quotes on Multiple Exchanges

#### Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (“Market Maker A”) is quoting in twenty series of options underlying security ABCD on the Exchange and on a second exchange (“Away Exchange”).
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes on both the Exchange and the Away Exchange in all twenty series to buy options at \$1.00 and to sell options at \$1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is  $\$1.00 \times \$1.05$  (with the Exchange and the Away Exchange representing the NBBO based on Market Maker A’s quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A’s quotes at \$1.00.
- Assume Market Maker A submits to the Exchange and to the Away Exchange timely requests for review of the trades with Member A as potentially erroneous transactions to buy.

#### Result

- Based on the Exchange’s current rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A’s quotations on the Exchange invalid pursuant to Rule 1092(b)(2). The Exchange, however, would view the Away Exchange’s quotations as valid, and would thus determine Theoretical Price to be \$1.05 (*i.e.*, the NBO in the case of a potentially erroneous buy transaction).
- The execution price of \$1.00 does not exceed the \$0.25 minimum amount set forth in the Exchange’s table to determine whether an obvious error has occurred (*i.e.*,  $\$1.05 + \$0.25 = \$1.30$ ) so any execution at or above this price is an obvious error.
- The transactions on the Exchange would not be nullified or adjusted.
- As the Exchange and all other options exchanges have identical rules with respect to the process described above, the transactions on the Away Exchange would not be nullified or adjusted.

### Example 3—Proposed Rule, Member Erroneously Quotes on Multiple Exchanges<sup>13</sup>

#### Assumptions

For purposes of this example, assume the following:

- A Member acting as a Market Maker on the Exchange (“Market Maker A”) is quoting in twenty series of options underlying security ABCD on the Exchange and on a second exchange (“Away Exchange”).<sup>14</sup>
- Market Maker A makes an error in calculating the market for options on ABCD, and publishes quotes on both the Exchange and the Away Exchange in all twenty series to buy options at \$1.00 and to sell options at \$1.05.
- In fact, options on ABCD in these series are nearly worthless and no other market participant is quoting in such series.
- Therefore, the NBBO in the twenty series at issue is  $\$1.00 \times \$1.05$  (with the Exchange and the Away Exchange representing the NBBO based on Market Maker A’s quotes).
- Assume Member A immediately enters sell orders and executes against Market Maker A’s quotes at \$1.00.
- Assume Market Maker A submits to the Exchange and to the Away Exchange timely requests for review of the trades with Member A as potentially erroneous transactions to buy. At the time of submitting the requests for review to the Exchange and the Away Exchange, Market Maker A identifies to the Exchange the quotes on the Away Exchange as quotes also represented by Market Maker A (and to the Away Exchange, the quotes on the Exchange as quotes also represented by Market Maker A).

#### Result

- Based on the proposed rules, the Exchange would identify Market Maker A as a participant to the trades at issue and would consider Market Maker A’s quotations on the Exchange invalid pursuant to Rule 1092(b)(2).
- The Exchange and the Away Exchange would also coordinate to confirm that the quotations identified by Market Maker A on the other exchange were indeed Market Maker A’s quotations. Once confirmed, each of the Exchange and the Away Exchange

<sup>13</sup> The Exchange notes that its proposed rule will not impact the proposed handling of a request for review where a market participant is quoting only on the Exchange, thus, the Exchange has not included a separate example for such a fact pattern.

<sup>14</sup> The Exchange notes that the proposed rule would operate the same if Market Maker A was quoting on more than two exchanges. The Exchange has limited the example to two exchanges for simplicity.

would also consider invalid the quotations published on the other exchange.

- As there were no other valid quotes to use as a reference price, the Exchange would then determine Theoretical Price.

- Assume the Exchange determines a Theoretical Price of \$0.05.

- The execution price of \$1.00 exceeds the \$0.25 minimum amount set forth in the Exchange's table to determine whether an obvious error has occurred (*i.e.*, \$0.05 + \$0.25 = \$0.30) so any execution at or above this price is an obvious error.

- Accordingly, the executions in all series would be adjusted by the Exchange to executions at \$0.20 per contract (Theoretical Price of \$0.05 plus \$0.15) to the extent the incoming orders submitted by Member A were non-Customer orders.

- The executions in all series would be nullified to the extent the incoming orders submitted by Member A were Customer orders.

- As the Exchange and all other options exchanges would have identical rules with respect to the process described above, as other options exchanges intend to adopt the same rule if the proposed rule is approved, the transactions on the Away Exchange would also be nullified or adjusted as set forth above.

- If this example was instead modified such that Market Maker A was quoting in 200 series rather than 20, the Exchange notes that Market Maker A could only request that the Exchange consider as invalid their quotations in 25 of those series on other exchanges. As noted above, the Exchange has proposed to limit the proposed rule to 25 series in order to continue to process requests for review in a timely and organized fashion in order to provide certainty to market participants. This is due to the amount of coordination that will be necessary in such a scenario to confirm that the quotations in question on an away options exchange were indeed submitted by a party to a transaction on the Exchange.

