access to computer and information resources are retrieved by name, logon ID, Employee Identification Number, or other unique identifier of the individual. Report and tracking data created during web-based meetings and video conferences that pertain to individual participants, content shared, conference codes and other relevant session data and historical device usage data are retrieved by meeting ID, host name or host email address. Records pertaining to web-based collaboration and communication applications are retrieved by organizer name and other associated personal identifiers. Media recordings created during web-based meetings and video conferences are retrieved by meeting ID, host name or host email address. Records of carpools and parking facilities are retrieved by name, ZIP Code, space number, or parking license number. Records pertaining to workhour data derived from RFID and Bluetooth technologies are retrieved by name, Employee Identification Number, and Bluetooth Device ID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Building access and accountable property records are retained until termination of access or accountability. Records of computer access privileges are retained 1 year after all authorizations are cancelled. Report and tracking data created during web-based meeting and video conferences, such as other relevant session data and historical device usage data, are retained for twenty-four months. Records pertaining to web-based collaboration and communication applications are retained for twenty-four months. Web-based meeting or video session recordings are retained for twenty-four months. Records of carpool membership and use of USPS parking facilities are retained 6 years. Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice. Records pertaining to workhour data derived from RFID and Bluetooth technologies may be retained up to 90 days.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge. Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Inquiries for records about building access, accountable property, carpool membership, and use of USPS parking facilities must be addressed to the facility head. Inquiries about computer access authorization records must be directed to the Manager, Corporate Information Security, 475 L'Enfant Plaza SW, Suite 2141, Washington, DC 20260. For Inspection Service computer access records, inquiries must be submitted to the Inspector in Charge, Information Technology Division, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201. Inquiries must include full name, Social Security Number or Employee Identification Number, and period of employment or residency at the location.

EXEMPTIONS PROMULGATED FROM THIS SYSTEM:

None.

HISTORY:

December 23, 2022, 87 FR 79006; August 4, 2020, 85 FR 47258; June 1, 2020, 85 FR 33210; April 11, 2014, 79 FR 20249; June 27, 2012, 77 FR 38342; June 17, 2011, 76 FR 35483; April 29, 2005, 70 FR 22516.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97726; File No. SR–MRX–2023–10]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Complex Order Rules

June 14, 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 June 6, 2023, Nasdaq MRX, LLC (''MRX'' 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 Options 3, Section 7, Types of Orders and Order and Quote Protocols; Options 3, Section 11, Auction Mechanisms; Options 3, Section 12, Crossing Orders, Section 13, Price Improvement Mechanisms for Crossing Transactions; Options 3, Section 14, Complex Orders; Options 3, Section 15, Simple Order Risk Protections; and Options 3, Section 16, Complex Order Risk Protections.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

1. Purpose

In connection with a technology migration to an enhanced Nasdaq, Inc. (''Nasdaq'') functionality, the Exchange intends to adopt certain trading functionality currently utilized at Nasdaq affiliate exchanges. Also, the Exchange intends to remove certain functionality. Specifically, the following sections would be amended: Options 3, Section 7, Types of Orders and Order and Quote Protocols; Options 3, Section 11, Auction Mechanisms; Options 3, Section 12, Crossing Orders, Section 13, Price Improvement Mechanisms for Crossing Transactions; Options 3, Section 14, Complex Orders; Options 3, Section 15, Simple Order Risk Protections; and Options 3, Section 16, Complex Order Risk Protections. Each change will be described below.

Re-Introduction of Stock-Related Strategies and Elimination of Trade Value Allowance

Before the migration of MRX to an enhanced technology platform,[3] MRX Members were able to trade certain Stock-Option Orders as described in MRX Options 3, Section 14(a)(2),[4] Stock-Complex Orders as described in MRX Options 3, Section 14(a)(3),[5] Complex QCC with Stock Orders as described in MRX Options 3, Section 14(b)(15),[6] QCC with Stock Orders [7] as described in Options 3, Section 7(t) and 12(e), as described in Supplementary Material .03 of MRX Options 3, Section 14 (''Delayed Functionalities'').[8] Separately, prior to the MRX migration, the Exchange offered a Trade Value Allowance,[9] which was also delayed.

At the time the Exchange issued an Options Trader Alert announcing migration details, the Exchange noted that these Delayed Functionalities would not be available for symbols that migrated to the platform and thereafter, until such time as the Exchange recommenced their availability by announcing a date in an Options Trader Alert, which date would be prior to one year from the start of the migration of the symbols to the platform.[10] The Exchange further noted that it was contemplating amendments to its stock-tied functionality and desired additional time to draft and code those changes before reintroducing stock-tied functionality on MRX.[11] MRX's technology migration commenced on November 7, 2022 and was completed on December 5, 2022.[12] At this time, the Exchange proposes to re-introduce stock-tied functionality and remove the delayed implementation language within Options 3, Sections 7, 11, 12, 13, and 14.

Stock-Tied Functionality

MRX proposes to: (1) re-introduce stock-tied functionality; and (2) amend the stock-tied functionality that was available before the migration. Before the migration of MRX to an enhanced technology platform when the Exchange was offering stock-tied functionality, MRX Members desiring to execute an order with stock or an ETF component were required to enter into a brokerage agreement with a broker-dealer designated by the Exchange and were permitted to enter into such an agreement with one or more other broker-dealers to which the Exchange is able to route stock orders.[13]

The Exchange proposes to amend its rules to instead require that a Member desiring to execute a Stock-Option Order or a Stock-Complex Order enter into a brokerage agreement with Nasdaq Execution Services, LLC (''NES'') which will execute the stock or ETF component of the order.[14] The stock component of a Qualified Contingent Cross (''QCC'') with Stock Order or a Complex QCC with Stock Order will continue to be handled by a third-party broker as provided in Options 3, Sections 12(e) and (f).[15] NES is a broker-dealer owned and operated by Nasdaq, Inc. NES, an affiliate of the Exchange, has been approved by the Commission to become a Member of the Exchange and perform inbound routing on behalf of the Exchange.[16] Additionally, NES is permitted to route outbound orders either directly or indirectly through a third party routing broker-dealer to other market centers and perform other functions regarding the cancellation of

[3] *See* Securities Exchange Act Release No. 95854 (September 21, 2022), 87 FR 58571 (September 27, 2022) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Its Rules Relating to Single-Leg and Complex Orders in Connection With a Technology Migration).

[4] The term ''Stock-Option Order'' refers to an order for a Stock-Option Strategy as defined in Options 3, Section 14(a)(2). A Stock-Option Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg. *See* MRX Options 3, Section 14(a)(2).

[5] The term ''Stock-Complex Order'' refers to an order for a Stock-Complex Strategy as defined in Options 3, Section 14(a)(3). A Stock-Complex Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of a Complex Options Strategy on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option legs to the total number of units of the underlying stock or convertible security in the stock leg. Only those Stock-Complex Strategies with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis, are eligible for processing. *See* MRX Options 3, Section 14(a)(3).

[6] A Complex QCC with Stock Order is a Qualified Contingent Cross Complex Order, as defined in subparagraph (b)(6) of Options 3, Section 14, entered with a stock component to be communicated to a designated broker-dealer for execution pursuant to MRX Options 3, Section 12(f).

[7] A QCC with Stock Order is a Qualified Contingent Cross Order, as defined in Options 3, Section 7(j), entered with a stock component to be communicated to a designated broker-dealer for execution pursuant to Options 3, Section 12(e). *See* Options 3, Section 7(t).

[8] *See* note 3 above.

[9] The Trade Value Allowance permits Stock-Option Strategies and Stock-Complex Strategies at valid increments Options 3, Section 14(c)(1), Stock-Option Strategies and Stock-Complex Strategies to trade outside of their expected notional trade value by a specified amount, in order to facilitate the execution of the stock leg and options leg(s). The Trade Value Allowance is the percentage difference between the expected notional value of a trade and the actual notional value of the trade. The amount of Trade Value Allowance permitted may be determined by the Member, or a default value determined by the Exchange and announced to Members; provided that any amount of Trade Value Allowance is permitted in mechanisms pursuant to Options 3, Sections 11 and 13 when auction orders do not trade solely with their contra-side order. *See* Supplementary Material .03 of MRX Options 3, Section 14.

[10] *See* note 3 above.

[11] *See* note 3 above. MRX indicated that it would also need time to file any related rule changes with the Commission prior to reintroducing stock-tied functionality.

[12] *See* Options Trader Alert #2022–34.

[13] *See* Supplementary Material .02 to Options 3, Section 14.

[14] *Id.*

[15] MRX members may also trade QCC Orders and complex [sic] QCC Orders. *See* Options 3, Section 12(c) and (d). For those orders, the parties to the trade will arrange for the execution of the stock component of the order.

