

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81433; File No. SR-Phlx-2017-69]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Quoting at the Opening

August 18, 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 August 16, 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 Phlx Rule 1017, entitled “Openings in Options.”

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 purpose of this rule change is to amend Phlx Rule 1017, entitled “Openings in Options” to specifically amend opening obligations for

Specialists.<sup>3</sup> The Exchange notes that the proposed rule change is similar to a Nasdaq MRX, LLC (“MRX”) rule.<sup>4</sup>

Today, Phlx Rule 1017(d)(iii) states that the Specialist assigned in a particular equity option must enter a Valid Width Quote not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index. The Specialist assigned in a particular U.S. dollar-settled FCO must enter a Valid Width Quote not later than 30 seconds after the announced market opening.

First, the Exchange proposes to add the words “or index” to further clarify that the requirement applies to equities and index options. The Exchange proposes this addition to further clarify the requirement in Rule 1017(d)(iii) clearly applies to equity and index options.

Second, the Exchange proposes to modify the Specialist’s current obligation to enter Valid Width Quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index for all assigned options, or in the case of a U.S. dollar-settled FCO after the announced market opening. The Exchange believes that the current requirement is very burdensome and instead proposes to add “in 90% of their assigned series” to require a Specialist to enter a Valid Width Quote not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in 90% of their assigned series, or in the case of U.S. dollar-settled FCOs in 90% of their assigned series not later than 30 seconds after the announced market opening.

Further, the Exchange proposes to require Specialists to promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to a U.S. dollar-settled FCO, following the announced market opening. The Exchange’s proposal is intended to account for market conditions which

may prevent a Specialist from opening all assigned series, for example an extremely volatile market which may impact the Specialist’s ability to enter aggressive quotes. Another example would be that news pertaining to a specific security is causing the underlying price to fluctuate rapidly and significantly, thereby causing the Specialist to await the underlying equity price to settle before entering a Valid Width Quote. The Exchange’s surveillance staff would monitor to ensure that Specialists are complying with these requirements during the Opening Process.

Today, the Opening Process for an options series will be conducted on or after 9:30 a.m. if the system has received, within two minutes (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange’s Web site) of the opening trade or quote on the market for the underlying security in the case of equity options or, in the case of index options, within two minutes of the receipt of the opening price in the underlying index (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange’s Web site), or within two minutes of market opening for the underlying currency in the case of a U.S. dollar-settled FCO (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange’s Web site) the Specialist’s Valid Width Quote, the Valid Width Quotes of two Phlx Electronic Market Makers other than the Specialist or if neither the Specialist or two Phlx Electronic Market Makers have submitted Valid Width Quotes, within the specified timeframe then one Phlx Electronic Market Maker’s Valid Width Quote.<sup>5</sup>

The Exchange is also proposing to amend existing rule text in Phlx Rule 1017(d)(iii) to lowercase a reference to the “Opening Price” as that reference refers to the underlying security’s opening price, not the defined Opening Price in Rule 1017(a)(iii).

##### Implementation

The Exchange proposes to implement this rule change on September 29, 2017.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup>

<sup>3</sup> The term “Specialist” applies to transactions for the account of a Specialist (as defined in Exchange Rule 1020(a)).

<sup>4</sup> See MRX Rule 701.

<sup>5</sup> See Rule 1017(d)(i)(A)–(C).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

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

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 for the reasons stated below.

The Exchange's first proposal at Rule 701(c)(3) to clarify that the requirement applies to equities and index options will make clear the applicability of the Specialist's requirement to enter Valid Width Quotes. This proposed amendment is non-substantive and is intended to add clarity to the rules.

The second proposal to amend a Specialist's requirement to enter Valid Width Quotes during the Opening Process is consistent with the Act because the 90% requirement to provide a Valid Width Quote in a series to which the Specialist is assigned will continue to ensure that options series are opened in a timely manner, while not imposing a burdensome requirement on market participants. Specialists would be required to promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute of the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price or, with respect to U.S. dollar-settled FCOs, following the announced market opening. The Exchange would monitor Specialists to ensure that they promptly provided a Valid Width Quote for the remainder of the series within a reasonable amount of time. The Exchange notes that market conditions could cause a Specialist to experience circumstances where opening 100% of all of their assigned series within one minute of the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled FCOs, following the announced market opening, is not feasible.

The Exchange believes that the proposed 90% Valid Width Quoting obligation, not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled FCOs, following the announced market opening, along with the "prompt" standard for the remaining 10% of their assigned series will ensure all series are opened in a timely manner. The Exchange's proposal accounts for

market conditions which may prevent a Specialist from opening all assigned series, for example an extremely volatile market which may impact the Specialist's ability to enter aggressive quotes. Another example would be that news pertaining to a specific security is causing the underlying price to fluctuate rapidly and significantly, thereby causing the Specialist to await the underlying equity price to settle before entering a Valid Width Quote. The Exchange believes that the time frame for Specialists to provide a Valid Width Quote in 90% of their assigned series not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled FCOs, following the announced market opening, will ensure liquidity on Phlx during the Opening Process.

