

Materials Under Seal; *Filing Acceptance Date*: August 16, 2023; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Christopher C. Mohr; *Comments Due*: August 24, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98142; File No. SR-Phlx-2023-34]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx's All-or-None Order

August 16, 2023.

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 August 3, 2023, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("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 its Rules at Options 3, Options Trading Rules, at: Section 7, Types of Orders and Order and Quote Protocols; Section 8, Options Opening Process; Section 10, Electronic Execution Priority and Processing in the System; Section 12, Electronic Qualified Contingent Cross Order; Section 13, Price Improvement XL ("PIXL"); Section 14, Complex Orders; Section 23, Data Feeds and Trade Information; Options 5, Section 4, Order Routing; and Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY. The Exchange also proposes to amend its Rules at Options 8, Floor Trading, at: Section 30, Crossing, Facilitation and Solicited Orders; and Section 32, Types of Floor-Based (Non-System) Orders.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements 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 Options 3, Options Trading Rules, at: Section 7, Types of Orders and Order and Quote Protocols; Section 8, Options Opening Process; Section 10, Electronic Execution Priority and Processing in the System; Section 12, Electronic Qualified Contingent Cross Order; Section 13, Price Improvement XL ("PIXL"); Section 14, Complex Orders; Section 23, Data Feeds and Trade Information; Option 5, Section 4, Order Routing; and Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY. The Exchange also proposes to amend its Rules at Options 8, Floor Trading, at: Section 30, Crossing, Facilitation and Solicited Orders; and Section 32, Types of Floor-Based (Non-System) Orders.

Background

Today, Phlx's All-or-None Orders are described in Options 7, Section 7(b)(5) as Limit Orders or Market Orders that are executed in their entirety or not at all. All-or-None Orders may only be submitted by a Public Customer.³ Phlx's All-or-None Orders rest on the order book as non-displayed orders. The Exchange does not disseminate bids or offers of All-or-None Orders to the Options Price Reporting Authority or

"OPRA" and Top of PHLX Options⁴ feed, however All-or-None Orders are displayed in the PHLX Orders⁵ and PHLX Depth of Book⁶ feed. Further, All-or-None Orders are executed in price-time priority among all Public Customer orders if the size contingency can be met. If an All-or-None Order contingency cannot be met, the All-or-None Order would be by-passed until such time as the contingency could be met.⁷

Proposal

At this time, the Exchange proposes to amend All-or-None Orders so that they may only be submitted by a Public Customer as an Immediate-or-Cancel Order. With this proposed change, All-or-None Orders would no longer rest on the order book. Upon entry, an All-or-None Order would be executed in its

⁴ Top of PHLX Options ("TOPO") is a direct data feed product that includes the Exchange's best bid and offer price, with aggregate size, based on displayable order and quoting interest on Phlx and last sale information for trades executed on Phlx. The data contained in the TOPO data feed is identical to the data simultaneously sent to the processor for the OPRA and subscribers of the data feed. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. See Options 3, Section 23(a)(1).

⁵ PHLX Orders is a real-time full Limit Order book data feed that provides pricing information for orders on the PHLX Order book for displayed order types and All-or-None Orders, as well as market participant capacity. PHLX Orders is currently provided as part of the TOPO Plus Orders data product. PHLX Orders provides real-time information to enable users to keep track of the single and complex order book(s). The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, leg information on complex strategies and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. The feed also provides auction and exposure notifications and order imbalances on opening/reopening (size of matched contracts and size of the imbalance). See Options 3, Section 23(a)(2).

⁶ PHLX Depth of Market is a data product that provides: (i) order and quotation information for individual quotes and orders on the order book; (ii) last sale information for trades executed on Phlx; (iii) auction; and (iv) an Imbalance Message which includes the symbol, side of the market, size of matched contracts, size of the imbalance, and price of the affected series. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening (size of matched contracts and size of the imbalance) and exposure notifications, with market participant capacity. See Options 3, Section 23(a)(2).