[16] *See* Securities Exchange Act Release No. 79995 (February 9, 2017), 82 FR 10811 (February 15, 2017) (SR–ISEMercury–2016–22) (Order Granting Approval of Proposed Rule Changes, as Modified by Amendment Nos. 1 and 2 Thereto, To Permit Nasdaq Execution Services, LLC To Become an Affiliated Member of Each Exchange To Perform Certain Routing and Other Functions).

orders and the maintenance of a NES error account.[17]

NES currently acts as agent for orders to buy and sell the underlying stock or ETF component of a Complex Order on Nasdaq Phlx LLC (''Phlx'').[18] The functions performed by NES on Phlx today are identical to the functions that MRX proposes for NES to perform for MRX Members.[19] Identical to Phlx, after MRX's System determines that a Complex Order execution is possible and identifies the prices for each component of such Complex Order, MRX will electronically communicate the stock or ETF component of the Complex Order to NES for execution.[20] NES, acting as agent for the orders to buy and sell the underlying stock or ETF, will execute the orders in the over-the-counter (''OTC'') market and will handle the orders pursuant to applicable rules regarding equity trading, including the rules governing trade reporting, trade-throughs, and short sales. Before the migration of MRX to an enhanced technology platform when the Exchange was offering stock-tied functionality, this function was performed by a third-party broker-dealer.

The proposed stock-tied functionality is identical to Phlx Options 3, Sections 13(b)(10)(ii) and 14(a)(i) with respect to utilizing NES to process and report the stock or ETF component of a Complex Order. However, there are two differences in the way Phlx and MRX handle stock-tied option orders.

First, while both Phlx and MRX have certain risk protections for complex orders, they differ. With respect to MRX, the execution price of the Complex Order must be within a certain price from the current market, as determined by the Exchange pursuant to Options 3, Section 16(a). Specifically, today, MRX Options 3, Section 16(a) provides that the System will not permit any leg of a complex strategy to trade-through the NBBO for the series or any stock component by a configurable amount calculated as the lesser of (i) an absolute amount not to exceed $0.10, and (ii) a percentage of the NBBO not to exceed 500%, as determined by the Exchange on a class, series or underlying basis. In contrast, Phlx Options 3, Section 16(b)(i) describes Phlx's Acceptable Complex Execution (''ACE'') Parameter which defines a price range outside of which a complex order will not be executed. On Phlx, a complex order to sell is not executed at a price that is lower than the cNBBO[21] bid by more than the ACE Parameter. Conversely, on Phlx, a complex order to buy will not be executed at a price that is higher than the cNBBO offer by more than the ACE Parameter. While MRX's and Phlx's price checks differ, both markets seek to prevent executions from occurring at certain prices and at certain percentages from the NBBO. MRX's proposal would require NES to apply the same price check for stock-tied functionality that was being applied previously by a third-party broker-dealer that executed the stock or ETF component of a complex strategy on behalf of MRX Members prior to MRX's technology migration. MRX Members would continue to be subject to the same price check which is applied to all Complex Orders executed on MRX.

Second, MRX and Phlx differ with respect to the manner in which their systems handle Stock-Option Strategies and Stock-Complex Strategies that would execute against interest on the Complex Order Book at a price that does not meet the price checks in their respective rules or do not meet Regulation SHO provisions as provided for in proposed Options 3, Section 16(e)[22] are handled by their respective systems. As proposed, MRX will hold orders on the Complex Order book that cannot be executed because of Regulation SHO or price check restrictions, unless the Member requests the order to be cancelled. If an MRX Member elects to have the order held on the Complex Order Book, the order would await other matching opportunities, otherwise at the Member's election the order would be returned to the Member. In contrast, Phlx only provides for a cancellation of the order. MRX's proposed approach would provide the Member with optionality as to the handing of the order. The Exchange believes providing the choice to have the order held on the Complex Order Book provides Members with an opportunity for an execution.

NES

NES is a registered broker-dealer and member of various exchanges and the Financial Industry Regulatory Authority (''FINRA''). NES will be responsible for the proper execution, trade reporting, and submission to clearing of the underlying stock or ETF component of a Complex Order.[23] Because these trades will occur off-exchange, the principal regulator is FINRA. Furthermore, today, NES is responsible for compliance with FINRA rules generally and is subject to examination by FINRA. Specifically, NES is subject to FINRA Rule 3110, which generally requires that the policies and procedures and supervisory systems of a broker-dealer be reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable FINRA rules, including those relating to the misuse of material non-public information. To this end, today, NES has in place policies related to confidentiality and the potential for informational advantages relating to its affiliates, intended to protect against the misuse of material nonpublic information.[24] In particular, NES will

[17] *Id.* MRX is subject to certain limitations and conditions such as maintaining a Regulatory Services Agreement with FINRA, as well as an agreement pursuant to Rule 17d–2 under the Act, among other limitations and conditions.

[18] *See* Phlx Options 3, Sections 13(b), 14(a) and 16(b).

[19] *See* Securities Exchange Act Release No. 63777 (January 26, 2011), 76 FR 5630 (February 1, 2011) (SR–Phlx–2010–157) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to Complex Orders) (''Phlx Complex Order Approval''). NES assumed the stock execution functionalities that were previously performed by NOS. Phlx subsequently filed to permit both inbound and outbound orders to be routed through NES instead of Nasdaq Options Services LLC (''NOS''). *See* Securities Exchange Act Release No. 71417 (January 28, 2014), 79 FR 6253 (February 3, 2014) (SR–Phlx–2014–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Outbound Routing) and 71416 (January 28, 2014), 79 FR 6244 (February 3, 2014) (SR–Phlx–2014–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Inbound Routing of Options Orders).

[20] *See* proposed Supplementary Material .08(b) to Options 3, Section 11, proposed Options 3, Section 12(b)(2), proposed Supplementary Material .09(b) to Options 3, Section 13, proposed Supplementary Material .02 to Options 3, Section 14 and proposed Options 3, Section 16(d). *See also* Phlx Options 3, Section 13(b)(10)(ii), Options 3, Section 16(b).

[21] The term ''cNBBO'' means the best net debit or credit price for a Complex Order Strategy based on the NBBO for the individual options components of a Complex Order Strategy, and, where the underlying security is a component of the Complex Order, the National Best Bid and/or Offer for the underlying security. *See* Phlx Options 3, Section 14(a)(vi).

[22] As proposed, NES will only execute Stock-Option Strategies and Stock-Complex Strategies if the underlying covered security component is in accordance with Rule 201 of Regulation SHO.

[23] The Commission's approval order for Phlx stated that NOS (now NES) ''. . . as a facility of the Phlx, NOS is subject to oversight by the Commission and by the Phlx. In addition, NOS, a member of FINRA, is responsible for compliance with applicable rules regarding equity trading, including rules governing trade reporting, trade-throughs and short sales, and is subject to examination by FINRA. Because NOS will execute the stock or ETF component of a Complex Order in the OTC market, the principal regulator of these trades will be FINRA, rather than the Phlx or Nasdaq.'' *See* SR–Phlx–2010–157 76 FR 5630 at 5625, footnote 20. Phlx originally set up its affiliated broker-dealers as two separate entities, NES and NOS. When Phlx replaced NOS with NES, it noted in the rule change that NES will operate the same way as NOS operated, in terms of routing options orders to destination options exchanges. *See* SR–Phlx–2014–04, 79 FR 6253 at 6254.

[24] Similarly, the Exchange does establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and NES. Additionally NES undertook all NOS' responsibilities with respect to

have in place policies and procedures designed to prevent the misuse of material non-public information related to stock-tied executions. Of note, NES only receives information about the stock or ETF portion of the order from the Exchange. As mentioned herein, today, NES is responsible for the proper execution, trade reporting, and submission to clearing of the underlying stock or ETF component of a Complex Order on Phlx. MRX will adopt identical policies and procedures for its stock-tied functionality as are in place on Phlx today.

In addition, because the execution and reporting of the stock/ETF piece will occur otherwise than on MRX or any other exchange, it will be handled by NES pursuant to applicable rules regarding equity trading,[25] including the rules governing trade reporting, trade-throughs and short sales. Specifically, NES will report the trades to the Trade Reporting Facility.[26] Firms that are members of FINRA are required to have a Uniform Service Bureau/Executing Broker Agreement (''AGU'') with NES in order to trade Complex Orders containing a stock/ETF component. Firms that are not members of FINRA are required to have a Qualified Special Representative (''QSR'') arrangement with NES in order to trade Complex Orders containing a stock/ETF component. This requirement is codified in proposed Supplementary Material .08 to Options 3, Section 11, proposed Options 3, Section 12(b)(1), proposed Supplementary Material .09 to Options 3, Section 13 and proposed Supplementary Material .07 to Options 3, Section 14. Accordingly, this process is available to all MRX Members and the stock/ETF component of a Complex Order, once executed, will be properly processed for trade reporting purposes. Phlx has identical requirements within its Options 3, Sections 13(b)(10) and 14(a)(i).