Trading Halts—Clarifying Change to Rule 1092, Commentary .03

Commentary .03 to Rule 1092 describes the Exchange's authority to declare trading halts in one or more options traded on the Exchange. The Exchange proposes to modify Commentary .03 to provide that, with respect to equity options, the Exchange shall nullify any transaction that occurs during a regulatory halt as declared by the primary listing market for the underlying security. The Exchange believes this change is necessary to

distinguish a declared regulatory halt, where the underlying security should not be actively trading on any venue, from an operational issue on the primary listing exchange where the security continues to safely trade on other trading venues.

#### Implementation Date

The Exchange proposes to delay the operative date of this proposal to a date within ninety (90) days after the Commission approved the Bats BZX proposal on July 6, 2017. The Exchange will announce the operative date in a Regulatory Alert made available to its Members.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>15</sup>

Specifically, the proposal is consistent with Section 6(b)(5) of the Act<sup>16</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to further modify their harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the proposal to utilize a TP Provider in the event the NBBO is unavailable or unreliable will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Thus, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act<sup>17</sup> in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange again reiterates that it has retained the standard of the current rule for most reviews of options transactions pursuant to Rule 1092, which is to rely on the NBBO to

determine Theoretical Price if such NBBO can reasonably be relied upon. The proposal to use a TP Provider when the NBBO is unavailable or unreliable is consistent with Section 6(b)(5) of the Act<sup>18</sup> in that the proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions by further reducing the possibility of disparate results between options exchanges and increasing the objectivity of the application of Rule 1092. Further, the Exchange believes that the proposed Rule is transparent with respect to the limited circumstances under which the Exchange will request a review and correction of Theoretical Price from the TP Provider, and has sought to limit such circumstances as much as possible. The Exchange notes that under the current Rule, Exchange personnel are required to determine Theoretical Price in certain circumstances and yet rarely do so because such circumstances have already been significantly limited under the harmonized rule (for example, because the wide quote provision of the harmonized rule only applies if the quote was narrower and then gapped but does not apply if the quote had been persistently wide). Thus, the Exchange believes it will need to request Theoretical Price from the TP Provider only in very rare circumstances and in turn, the Exchange anticipates that the need to contact the TP Provider for additional review of the Theoretical Price provided by the TP Provider will be even rarer. Similarly, the Exchange believes it is unlikely that an Exchange Official will ever be required to determine Theoretical Price, as such circumstance would only be in the event of a systems issue that has rendered the TP Provider's services unavailable and such issue cannot be corrected in a timely manner.

The Exchange also believes its proposal to adopt language in paragraph (d) of Commentary .05 to Rule 1092 to disclaim the liability of the Exchange and the TP Provider in connection with the proposed Rule, the TP Provider's calculation of Theoretical Price, and the Exchange's use of such Theoretical Price is consistent with the Act. As noted above, this proposed language is modeled after existing language in Exchange Rules regarding "reporting authorities" that calculate indices,<sup>19</sup> and is consistent with Section 6(b)(5) of the Act<sup>20</sup> in that the proposed Rule will foster cooperation and coordination

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See *supra*, note 12.

<sup>20</sup> 15 U.S.C. 78f(b)(5).

with persons engaged in regulating and facilitating transactions.

As described above, the Exchange proposes a modification to the valid quotes provision to also exclude quotes in a series published by another options exchange if either party to the transaction in question submitted the orders or quotes in the series representing such options exchange's best bid or offer. The Exchange believes this proposal is consistent with Section 6(b)(5) of the Act<sup>21</sup> because the application of the rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions by allowing the Exchange to coordinate with other options exchanges to determine whether a market participant that is party to a potentially erroneous transaction on the Exchange established the market in an option on other options exchanges; to the extent this can be established, the Exchange believes such participant's quotes should be excluded in the same way such quotes are excluded on the Exchange. The Exchange also believes it is reasonable to limit the scope of this provision to twenty-five (25) series and to require the party that believes it established the best bid or offer on one or more other options exchanges to identify to the Exchange the quotes which were submitted by that party and published by other options exchanges. The Exchange believes these limitations are consistent with Section 6(b)(5) of the Act<sup>22</sup> because they will ensure that the Exchange is able to continue to apply the Rule in a timely and organized fashion, thus fostering cooperation and coordination with persons engaged in regulating and facilitating transactions and also removing impediments to and perfecting the mechanism of a free and open market and a national market system.

Finally, with respect to the proposed modification to Commentary .03 to Rule 1092, the Exchange believes that this proposal is consistent with Section 6(b)(5) of the Act<sup>23</sup> because it specifically provides for nullification where a trading halt exists with respect to an underlying security across the industry (*i.e.*, a regulatory halt) as distinguished from a situation where the primary exchange has experienced a technical issue but the underlying security continues to trade on other equities platforms. The Exchange notes that a similar provision already exists in the rules of certain other options

exchanges, and thus, has been found to be consistent with the Act.