⁷ Also of note, All-or-None Orders are non-routable and the Acceptable Trade Range protection in Options 3, Section 15(a) is not applied to All-or-None Orders. See Options 7, Section 7(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "Public Customer" means a person or entity that is not a broker or dealer in securities and is not a Professional as defined within Options 1, Section (b)(45). See Options 1, Section 1(b)(46).

entirety or it will cancel if it cannot execute. Other options markets require All-or-None Orders to be Immediate-or-Cancel such as Nasdaq GEMX, LLC.⁸

The Exchange proposes to amend the order type description in Options 3, Section 7(b)(5) to state, “An All-or-None Order is a Limit Order or Market Order that is to be executed in its entirety or not at all. An All-or None Order may only be submitted by a Public Customer as an Immediate-or-Cancel Order.” As is the case today, the Acceptable Trade Range protection in Options 3, Section 15(a) is not applied to All-Or-None Orders. Further, the All-or-None Order type in Options 8, Section 32(b)(3) may only be submitted by a Public Customer. The Exchange proposes to add a new sentence in Options 8, Section 32(b)(3) that would state, “Further, pursuant to Options 8, Section 39, A–3, an All-or-None Order has no standing respecting executions in the trading crowd except with respect to other All-or-None Orders. When represented in the trading crowd, All-or-None Orders are not included as part of the bid or offer.” The Exchange believes the new sentence, which references existing language in Options 8, Section 39, A–3, will bring greater clarity to the All-or-None Order type description.

The Exchange proposes to also remove rule text about All-or-None Orders as a Non-Displayed Contingency Order in Options 3, Section 7(b)(5)(i). The Exchange proposes to add a new Options 3, Section 7(b)(4)(C) that states, “A Stop Order is a non-displayed, contingency order until elected,” in order to preserve the current rule text related to Stop Orders at Options 3, Section 7(b)(5)(i).

As a result of the proposed amendment to the All-or-None Order type, Phlx proposes to remove rule text regarding All-or-None Orders in various other rules. Since All-or-None Orders will not rest on the order book, it is not considered for purposes of Legging Orders and therefore the rule text within Options 3, Section 7(b)(10)(2) and (4) related to All-or-None Orders is being removed. Additionally, the Exchange proposes a technical amendment to re-letter Options 3, Section 7(b)(1) (1)–(4) as (A)–(D).

⁸ See Nasdaq GEMX, LLC (“GEMX”) Options 3, Section 7(c). See Securities Exchange Act Release No. 80102 (February 24, 2017), 82 FR 12381 (March 2, 2017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to All-or-None Orders). See also GEMX, Nasdaq MRX, LLC (“MRX”), and Nasdaq ISE, LLC (“ISE”) Options 3, Section 7(c). The Nasdaq Options Market LLC (“NOM”) Options 3, Section 7(a)(8) and Nasdaq BX, Inc. (“BX”) Options 3, Section 7(a)(7). GEMX, MRX, ISE, NOM and BX have All-or-None Orders that are Immediate-or-Cancel.

Since All-or-None Orders will not rest on the order book as proposed, those orders would be treated the same as all other Immediate-or-Cancel Orders in the Opening Process and, therefore, do not need to be separately described in Options 3, Section 8. The Exchange proposes to remove specific references to All-or-None Orders in Options 3, Section 8(b), (h) and (k)(C)(6).

All-or-None Orders do not need to be excluded from the internal PBBO in Options 3, Section 10, which describes the Exchange’s allocation process, because All-or-None Orders will not rest on the order book with this proposed amendment. The Exchange proposes to remove the language concerning All-or-None Orders from Options 3, Section 10(a)(1)(B), (C), and (D)(i) and (ii).

As proposed, Public Customers All-or-None Orders, similar to all other Public Customer Orders which are Immediate-or-Cancel Orders, will not be considered for purposes of checking the order book prior to executing a Qualified Contingent Cross Order since they will not rest on the order book. Therefore, the Exchange proposes to remove the language within Supplementary Material .01 to Options 3, Section 12 and Options 8, Section 30 concerning All-or-None Orders.

As proposed, All-or None Orders will not be considered when checking the order book to start a PIXL Auction or to allocate the PIXL Order at the end of the PIXL Auction because All-or-None Orders will not rest on the order book. Therefore, the Exchange proposes to remove the language within Options 3, Section 13(a)(2) and (f) related to All-or-None Orders on the order book.