With respect to trade-throughs, the Exchange believes that the stock/ETF component of a Complex Order is eligible for the Qualified Contingent Trade Exemption from Rule 611(a) of Regulation NMS. A Qualified Contingent Trade is a transaction consisting of two or more component orders, executed as agent or principal, that satisfy the six elements in the Commission's order exempting Qualified Contingent Trades (''QCTs'') from the requirements of Rule 611(a),[27] which requires trading centers to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs.[28] The Exchange believes that the stock/ETF portion of a Complex Order under this proposal complies with all six requirements. Moreover, as explained below, MRX's System will validate compliance with each requirement such that any matched order received by NES under this proposal has been checked for compliance with the exemption, as follows:

(1) At least one component order is in an NMS stock: The stock/ETF component must be an NMS stock, which is validated by the System;

(2) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent: A Complex Order, by definition consists of a single net/debit price and this price contingency applies to all the components of the order, such that the stock price computed and sent to NES allows the stock/ETF order to be executed at the proper net debit/credit price based on the execution price of each of the option legs, which is determined by the MRX System;

(3) the execution of one component is contingent upon the execution of all other components at or near the same time: Once a Complex Order is accepted and validated by the System, the entire package is processed as a single transaction and each of the option leg and stock/ETF components are simultaneously processed;

(4) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined at the time the contingent order is placed: Complex Orders, upon entry, must have a size for each component and a net debit/credit, which the System validates and processes to determine the ratio between the components; an order is rejected if the net debit/credit price and size are not provided on the order;

(5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled: under this proposal, the stock/ETF component must be the underlying security respecting the option legs, which is validated by the System; and

(6) the transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade: Under this proposal, the ratio between the options and stock/ETF must be a conforming ratio (8 contracts per 100 shares), which the System validates, and which under reasonable risk valuation methodologies, means that the stock/ETF position is fully hedged.[29]

Furthermore, proposed Supplementary Material .08 to Options 3, Section 11, proposed Options 3, Section 12(b)(1), proposed Supplementary Material .09 to Options 3, Section 13 and proposed Supplementary Material .07 to Options 3, Section 14 provide that Members may only submit Complex Orders with a stock/ETF component if such orders

the execution and reporting of the underlying security component of a Complex Order. *See* SR–Phlx–2014–04 at note 20. Therefore, members of FINRA or the NASDAQ Stock Market (''NASDAQ'') who were required to have a Uniform Service Bureau/Executing Broker Agreement (''AGU'') with NOS in order to trade Complex Orders containing a stock/ETF component and firms that are not members of FINRA or NASDAQ who were required to have a Qualified Special Representative (''QSR'') arrangement with NOS in order to trade Complex Orders containing a stock/ETF component were required to have such arrangements with NES. *See* Securities Exchange Act Release No. 71417 (January 28, 2014), 79 FR 6253 (February 3, 2014) (SR–Phlx–2014–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Outbound Routing) and 71416 (January 28, 2014), 79 FR 6244 (February 3, 2014) (SR–Phlx–2014–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Inbound Routing of Options Orders).

[25] Once the orders are communicated to the broker-dealer for execution, the broker-dealer has complete responsibility for determining whether the orders may be executed in accordance with all of the rules applicable to execution of equity orders.

[26] Specifically, the trades will be reported to the FINRA/Nasdaq TRF which is a facility of FINRA that is operated by Nasdaq, Inc. and utilizes Automated Confirmation Transaction (''ACT'') Service technology.

[27] 17 CFR 242.611(a).

[28] *See* Securities Exchange Act Release Nos. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (''QCT Exemptive Order''). *See also* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006). The QCT Exemption applies to trade-throughs caused by the execution of an order involving one or more NMS stocks that are components of a ''qualified contingent trade.'' As described more fully in the QCT Exemptive Order, a qualified contingent trade is a transaction consisting of two or more component orders, executed as principal or agent, where: (1) At least one component order is an NMS stock; (2) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) the execution of one component is contingent upon the execution of all other components at or near the same time; (4) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined at the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled; and (6) the Exempted NMS Stock Transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade.

[29] A trading center may demonstrate that an Exempted NMS Stock Transaction is fully hedged under the circumstances based on the use of reasonable risk-valuation methodologies. The release approving the original exemption stated: To effectively execute a contingent trade, its component orders must be executed in full or in ratio at its predetermined spread or ratio. ''In ratio'' clarifies that component orders of a contingent trade do not necessarily have to be executed in full, but any partial executions must be in a predetermined ratio.

comply with the Qualified Contingent Trade Exemption. Members submitting such Complex Orders with a stock/ETF component represent that such orders comply with the Qualified Contingent Trade Exemption. Thus, the Exchange believes that Complex Orders consisting of a stock/ETF component will comply with the exemption and that MRX's System will validate such compliance to assist NES in carrying out its responsibilities as agent for these orders.

With respect to short sale regulation, the proposed handling of the stock/ETF component of a Complex Order under this proposal should not raise any issues of compliance with the currently operative provisions of Regulation SHO.[30] When a Complex Order has a stock/ETF component, Members must indicate, pursuant to Regulation SHO, whether that order involves a long or short sale. The System will accept Complex Orders with a stock/ETF component marked to reflect either a long or short position; specifically, orders not marked as buy, sell or sell short will be rejected by MRX's System.[31] The System will electronically deliver the stock/ETF component to NES for execution. Simultaneous to the options execution on MRX's System, NES will execute and report the stock/ETF component, which will contain the long or short indication as it was delivered by the Member to MRX's System. Accordingly, NES, as a trading center under Rule 201, will be compliant with the requirements of Regulation SHO. Of course, broker-dealers, including both NES and the Members submitting orders to MRX with a stock/ETF component, must comply with Regulation SHO. NES' compliance team updates, reviews and monitors NES' policies and procedures including those pertaining to Regulation SHO on an annual basis.

Further, proposed Supplementary Material .08(c) to Options 3, Section 11, and proposed Options 3, Section 12(b)(3), proposed Supplementary Material .09(c) to Options 3, Section 13, and proposed Options 3, Section 16(e) provide that when the short sale price test in Rule 201 of Regulation SHO[32] is triggered for a covered security, NES will not execute a short sale order in the underlying covered security component[33] of a Complex Order if the price is equal to or below the current national best bid. However, NES will execute a short sale order in the underlying covered security component of a Complex Order if such order is marked ''short exempt,'' regardless of whether it is at a price that is equal to or below the current national best bid. If NES cannot execute the underlying covered security component of a Complex Order in accordance with Rule 201 of Regulation SHO, the Exchange will hold the Complex Order on the Complex Order Book, if consistent with Member instructions (Members may always elect to cancel the order).[34] The order may execute at a price that is not equal to or below the current national best bid.[35] This proposed rule is similar to Phlx Options 3, Section 16(b) except that unlike Phlx, MRX will not cancel back the Complex Order to the entering Member unless the Member requests that the order be cancelled. As noted above, MRX and Phlx differ with respect to the manner in which their systems handle Stock-Option Strategies and Stock-Complex Strategies that do not meet requisite price checks in their respective rules or do not meet the requirements of Regulation SHO. As proposed, MRX will hold orders on the Complex Order book that cannot be executed pursuant to Regulation SHO restrictions, unless the Member requests the order to be cancelled.[36] If an MRX Member elects to have the order held, the order would await other matching opportunities, otherwise at the Member's election the order would be returned to the Member. In contrast, Phlx only provides for a cancellation of the order. MRX's proposed approach would the Member with optionality as to the handing of the order. The Exchange believes providing the choice to have the order held provides Members with an opportunity for an execution.

For these reasons, the processing of the stock/ETF component of a Complex Order under this proposal will comply with applicable rules regarding equity trading, including the rules governing trade reporting, trade-throughs and short sales. NES's responsibilities respecting these equity trading rules will be documented in NES's written policies and procedures. NES' compliance team updates, reviews and monitors NES' policies and procedures regarding equity trading rules on an annual basis. NES is regulated by FINRA and as such, NES policies and procedures are subject to review and examinations by FINRA.

As part of the execution of the stock/ETF component, NES will ensure that the execution price is within the intra-day high-low range for the day in that stock at the time the Complex Order is processed and within a certain price range from the current market pursuant to Options 3, Section 16(a),[37] which the Exchange will establish in an Options Trader Alert. If the stock price is not within these parameters, the Complex Order is not executable and would be held on the order book or cancelled, consistent with Member instructions.[38] Before the migration of MRX to enhanced technology platform when the Exchange was offering stock-tied functionality, the third-party broker-dealer would ensure the execution price was within the intra-day high-low range. With the transition to NES, the Exchange would commence performing this check. Members who transact stock-tied functionality on MRX would therefore continue to be subject to the same execution price check with NES as they were before the migration.