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

The Exchange believes the entire proposal is consistent with Section 6(b)(8) of the Act<sup>24</sup> in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange does not believe that the proposal will impose a burden on intermarket competition but rather that it will alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to further harmonize and improve the process related to the adjustment and nullification of [sic] erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. To that end, the selection and implementation of a TP Provider utilized by all options exchanges will further reduce the possibility that participants with potentially erroneous transactions that span multiple options exchanges are handled differently on such exchanges. Similarly, the proposed ability to consider quotations invalid on another options exchange if ultimately originating from a party to a potentially erroneous transaction on the Exchange represents a proposal intended to further foster cooperation by the options exchanges with respect to market events. The Exchange understands that all other options exchanges either have or they intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the proposed provisions apply to all market participants equally.

#### *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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>25</sup> and Rule 19b-4(f)(6)<sup>26</sup> thereunder.

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-2017-66 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2017-66. 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 Web site (<http://www.sec.gov/>

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</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, 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.

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> 15 U.S.C. 78f(b)(8).

*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 Web site 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2017-66, and should be submitted on or before September 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-17067 Filed 8-11-17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81344; File No. SR-NASDAQ-2017-068]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise the NASDAQ Options Market LLC Rules Regarding the Options Regulatory Fee

August 8, 2017.

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 July 26, 2017, The NASDAQ Stock Market LLC ("Nasdaq" 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 revise The NASDAQ Options Market LLC ("NOM") Rules at Chapter XV, Section 5 to: (i) Make adjustments to the amount of its Options Regulatory Fee ("ORF"); and (ii) more closely reflect the manner in which NOM assesses and collects its ORF.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments [sic] become operative on August 1, 2017.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

NOM initially filed to establish its ORF in 2011.<sup>3</sup> The Exchange has amended its ORF several times since the inception of this fee.<sup>4</sup> At this time, the Exchange proposes to: (i) Amend the amount of its ORF; and (ii) revise NOM's Rules at Chapter XV, Section 5 to more closely reflect the manner in which NOM assesses and collects its ORF.

The Exchange supports a common approach for the assessment and

collection of ORF among the various options exchanges that assess such a fee. Furthermore, the Exchange supports guidance from the Commission regarding regulatory cost structures to ensure equal knowledge and treatment among options markets assessing ORF.

##### Proposal 1—Amend the Amount of the ORF

The Exchange assesses an ORF of \$0.0021 per contract side. The Exchange proposes to increase the ORF from \$0.0021 per contract side to \$0.0027 per contract side as of August 1, 2017 to account for a reduction in market volume. The Exchange's proposed change to the ORF should balance the Exchange's regulatory cost [sic] against the anticipated revenue. The Exchange regularly reviews its ORF to ensure that the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange believes this adjustment will permit the Exchange to cover a material portion of its regulatory costs, while not exceeding regulatory costs.

The Exchange notified its Participants of this ORF adjustment thirty (30) calendar days prior to the proposed operative date.<sup>5</sup>

##### Proposal 2—Reflect the Manner in Which NOM Assesses and Collects Its ORF

Currently, NOM assesses its ORF for each Customer option transaction that is either: (1) Executed by a Participant on NOM; or (2) cleared by a NOM Participant at The Options Clearing Corporation ("OCC") in the Customer range,<sup>6</sup> even if the transaction was executed by a non-member of NOM, regardless of the exchange on which the transaction occurs.<sup>7</sup> If the OCC clearing member is a NOM Participant, ORF is assessed and collected on all cleared Customer contracts (after adjustment for CMTA<sup>8</sup>); and (2) if the OCC clearing member is not a NOM Participant, ORF is collected only on the cleared Customer contracts executed at NOM, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

By way of example, if Broker A, a NOM Participant, routes a Customer

<sup>5</sup> See Options Trader Alert #2017-54.

<sup>6</sup> Exchange Rules require each member to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the Rules of the Exchange and report resulting transactions to OCC.

<sup>7</sup> The Exchange uses reports from OCC when assessing and collecting the ORF.

<sup>8</sup> CMTA or Clearing Member Trade Assignment is a form of "give-up" whereby the position will be assigned to a specific clearing firm at OCC.

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 65913 (December 8, 2011), 76 FR 77883 (December 14, 2011) (SR-NASDAQ-2011-163) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee).

<sup>4</sup> See Securities Exchange Act Release Nos. 76950 (January 21, 2016), 81 FR 4687 (January 27, 2016) (SR-NASDAQ-2016-003); and 78360 (July 19, 2016), 81 FR 48475 (July 25, 2016) (SR-NASDAQ-2016-096).