As amended, All-or-None Orders will be treated in the same manner as other Immediate-or-Cancel Orders with respect to a Complex Opening Process and a Complex Order Live Auction. Also, All-or-None Orders will not rest on the order book and are not considered for purposes of legging into the simple order book. Therefore, the Exchange is removing language concerning All-or-None Orders within Options 3, Section 14(d)(ii)(C), (e)(vi)(A)(1), (e)(viii)(C)(3), and (f)(iii)(A) because All-or-None Orders do not need to be treated differently.

For purposes of the PHLX Orders feed, All-or-None Orders will be treated the same as all other Immediate-or-Cancel Orders and not displayed on the PHLX Orders feed. Options 3, Section 23(a)(2) is being amended to remove All-or-None Orders from the feed description.

Since All-or-None Orders will not rest on the order book the Exchange proposes to amend Options 5, Section

4(a), 4(a)(iii)(C)(3), (5), (7) and (9), concerning Routing, to remove references to the exclusion of All-or-None Orders from the PBBO and their partial exclusion from the internal PBBO.

The Exchange proposes to remove the following pricing from Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY, “The Cancellation Fee for each cancelled electronically delivered Professional⁹ AON order will continue to apply to the SPY. The Cancellation Fee will not apply for each cancelled electronically delivered Customer order in SPY.” Today, only Public Customers may submit All-or-None Orders.¹⁰ In 2019, Phlx amended its All-or-None Order type to offer it only to Public Customers and no longer offer the order type to Professionals.¹¹ This pricing should have been removed in 2019, as Professionals could no longer enter All-or-None Orders after the 2019 amendment.

Implementation

The Exchange proposes to implement this rule proposal before January 31, 2024. The Exchange will announce the implementation date in an Options Trader Alert to provide notice to members and member organizations.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposal is appropriate and reasonable, because the time-in-force designation of Immediate-Or-Cancel will offer members and member organizations certainty with respect to their order handling. Today, All-or-None Orders are executed in price-time priority among all Public Customer orders if the size contingency can be met, but otherwise

⁹ The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Member organizations must indicate whether orders are for Professionals. See Options 1, Section 1(b)(45).

¹⁰ See Options 3, Section 7(b)(5).

¹¹ See Securities Exchange Act Release No. 85262 (March 7, 2019), 84 FR 1912 (March 13, 2019) (SR-Phlx-2019-03).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

have no priority on the order book. With this proposal, an All-Or-None Order will either execute immediately or be cancelled back to the member or member organization. This proposal would remove uncertainty with respect to the manner in which these orders would be handled in the order book by cancelling back an All-Or-None Order if it cannot be immediately executed in its entirety. This proposal would harmonize Phlx's All-or-None Order type across its various options markets.¹⁴

The Exchange notes that members and member organizations are aware of this proposed change.¹⁵

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 Exchange does not believe that the proposed rule change will impact the intense competition that exists in the options market. With this change, no market participant would be able to submit an All-Or-None Order without a time-in-force designation of Immediate-Or-Cancel. The Exchange believes the All-Or-None Order type, as proposed, will continue to offer members and member organizations a competitive alternative for submitting orders for execution. Furthermore, the proposed rule changes align the Exchange's System functionality across the Nasdaq affiliated options exchanges that have all-or-none order types.¹⁶

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

¹⁴ See GEMX, MRX, ISE Options 3, Section 7(c), NOM Options 3, Section 7(a)(8) and BX Options 3, Section 7(a)(7). GEMX, MRX, ISE, NOM and BX have All-or-None Orders that are Immediate-or-Cancel.

¹⁵ See Options Trader Alert 2023-17. The Exchange has not received any feedback from members or member organizations regarding the change to the All-or-None Order as a result of the Options Trader Alert. Further, the Exchange reached out to member organizations about the All-or-None change and, based on those conversations, the Exchange does not believe that member organizations have any concerns with the proposed change.

¹⁶ See *supra* note 14.

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 Act¹⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁸

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2023-34 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-2023-34. 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 (<https://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

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 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.

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2023-34 and should be submitted on or before September 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98150; File No. SR-NYSEARCA-2023-53]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend the Connectivity Fee Schedule Regarding Power Allocation

August 16, 2023.

Pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 3, 2023, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.