The Exchange believes that the continued electronic submission of the stock/ETF piece of the Complex Order to NES for execution should help ensure that the Complex Order, as a whole, is executed timely and at the desired price. In addition, the Exchange's electronic communication of the stock or ETF component to NES for execution eliminates the need for each party to separately submit the stock component to a broker-dealer for execution. The execution of the stock/ETF portion of a Complex Order will be immediate; the Exchange's System will calculate the stock price based on the net debit/credit price of the Complex Order,[39] while also calculating and determining the appropriate options price(s), all electronically. The Exchange continues to believe that this practice would not

[30] 17 CFR 242.200 *et seq.*

[31] The Exchange also accepts short sell exempt orders as described herein.

[32] *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (''Rule 201 Adopting Release'').

[33] For purposes of this paragraph, the term ''covered security'' shall have the same meaning as in Rule 201(a)(1) of Regulation SHO.

[34] *See* proposed Options 3, Section 16(e). In contrast, Complex Orders in an auction mechanism that cannot be executed in accordance with Regulation SHO will be cancelled back and will not rest on the Complex Order Book as provided in Supplementary Material .08 to Options 3, Section 11 and Supplementary Material .09 to Options 3, Section 13.

[35] *See* proposed Options 3, Section 16(e).

[36] *See* proposed Options 3, Section 16(e).

[37] This intra-day high-low range check does not occur for Complex PIM Orders, Complex Facilitation Orders and Complex SOM Orders, and also does not occur for Complex Customer Cross Orders.

[38] *See* proposed Options 3, Section 16(d). In contrast, Complex Orders in an auction mechanism that cannot be executed in accordance with Regulation SHO will be cancelled back and will not rest on the Complex Order Book as provided in Supplementary Material .08 to Options 3, Section 11 and Supplementary Material .09 to Options 3, Section 13.

[39] The stock/ETF price is, of course, included within the net debit/credit price of the Complex Order.

require the Exchange to later nullify options trades if the stock price cannot be achieved. Accordingly, like Phlx, the Exchange is not proposing to adopt a rule permitting such option trade nullifications because the trade would not occur at a price that later required nullification due to the unavailability of the stock/ETF price. The Exchange further believes that the certainty associated with such electronic calculations and processing will continue to be an attractive feature for Members transacting Complex Orders with a stock or ETF component. Likewise, Phlx does not have a rule for options trade nullification for similar transactions. Phlx reasoned in its proposal to similarly use an affiliate to execute the stock or ETF component of a Complex Order that because such execution would be immediate, with Phlx's system calculating the stock or ETF price based on the net debit/credit price of the Complex Order while also calculating and determining the appropriate options price(s), that it believed that its approach would not require Phlx to later nullify options trades if the stock price cannot be achieved.[40]

The Exchange also believes that it is appropriate to construct a program wherein its affiliate, NES, is the exclusive conduit for the execution of the stock/ETF component of a Complex Order under this proposal, similar to Phlx.[41] As a practical matter, complex order programs on other exchanges involve specific arrangements with a broker-dealer to facilitate prompt execution. NES does not intend to charge a fee for the execution of the stock/ETF component of a Complex Order.[42] The Exchange believes that is consistent with the Act for such an arrangement to involve one broker-dealer, even one that is an affiliate, particularly to offer the aforementioned benefits of a prompt, electronic execution for Complex Orders involving stock/ETFs. Specifically, offering a seamless, automatic execution for both the options and stock/ETF components of a Complex Order is an important feature that should promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by deeply enhancing the sort of complex order processing available on options exchanges today. Nevertheless, Members could, in lieu of this proposed arrangement with NES, choose, instead, the following alternatives: (i) avoid using Complex Orders that involve stock/ETFs, (ii) use a trading floor to execute Complex Order with stock, or (iii) go to another options venue, several of which offer a similar feature.[43]

In line with the proposed amendments, the Exchange proposes to remove language within Supplementary Material .02 of Options 3, Section 14 which states,

> Members may also indicate preferred execution brokers, and such preferences will determine order routing priority whenever possible. A trade of a Stock-Option Order or a Stock-Complex Order will be automatically cancelled if market conditions prevent the execution of the stock or option leg(s) at the prices necessary to achieve the agreed upon net price. When a Stock-Option Order or Stock-Complex Order has been matched with another Stock-Option Order or Stock-Complex Order that is for less than the full size of the Stock-Option Order or Stock-Complex Order, the full size of the Stock-Option Order or Stock Complex Order being processed by the stock execution venue will be unavailable for trading while the order is being processed.

As noted herein, Members will no longer be able to indicate preferred execution brokers which makes the first sentence within Supplementary Material .02 of Options 3, Section 14 unnecessary. The second sentence within Supplementary Material .02 of Options 3, Section 14 is being removed because the Exchange is replacing this rule text with proposed Options 3, Section 16(d) and (e) which describes price checks that will be performed for Stock-Option Orders or Stock-Complex Orders by NES. The third sentence within Supplementary Material .02 of Options 3, Section 14 is being removed because the Exchange's proposal to replace the third-party broker with NES will remove a delay that currently exists in the workflow to process a Stock-Option Order or Stock-Complex Order. NES will perform the stock leg validations proposed in Options 3, Sections 16(d) and (e) for Stock-Option Orders or Stock-Complex Orders. Thereafter, NES would print the stock components onto the Trade Reporting Facility and MRX would print the option component executions. This new workflow in which the stock or ETF component of the order will be routed to NES for execution instead of a third-party broker-dealer will obviate the possibility that the stock execution venue will be unavailable for trading while the order is being processed because MRX would no longer be reliant on a third-party broker-dealer to conduct the appropriate checks and, thereafter, relay information to MRX. With the proposed change, NES, the Exchange's affiliate, would conduct the necessary price checks and would make Stock-Option Orders or Stock-Complex Orders available to MRX in the same way that it does for Phlx. The Exchange believes that this new workflow would increase the efficiency of the entire transaction, including stock component validation and reporting.

Complex Opening Process

Similarly, the Exchange proposes to amend Supplementary Material .04 to Options 3, Section 14 to provide that Stock-Option Strategies and Stock-Complex Strategies will open pursuant to the Complex Opening Price Determination described in Supplementary Material .05 to Options 3, Section 14 instead of the Complex Uncrossing Process described in Supplementary Material .06(b) to Options 3, Section 14. Similar to the discussion above, the applicable price checks for the stock/ETF component of a Stock-Option Strategy and Stock-Complex Strategy were being performed by a third-party broker-dealer before the migration, which caused a delay that prevented these strategies from participating in the Complex Opening Process. With the proposed change to utilize NES in lieu of a third-party broker-dealer, Stock-Option Strategies and Stock-Complex Strategies would be able to participate in the Complex Opening Process because there would be no delay as NES, the Exchange's affiliate, would conduct the necessary checks (*i.e.,* the price checks Options 3, Section 16(d) and (e)). Thereafter, NES would make Stock-Option Order or Stock-Complex Order available to participate in the Complex Opening Process.

For example, assume that an underlying equity is in a Regulation

[40] *See* Phlx Complex Order Approval *supra* at 5633.

[41] *See* MRX General 2, Section 4(b) which provides that Nasdaq, Inc., which owns NASDAQ Execution Services, LLC and the Exchange, shall establish and maintain procedures and internal controls reasonably designed to ensure that NASDAQ Execution Services, LLC does not develop or implement changes to its system on the basis of non-public information regarding planned changes to the Exchange's systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange Members in connection with the provision of inbound routing to the Exchange.

[42] However, Trade Reporting Facility and clearing fees, not charged by MRX or NES, may result. National Securities Clearing Corporation (''NSCC'') and ACT will bill firms directly for their use of the NSCC and ACT systems, respectively. To the extent that NES is billed by NSCC or ACT, it will not pass through such fees to firms for the stock/ETF portion of a Complex Order under this proposal. MRX's fees applicable to Complex Orders appear in its Fee Schedule and may change from time to time.

[43] Existing Complex Order mechanisms at Cboe, Inc. (''Cboe'') offers a similar end result. *See* Cboe 5.33(l).