The Exchange desires to encourage Specialists to continue to make markets on Phlx at the Opening. The Exchange believes that requiring Specialists to provide a Valid Width Quote in 90% of their assigned options not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled FCOs, following the announced market opening along with the "prompt" standard for the remaining 10% will enhance the market making functions for Specialists and serve to maintain a fair and orderly market thereby promoting the protection of investors and the public interest.

#### *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. The proposal does not change the intense competition that exists among the options markets for options business including on the opening. Nor does the Exchange believe that the proposal will impose any burden on intra-market competition; the Opening Process involves many types of participants and interest.

The Exchange's proposal to require a Specialist to enter a Valid Width Quote in 90% of their assigned series not later than one minute time following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the

underlying index or, with respect to U.S. dollar-settled FCOs, following the announced market opening and promptly enter a Valid Width quote for the remaining 10% their assigned series does not create an undue burden on competition. The proposal will continue to ensure that options series are opened in a timely manner, while not imposing a burdensome requirement on market participants. Specialists would be required to promptly enter a Valid Width Quote in the remainder of their assigned series which were not open within one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled FCOs, following the announced market opening. The Exchange would monitor Specialists to ensure that they promptly entered a Valid Width Quote for the remainder of their assigned series within a reasonable amount of time. The Exchange notes that market conditions could cause a Specialist to experience circumstances where entering a Valid Width Quote for 100% of all of their assigned series within one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or with respect to U.S. dollar-settled FCOs within one minute after the announced market opening, is not feasible. The Exchange believes that the proposed 90% obligation to enter a Valid Width Quote not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled FCOs, following the announced market opening for the underlying security along with the "prompt" standard for the remaining series will ensure all series are opened in a timely manner.

#### *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>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-69 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-2017-69. 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/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 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; 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-2017-69 and should be submitted on or before September 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81432; File No. SR-MSRB-2017-04]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Consisting of Proposed Amendments to MSRB Rule G-21(e), on Municipal Fund Security Product Advertisements

August 18, 2017.

#### I. Introduction

On June 22, 2017, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "SEC" or "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 consisting of proposed amendments to MSRB Rule G-21(e), on municipal fund security product advertisements, to address important regulatory developments and to enhance investor protection in connection with municipal fund securities (the

"proposed rule change"). The proposed rule change was published for comment in the **Federal Register** on July 7, 2017.<sup>3</sup>

The Commission received two comment letters on the proposed rule change.<sup>4</sup> On August 9, 2017, the MSRB responded to those comments<sup>5</sup> and filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").<sup>6</sup> The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested parties and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of Proposed Rule Change

In the Notice of Filing and Amendment No. 1, the MSRB stated that the purpose of the proposed rule change is to reflect relevant regulatory developments; enhance the "out-of-state disclosure obligation" about the potential other benefits an investor may be provided by investing in a 529 college savings plan offered by the home state of the investor or of the designated beneficiary; clarify that certain advertisements that contain performance data may include a hyperlink to a Web site that contains more recent performance data; and include several revisions that are designed to promote understanding of and compliance with the rule.<sup>7</sup> The MSRB stated that the proposed rule change would amend Rule G-21(e) to reflect two regulatory developments—the SEC's money market reforms and the formation of the Financial Industry Regulatory Authority, Inc. ("FINRA").<sup>8</sup> As further described by the MSRB in the Notice of Filing, Rule G-21(e)(i)(A)(2)(c) currently requires that a municipal fund security advertisement

<sup>3</sup> Securities Exchange Act Release No. 81060 (June 30, 2017) (the "Notice of Filing"), 82 FR 31644 (July 7, 2017).

<sup>4</sup> See Letter to Secretary, Commission, from Michael Koffler, Eversheds Sutherland (US) LLP ("Eversheds Sutherland"), dated July 28, 2017 (the "Eversheds Sutherland Letter"); and, Letter to Secretary, Commission, from Robin Traxler, Esq., Vice President, Regulatory Affairs & Associate General Counsel, Financial Services Institute ("FSI"), dated July 28, 2017 (the "FSI Letter").

<sup>5</sup> See Letter to Secretary, Commission, from Pamela K. Ellis, Associate General Counsel, MSRB, dated August 9, 2017 (the "MSRB Response Letter"), available at <https://www.sec.gov/comments/sr-msrb-2017-04/msrb201704-2205630-160509.pdf>.

<sup>6</sup> *Id.* In Amendment No. 1, the MSRB proposed to amend the proposed rule change to Rule G-21(e)(i)(A)(2)(c) to make a minor technical change to clarify that the proposed rule change to that provision would apply to an advertisement of a municipal fund security "that has an investment option that invests solely in a money market fund."

<sup>7</sup> See Notice of Filing and Amendment No. 1.

<sup>8</sup> See Notice of Filing.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</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>10</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.