SHO State, the underlying equity component is open on the primary underlying market, and the following strategy is created prior to the option leg being opened on MRX:

- Assume Stock Option Strategy: Buy 8 puts and buy 100 shares
- Stock Leg NBBO: 50.00 × 50.20
- Option leg opens on MRX and the NBBO is 2.00 × 2.10
- Stock-Option Strategy derived NBBO: 16.50 × 16.75 [44]
- Firm A Customer Stock-Option Order to buy 5 strategies for 16.50 arrives
- Firm B Stock-Option Order to buy 5 strategies for 16.50 arrives
- Firm C Stock-Option Order to sell 7 strategies for 16.50 arrives with instructions to short the stock component
- Firm D Stock-Option Order to sell 3 strategies for 16.50 arrives with instructions to Sell the Stock component

In the above scenario, only Firm A (buying 5 strategies) and Firm D (not shorting 3 strategies) can actually trade at the Opening Price despite it appearing there is a fully matched cross. Firm C (selling 7 strategies) cannot trade because the underlying is in a Regulation SHO state and the only price the stock leg can be matched at, is on the National Best Bid, which is not a permissible price to short sell for an underlying in a Regulation SHO state.

Prior to the migration, MRX did not attempt to match Stock-Option Orders and Stock-Complex Orders during the Complex Opening Price Determination because the Exchange could not ensure that all parties in the cross would be able to match at the proposed stock leg price because the checks were performed by a third party. If the third party was unable to match part of the cross, executions on the options components would need to be busted, therefore the Exchange did not consider Stock-Option Orders and Stock-Complex Orders in the Complex Opening prior to the migration.

With this proposal, the price checks would be conducted by NES, an affiliate of the Exchange. Once MRX determines the stock and option leg prices, MRX will communicate the stock price and quantity to NES, who will conduct the necessary price checks. The proposed workflow provides efficiencies for the stock component execution as compared to the current process which involves a third-party broker-dealer. With this process, MRX would be able to process the option component and match the strategies during the Complex Opening Price Determination without the need for MRX to await a response from a third-party broker-dealer.

The ability to attempt this match opportunity earlier in the Complex Opening Price Determination is critical because the market can move between the Complex Opening Price Determination and the Complex Uncrossing Process [45] in such a way that the trade could no longer be possible. By way of example, prior to the migration, if the Stock Component adjusts to 53.00 × 54.00 before this strategy can attempt a Complex Uncrossing Process, the Stock Option Strategy derived NBBO would be 17.25 × 17.70 and there would no longer be a match possible for the interest willing to buy and sell at 16.50. If the System instead had utilized the Opening Price Determination, the execution would have occurred in this instance.

Trade Value Allowance

Trade Value Allowance is a functionality that allows Stock-Option Strategies and Stock-Complex Strategies to trade outside of their expected notional trade value by a specified amount (the ‘‘Trade Value Allowance’’).[46] After calculating the appropriate options match price for a Stock-Option or Stock-Complex Order expressed in a valid one cent increment, the System calculates the corresponding stock match price rounded to the increment supported by the equity market.

The Exchange no longer desires to offer the Trade Value Allowance. The Exchange has issued an Options Trader Alert indicating its intent to decommission this functionality to provide notice to Members.[47] Very few Members have opted to utilize the Trade Value Allowance and even a smaller percentage of trades were subject to the allowance. Phlx does not have a similar allowance today. In an effort to harmonize its complex order functionality across its Nasdaq affiliated markets, the Exchange proposes to no longer offer the Trade Value Allowance functionality. With the proposed change to utilize NES, the Exchange would determine the stock leg prices, and NES would be able to execute the stock leg at two different prices to ensure that the net price of the execution is within the notional value of the original order, thus eliminating the need for the allowance.

Options 3, Section 7

The Exchange proposes to make a clarifying change to MRX Options 3, Section 7, Types of Orders and Order and Quote Protocols. The Exchange proposes to amend MRX Options 3, Section 7(t) related to QCC with Stock Orders to make clear that QCC with Stock Orders may only be entered through FIX.[48] MRX has 2 order entry protocols, FIX and OTTO.[49] Members are required to have an order entry protocol to enter orders onto MRX. MRX offers each Member one FIX port at no cost.[50] All Members would have the ability to enter QCC with Stock Orders. QCC with Stock Orders may not be entered through OTTO.

Additionally, the Exchange proposes to amend Supplementary Material .02(d) to Options 3, Section 7 related to Immediate-or-Cancel Orders. The Exchange proposes to specifically amend Supplementary Material .02(d)(3) to Options 3, Section 7 to add QCC with Stock Orders and Complex QCC with Stock to the list of order types that have a Time in Force or ‘‘TIF’’ of Immediate-or-Cancel or ‘‘IOC’’. Because QCC with Stock Orders and Complex QCC with Stock have a TIF of IOC, these order types will either execute on entry or cancel. Adding these order types to Supplementary Material .02(d)(3) to Options 3, Section 7 will make this clear.

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[44] The derived NBBO for the Stock Option Strategy was calculated as follows: Stock Option Strategy Derived Bid = ¼(2.00 × 8) + ¼(50) = 16.50 and Stock Option Strategy Derived Offer = ¼(2.10 × 8) + ¼(50.20) = 16.75. The Stock Option Strategy is normalized by MRX's System by dividing the legs by the greatest common denominator of four (4). The normalized ratio was applied to the option leg price and stock leg price to determine the net price strategy.

[45] *See* Supplementary Material .06 to MRX Options 3, Section 14.

[46] The Trade Value Allowance is the percentage difference between the expected notional value of a trade and the actual notional value of the trade. *See* Supplementary Material .03 of MRX Options 3, Section 14.

[47] *See* Options Trader Alert # 2023–3. No Member has expressed concern with this functionality being eliminated.

[48] ‘‘Financial Information eXchange’’ or ‘‘FIX’’ is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders to the Exchange. Features include the following: (1) execution messages; (2) order messages; (3) risk protection triggers and cancel notifications; and (4) post trade allocation messages. *See* Supplementary Material .03(a) to Options 3, Section 7.

[49] ‘‘Ouch to Trade Options’’ or ‘‘OTTO’’ is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. *See* Supplementary Material .03(b) to Options 3, Section 7.

[50] *See* Options 7, Section 6, Ports and Other Services.

Options 3, Section 12

The Exchange proposes to amend Options 3, Section 12(e)(4) to clarify the manner in which a Member may submit a QCC with Stock Order.[51] Today, Options 3, Section 12(e)(4) provides that, ''QCC with Stock Orders can be entered with separate prices for the stock and options components, or with a net price for both.'' The Exchange proposes to amend this rule text to instead reflect the current manner in which QCC with Stock Orders may be entered into MRX's System. The proposed rule text would provide, ''QCC with Stock Orders must be entered with a net price for the stock and options components through FIX. The System will calculate the individual component prices.'' The current language of Options 3, Section 12(e)(4) is not correct. The Exchange proposes to amend this language to make clear the current System functionality. The proposed language does not result in a change to the Exchange's System. As noted above, QCC with Stock Orders may not be entered through OTTO. The Exchange notes that requiring QCC with Stock Orders to be submitted through FIX is consistent with proposed Options 3, Section 7(t) which currently requires Members to enter QCC Orders through FIX. Additionally, the Exchange is specifying the System calculates the individual component prices.

Options 3, Section 15

The Exchange proposes to amend its Market Wide Risk Protection within Options 3, Section 15(a)(1)(C) to add certain additional information concerning the current Market Wide Risk Protection along with new language that would apply as a result of the proposed changes to stock-tied functionality.

Today, the Exchange offers a Market Wide Risk Protection which is comprised of an ''Order Entry Rate Protection'' which protects Members against entering orders at a rate that exceeds predefined thresholds, and an ''Order Execution Rate Protection,'' which protects Members against executing orders at a rate that exceeds their predefined risk settings. Both of these risk protections are detailed in the ''Market Wide Risk Protection.'' Today, pursuant to the proposed Market Wide Risk Protection rule, the Exchange's System maintains one or more counting programs for each Member that count orders entered and contracts traded on MRX. Members can use multiple counting programs to separate risk protections for different groups established within the Member.

MRX Options 3, Section 15(a)(1)(C) currently states, that the counting programs will maintain separate counts, over rolling time periods specified by the Member for each count of: (1) the total number of orders entered; (2) the total number of contracts traded. The Exchange proposes to amend MRX Options 3, Section 15(a)(1)(C) to instead provide,

> [t]he counting programs will maintain separate counts, over rolling time periods specified by the Member for each count, of: (1) the total number of orders entered in the regular order book; (2) the total number of orders entered in the complex order book with only options legs; (3) the total number of Stock-Option Orders and Stock-Complex Orders entered in the complex order book with both stock and options legs ; (4) the total number of contracts traded in regular orders; (5) the total number of contracts traded in complex orders with only options legs; and (6) the total number of Stock-Option Order and Stock-Complex Order contracts traded in complex orders with both stock and option legs).

Today, the counting programs maintain separate counts over rolling time period for the total number of orders entered in the regular order book, complex order book with only options legs; and the complex order book with both stock and options legs. Additionally, the risk protection counts the total number of contracts traded in regular orders and Complex Orders with only options legs.[52] The current rule text does not provide for each of these counts today.

The Exchange proposes a technical amendment to the first provision of MRX Options 3, Section 15(a)(1)(C) to add ''in the regular order book'' to the sentence to distinguish the single-leg order book from the complex order book.

At the time that MRX adopted Complex Order rules, those rules were intended to be identical to Nasdaq ISE, LLC (''ISE'') complex order rules.[53] MRX should have amended MRX Options 3, Section 15(a)(1)(C) to include the rule text within (2) through (5), as noted above, to mirror the rules of ISE Options 3, Section 15(a)(1)(C) as it pertains to Complex Orders. The Exchange proposes to mirror the rules of ISE Options 3, Section 15(a)(1)(C) within (2) through (5) except that the rules will use the defined terms Stock-Option Order, Stock-Complex Order, and Complex Option Order.[54] The Exchange notes that the stock portion of QCC Orders, Complex Qualified QCC Orders, QCC with Stock Orders, and Complex QCC with Stock Orders are not counted in (3) because MRX's System does not handle the stock portion of these orders. MRX would not represent the stock leg through NES as it would for other Stock-Option Orders and Stock-Complex Orders as described herein. The Exchange inadvertently did not amend its rules similar to ISE today. Today, the Market Wide Risk Protection includes Complex Orders, where applicable. At this time, MRX proposes to mirror ISE's rules related to the counting functionality for Complex Orders to reflect the manner in which the System operates. The Exchange notes that QCC Orders, Complex Qualified QCC Orders, QCC with Stock Orders, and Complex QCC with Stock Orders are considered, where applicable, in Options 3, Section 15(a)(1)(C)(1), (2), (4) and (5).

Today, the Exchange does not include a complex execution count for Complex Orders with a stock component as the execution counts maintained by the Order Execution Rate Protection are based solely on options contracts traded. At this time, as a result of amending the stock-tied functionality, the Exchange proposes to add a new number (6) to MRX Options 3, Section 15(a)(1)(C) to note that the counting programs will maintain separate counts, over rolling time periods specified by the Member for each count, of the total number of Stock-Option Order and Stock-Complex Order contracts traded in Complex Order with both stock and option legs. The Exchange is adding new number (6) because it is introducing NES in place of a third-party broker-dealer. As a result, the Exchange will guarantee a stock-tied execution. Before the migration, the stock-tied execution was not guaranteed by the third-party broker-dealer. Because of the ability to guarantee the execution, the Exchange is amending Options 3, Section 15(a)(1)(C) to add (6) to the list of contracts counted by the Market Wide Risk Protection because the Exchange is able to perform the risk check since NES will be handling the stock for Stock-Option Orders and Stock-Complex Orders. This risk protection will reduce risk associated with system errors or market events that

[51] QCC with Stock Orders are processed in accordance with Options 3, Section 12(e).

[52] The Member's allowable order rate for the Order Entry Rate Protection is comprised of the parameters defined in (1) to (3), while the allowable contract execution rate for the Order Execution Rate Protection is comprised of the parameters defined in (4) and (5).

[53] *See* Securities Exchange Act Release No. 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR–MRX–2019014) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Complex Order Pricing).

[54] A similar change will be made to ISE to utilize the defined terms ''Stock-Option Order,'' ''Stock-Complex Order'' and ''Complex Option Order.''

may cause Members to send a large number of orders, or receive multiple, automatic executions, before they can adjust their exposure in the market. Without adequate risk management tools, such as those proposed in this filing, Members could reduce the amount of order flow and liquidity that they provide on MRX. As a result, the functionality promotes just and equitable principles of trade.

Finally, the Exchange proposes to add the defined term ''DNTT'' to the end of Options 3, Section 16(a) to define the instruction on a Complex Order to price each leg of the Complex Order to be executed equal to or better than the NBBO for the options series or any stock component, as applicable as a ''Do-Not-Trade-Through'' or ''DNTT.'' This is not a substantive amendment, rather this change is meant to assist Members in locating this functionality within MRX's rules.

Implementation

The Exchange will issue an Options Trader Alert to Members to provide notification of the implementation date for MRX's Delayed Functionalities, except Trade Value Allowance. MRX will announce the day it will recommence the Delayed Functionalities, except Trade Value Allowance, before November 7, 2023, which is one year from the day MRX's technology migration commenced. Separately, MRX informed Members that it will not recommence the Trade Value Allowance functionality in a separate Options Trader Alert.[55] As discussed above, the Trade Value Allowance will no longer be necessary.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[56] in general, and furthers the objectives of Section 6(b)(5) of the Act,[57] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest for the reasons discussed below.

Re-Introduction of Stock-Related Strategies and Elimination of Trade Value Allowance

Stock-Tied Functionality

The Exchange's proposal to amend its stock-tied functionality that the Exchange used prior to the technology migration and recommence offering this functionality as described above promotes just and equitable principles of trade and removes impediments to and perfect the mechanism of a free and open market and a national market system because it will permit the Exchange to streamline its stock-tied processes as discussed more fully below. Further, the amendments to require that a Member desiring to execute an order with stock or an ETF component enter into a brokerage agreement with NES, a broker-dealer owned and operated by Nasdaq, Inc., protects investors and the general public because Members will be required to comply with NES' requirements and those requirements will be uniform for all MRX Members.

The proposed stock-tied functionality is identical to Phlx Options 3, Sections 13(b)(10)(ii) and 14(a)(i) with respect to utilizing NES to process and report stock-tied functionality with two differences.

First, while both Phlx and MRX have certain risk protections for complex orders, they differ. With respect to MRX, the execution price of the Complex Order must be within a certain price from the current market, as determined by the Exchange pursuant to Options 3, Section 16(a). Specifically, today, MRX Options 3, Section 16(a) provides that the System will not permit any leg of a complex strategy to trade-through the NBBO for the series or any stock component by a configurable amount calculated as the lesser of (i) an absolute amount not to exceed $0.10, and (ii) a percentage of the NBBO not to exceed 500%, as determined by the Exchange on a class, series or underlying basis. Phlx Options 3, Section 16(b)(i) describes Phlx's ACE Parameter which defines a price range outside of which a complex order will not be executed. On Phlx, a complex order to sell is not executed at a price that is lower than the cNBBO bid by more than the ACE Parameter. Conversely, on Phlx, a complex order to buy will not be executed at a price that is higher than the cNBBO offer by more than the ACE Parameter. While MRX's and Phlx's price checks differ, both markets seek to prevent executions from occurring at certain prices and at certain percentages from the NBBO. The Exchange believes that this proposal promotes just and equitable principles of trade because NES would apply the same price check for stock-tied functionality that was being applied previously by a third party that executed the stock or ETF component of a complex strategy on behalf of MRX Members. Additionally, MRX Members would continue to be subject to the same price check which is applied to all Complex Orders executed on MRX.

Second, MRX and Phlx differ with respect to the manner in which their systems handle Stock-Option Strategies and Stock-Complex Strategies that would execute against interest on the Complex Order Book at a price that do not meet price checks as provided for in proposed Options 3, Section 16(d)[58] or do not meet Regulation SHO provisions as provided for in proposed Options 3, Section 16(e)[59] are handled by their respective systems. As proposed, MRX will hold orders on the Complex Order book that cannot be executed because of Regulation SHO or price check restrictions, unless the Member requests the order to be cancelled. If an MRX Member elects to have the order held on the Complex Order Book, the order would await other matching opportunities, otherwise at the Member's election the order would be returned to the Member. In contrast, Phlx only provides for a cancellation of the order. The Exchange believes that this proposal promotes just and equitable principles of trade because MRX's proposed approach would provide the Member with optionality as to the handing of the order. The Exchange believes providing the choice to have the order held on the Complex Order Book provides Members with an opportunity for an execution.

NES, an affiliate of the Exchange and a registered broker-dealer, has been approved by the Commission to become a Member of the Exchange and perform inbound routing on behalf of the Exchange.[60] Additionally, NES is permitted to route outbound orders either directly or indirectly through a third party routing broker-dealer to other market centers and perform other functions regarding the cancellation of orders and the maintenance of a NES error account.[61] The functions performed by NES on Phlx today are identical to the functions that MRX proposes for NES to perform for MRX Members.[62] Identical to Phlx, after

[55] *See supra* note 12.

[56] 15 U.S.C. 78f(b).

[57] 15 U.S.C. 78f(b)(5).

[58] As proposed, the execution price of Stock-Option Strategies and Stock-Complex Strategies must be within the high-low range for the day in that stock at the time the Complex Order is processed and within a certain price from the current market pursuant to Options 3, Section 16(a), as determined by the Exchange.

[59] *See supra* note 22.

[60] *See supra* note 16.

[61] *See supra* note 17.

[62] *See* Securities Exchange Act Release No. 63777 (January 26, 2011), 76 FR 5630 (February 1, 2011) (SR–Phlx–2010–157) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to Complex Orders) (''Phlx Complex Order Approval''). NES assumed the stock execution functionalities that were previously performed by NOS. Phlx subsequently filed to permit both inbound and outbound orders to be routed through NES instead of Nasdaq Options

MRX's System determines that a Complex Order is possible and identifies the prices for each component of such Complex Order, MRX will electronically communicate the stock or ETF component of the Complex Order to NES for execution.[63]

NES, acting as agent for the orders to buy and sell the underlying stock or ETF, will execute the orders in the OTC market and will handle the orders pursuant to applicable rules regarding equity trading, including the rules governing trade reporting, trade-throughs, and short sales. Before the migration, this function was performed by a third-party broker-dealer that executed the stock or ETF component of a complex strategy on behalf of MRX Members. As proposed, this structure will promote just and equitable principles of trade because NES will be responsible for the proper execution, trade reporting, and submission to clearing of the underlying stock or ETF component of a Complex Order.[64] Furthermore, today, NES is responsible for compliance with FINRA rules generally and is subject to examination by FINRA.[65] Finally, today, NES has in place policies related to confidentiality and the potential for informational advantages relating to its affiliates, intended to protect against the misuse of material nonpublic information.[66] In particular, NES will have in place policies and procedures designed to prevent the misuse of material non-public information related to stock-tied executions which will protect investors and the public interest. NES only receives information about the stock or ETF portion of the order from the Exchange. As mentioned herein, today, NES is responsible for the proper execution, trade reporting, and submission to clearing of the underlying stock or ETF component of a Complex Order on Phlx. MRX will adopt identical policies and procedures for its stock-tied functionality as are in place on Phlx today.

In addition, the execution and reporting of the stock/ETF piece will occur otherwise than on MRX or any other exchange, and will be handled by NES pursuant to applicable rules regarding equity trading,[67] including the rules governing trade reporting, trade-throughs and short sales. The Exchange's proposal also promotes just and equitable principles of trade as NES will report the trades to the Trade Reporting Facility.[68] Further, all MRX Members may execute stock-tied transactions. All stock-tied transactions will have the stock/ETF component of a Complex Order, once executed, properly processed for trade reporting purposes. Phlx has identical rules for processing and reporting.[69]

With respect to trade-throughs, the Exchange believes that the stock/ETF component of a Complex Order is eligible for the Qualified Contingent Trade Exemption from Rule 611(a) of Regulation NMS. The Exchange believes that the stock/ETF portion of a Complex Order under this proposal complies with all six requirements of the Qualified Contingent Trade Exemption.[70] In order to promote just and equitable principles of trade, MRX's System will validate compliance with each requirement such that any matched order received by NES under this proposal has been checked for compliance with the exemption. Members may only submit Complex Orders with a stock/ETF component if such orders comply with the Qualified Contingent Trade Exemption.[71] Members submitting such Complex Orders with a stock/ETF component represent that such orders comply with the Qualified Contingent Trade Exemption. Thus, the Exchange believes that Complex Orders consisting of a stock/ETF component will comply with the exemption and that MRX's System will validate such compliance to assist NES in carrying out its responsibilities as agent for these orders.

With respect to short sale regulation, the proposed handling of the stock/ETF component of a Complex Order under this proposal should not raise any issues of compliance with the currently operative provisions of Regulation SHO[72] and therefore promote just and equitable principles of trade. When a Complex Order has a stock/ETF component, Members must indicate, pursuant to Regulation SHO, whether that order involves a long or short sale. The System will accept Complex Orders with a stock/ETF component marked to reflect either a long or short position; specifically, orders not marked as buy, sell or sell short will be rejected by MRX's System.[73] The System will electronically deliver the stock/ETF component to NES for execution. Simultaneous to the options execution on MRX's System, NES will execute and report the stock/ETF component, which will contain the long or short indication as it was delivered by the Member to MRX's System. Accordingly, NES, as a trading center under Rule 201, will be compliant with the requirements of Regulation SHO. Of course, broker-dealers, including both NES and the Members submitting orders to MRX with a stock/ETF component, must comply with Regulation SHO. NES'

Services LLC (''NOS''). *See* Securities Exchange Act Release No. 71417 (January 28, 2014), 79 FR 6253 (February 3, 2014) (SR–Phlx–2014–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Outbound Routing) and 71416 (January 28, 2014), 79 FR 6244 (February 3, 2014) (SR–Phlx–2014–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Inbound Routing of Options Orders).

[63] *See* proposed Supplementary Material .08(b) to Options 3, Section 11, proposed Options 3, Section 12(b)(2), proposed Supplementary Material .09(b) to Options 3, Section 13, proposed Supplementary Material .02 to Options 3, Section 14 and proposed Options 3, Section 16(d). *See also* Phlx Options 3, Section 13(b)(10)(ii), Options 3, Section 16(b).

[64] *See supra* note 23.

[65] NES is subject to FINRA Rule 3110, which generally requires that the policies and procedures and supervisory systems be reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable FINRA rules, including those relating to the misuse of material non-public information.

[66] *See supra* note 24.

[67] *See supra* note 25.

[68] *See supra* note 26.

[69] *See* Phlx Options 3, Sections 13(b)(10) and 14(a)(i).

[70] The six requirements include: (1) At least one component order is in an NMS stock: The stock/ETF component must be an NMS stock, which is validated by the System; (2) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent: A Complex Order, by definition consists of a single net/debit price and this price contingency applies to all the components of the order, such that the stock price computed and sent to NES allows the stock/ETF order to be executed at the proper net debit/credit price based on the execution price of each of the option legs, which is determined by the MRX System; (3) the execution of one component is contingent upon the execution of all other components at or near the same time: Once a Complex Order is accepted and validated by the System, the entire package is processed as a single transaction and each of the option leg and stock/ETF components are simultaneously processed; (4) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined at the time the contingent order is placed: Complex Orders, upon entry, must have a size for each component and a net debit/credit, which the System validates and processes to determine the ratio between the components; an order is rejected if the net debit/credit price and size are not provided on the order; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled: under this proposal, the stock/ETF component must be the underlying security respecting the option legs, which is validated by the System; and (6) the transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade: Under this proposal, the ratio between the options and stock/ETF must be a conforming ratio (8 contracts per 100 shares), which the System validates, and which under reasonable risk valuation methodologies, means that the stock/ETF position is fully hedged.

[71] *See* Supplementary Material .07 to Options 3, Section 14.

[72] 17 CFR 242.200 *et seq.*

[73] The Exchange also accept short sell exempt orders as described herein.

compliance team updates, reviews and monitors NES' policies and procedures including those pertaining to Regulation SHO on an annual basis.

Further, proposed Options 3, Section 16(e) provides that when the short sale price test in Rule 201 of Regulation SHO [74] is triggered for a covered security, NES will not execute a short sale order in the underlying covered security component of a Complex Order if the price is equal to or below the current national best bid. However, NES will execute a short sale order in the underlying covered security component of a Complex Order if such order is marked ''short exempt,'' regardless of whether it is at a price that is equal to or below the current national best bid. If NES cannot execute the underlying covered security component of a Complex Order in accordance with Rule 201 of Regulation SHO, the Exchange will hold the Complex Order on the Complex Order Book, if consistent with Member instructions (Members may always elect to cancel the order).[75] The order may execute at a price that is not equal to or below the current national best bid. This proposed rule is similar to Phlx Options 3, Section 16(b) except that unlike Phlx, MRX will not cancel back the Complex Order to the entering Member unless the Member requests that the order be cancelled back.

For these reasons, the processing of the stock/ETF component of a Complex Order under this proposal will comply with applicable rules regarding equity trading, including the rules governing trade reporting, trade-throughs and short sales and is consistent with the Act. NES's responsibilities respecting these equity trading rules will be documented in NES's written policies and procedures. NES' compliance team updates, reviews and monitors NES' policies and procedures. NES is regulated by FINRA and as such, NES policies and procedures are subject to review and examinations by FINRA.

Further, as part of the execution of the stock/ETF component, the Exchange will ensure that the execution price is within the intra-day high-low range for the day in that stock at the time the Complex Order is processed and within a certain price range from the current market pursuant to Options 3, Section 16(a) which will protect investors and the general public.[76] If the stock price is not within these parameters, the Complex Order is not executable and would be held on the order book or cancelled, consistent with Member instructions.[77] Before the migration of MRX to enhanced technology platform when the Exchange was offering stock-tied functionality, the third-party broker-dealer would ensure the execution price was within the intra-day high-low range. With the transition to NES, the Exchange would commence performing this check. Members who transact stock-tied functionality on MRX would therefore continue to be subject to the same execution price check with NES as they were before the migration. This intra-day high-low range check does not occur for certain Complex Orders auctions (*e.g.* Complex PIM Orders,[78] Complex Facilitation Orders [79] and Complex SOM Orders [80]) and also does not occur for Complex Customer Cross Orders [81] or Complex QCC Orders.[82] The Exchange believes that this exception for auctions is consistent with the Act because these auctions have their own rules for auction eligibility, entry checks, and offer price improvement all of which are distinguishable from execution of orders on the Complex Order Book. Complex Customer Cross Orders are automatically executed upon entry so long as: (i) the price of the transaction is at or within the best bid and offer for the same complex strategy on the Complex Order Book; (ii) there are no Priority Customer Complex Orders for the same strategy at the same price on the Complex Order Book; and (iii) the options legs can be executed at prices that comply with the provisions of Options 3, Section 14(c)(2). Complex Customer Cross Orders will be rejected if they cannot be executed.[83]

Finally, the Exchange also believes that it is appropriate to construct a program wherein its affiliate, NES, is the exclusive conduit for the execution of the stock/ETF component of a Complex Order under this proposal, identical to Phlx.[84] As a practical matter, complex order programs on other exchanges involve specific arrangements with a broker-dealer to facilitate prompt execution. NES does not intend to charge a fee for the execution of the stock/ETF component of a Complex Order.[85] The Exchange believes that is consistent with the Act for such an arrangement to involve one broker-dealer, even one that is an affiliate, particularly to offer the aforementioned benefits of a prompt, electronic execution for Complex Orders involving stock/ETFs. Specifically, offering a seamless, automatic execution for both the options and stock/ETF components of a Complex Order is an important feature that should promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by deeply enhancing the sort of complex order processing available on options exchanges today. Nevertheless, Members could, in lieu of this proposed arrangement with NES, choose, instead, the following alternatives: (i) avoid using Complex Orders that involve stock/ETFs, (ii) use a trading floor to execute Complex Order with stock, or (iii) go to another options venue, several of which offer a similar feature.[86]

The Exchange's proposal to remove the second and third sentences within Supplementary Material .02 of Options 3, Section 14 [87] is consistent with the Act in that it protects investors and the general public because this new workflow in which the stock or ETF

[74] *See supra* note 32.

[75] *See* proposed Options 3, Section 16(e). In contrast, Complex Orders in an auction mechanism that cannot be executed in accordance with Regulation SHO will be cancelled back and will not rest on the Complex Order Book as provided in Supplementary Material .08 to Options 3, Section 11 and Supplementary Material .09 to Options 3, Section 13.

[76] *See supra* note 37.

[77] Similar to other order types, the Member may elect to enter the order as an Immediate-or-Cancel to avoid resting on the order book or as Day order which could rest on the order book.

[78] A Complex PIM Order is an order entered into the Complex Price Improvement Mechanism as described in Options 3, Section 13(e). *See* MRX Options 3, Section 14(b)(18).

[79] A Complex Facilitation Order is an order entered into the Complex Facilitation Mechanism as described in Options 3, Section 11(c). *See* MRX Options 3, Section 14(b)(16).

[80] A Complex SOM Order is an order entered into the Complex Solicited Order Mechanism as described in Options 3, Section 11(e). *See* MRX Options 3, Section 14(b)(17).

[81] *See* Options 3, Section 12(b).

[82] *See* Options 3, Section 12(d).

[83] Supplementary Material .01 to Options 3, Section 22 applies to Complex Customer Cross Orders.

[84] *See supra* note 41. *See* proposed Supplementary Material .02 to MRX Options 3, Section 14. In addition to amending Supplementary Material .02 to MRX Options 3, Section 14 to require Members to enter into a brokerage agreement, the Exchange proposes to make conforming changes to Supplementary Material .02 to MRX Options 3, Section 14 to delete provisions that allow Members to enter into a brokerage agreement with one or more brokers to route stock orders.

[85] *See supra* note 42.

[86] *See supra* note 43.

[87] The second and third sentences of Supplementary Material .02 of MRX Options 3, Section 14 states, ''A trade of a Stock-Option Order or a Stock-Complex Order will be automatically cancelled if market conditions prevent the execution of the stock or option leg(s) at the prices necessary to achieve the agreed upon net price. When a Stock-Option Order or Stock-Complex Order has been matched with another Stock-Option Order or Stock-Complex Order that is for less than the full size of the Stock-Option Order or Stock-Complex Order, the full size of the Stock-Option Order or Stock Complex Order being processed by the stock execution venue will be unavailable for trading while the order is being processed.''

component of the order will be routed to NES for execution instead of a third-party broker-dealer will obviate the possibility that the stock execution venue will be unavailable for trading while the order is being processed because of the efficiency created in executing the entire transaction, including stock component validation and reporting, without the need for MRX to utilize a third-party broker-dealer and await a response from the third-party broker-dealer. MRX would no longer be reliant on a third-party broker-dealer to conduct the appropriate checks and, thereafter, relay information to MRX. With the proposed change, NES, the Exchange's affiliate, would conduct the necessary checks and thereafter the Stock-Option Order or Stock-Complex Order would be available for execution. Proposed Options 3, Sections 16(d) and (e) describe the System price checks that will be performed for Stock-Option Orders or Stock-Complex Orders by NES.

Similarly, the Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 14 to provide that Stock-Option Strategies and Stock-Complex Strategies will open pursuant to the Complex Opening Price Determination described in Supplementary Material .05 to Options 3, Section 14, instead of the Complex Uncrossing Process described in Supplementary Material .06(b) to Options 3, Section 14, is consistent with the Act. Similar to the discussion above, previously the applicable checks for the stock/ETF component of a Stock-Option Strategy and Stock-Complex Strategy were being performed by a third-party broker-dealer before the migration, which caused a delay that prevented these strategies from participating in the Complex Opening Process. With the proposed change to utilize NES, in lieu of a third-party broker-dealer, Stock-Option Strategies and Stock-Complex Strategies would be able to participate in the Complex Opening Process as NES, the Exchange's affiliate, would conduct the necessary price checks and would be able to make Stock-Option Order or Stock-Complex Order available to participate in the Complex Opening Process without the need for MRX to await a response from a third-party broker-dealer. This amendment is consistent with the Act as it serves to protect investors and the general public by improving the Exchange's processes to make Stock-Option Strategies and Stock-Complex Strategies subject to the Complex Opening Price Determination similar to other order types. The Complex Opening Process seeks to maximize the interest which is traded during the Complex Opening Price Determination process and deliver a rational price for the available interest at the opening. The Complex Opening Price Determination process maximizes the number of contracts executed during the Complex Opening Process and ensures that residual contracts of partially executed orders or quotes are at a price equal to or inferior to the Opening Price.

Trade Value Allowance

The Exchange's proposal to no longer offer Trade Value Allowance is consistent with the Act because very few Members have opted to utilize the Trade Value Allowance and even a smaller percentage of trades were subject to the allowance. Phlx does not have a similar allowance today. In an effort to harmonize its complex order functionality across its Nasdaq affiliated markets, the Exchange proposes to no longer offer the Trade Value Allowance functionality. In addition, the Exchange believes that this proposal removes impediments to and perfect the mechanism of a free and open market and a national market system because the proposal removes an allowance that is no longer necessary; other options exchanges, like Phlx, do not offer such an allowance. With the proposed change to utilize NES, the Exchange would be able to determine stock leg prices, and NES would be able to execute the stock leg at two different prices to ensure that the net price of the execution is within the notional value of the original order, thus eliminating the need for the allowance.

Options 3, Section 7

The Exchange's proposal to make a clarifying change to MRX Options 3, Section 7, Types of Orders and Order and Quote Protocols is consistent with the Act. The Exchange proposes to amend MRX Options 3, Section 7(t) related to QCC with Stock Orders to make clear that QCC with Stock Orders may only be entered through FIX. MRX has 2 order entry protocols, FIX and OTTO. QCC with Stock Orders may not be entered through OTTO. Members are required to have an order entry protocol to enter orders onto MRX.[88] The Exchange's proposal to add rule text to Options 3, Section 7(t) will clarify the functionality, thereby protecting investors and the general public.

Additionally, the Exchange's proposal to amend Supplementary Material .02(d) to Options 3, Section 7 related to Immediate-or-Cancel Orders is consistent with the Act. The Exchange proposes to specifically amend Supplementary Material .02(d)(3) to Options 3, Section 7 to add QCC with Stock Orders and Complex QCC with Stock to the list of order types that have a Time in Force or "TIF" of Immediate-or-Cancel or "IOC." Because QCC with Stock Orders and Complex QCC with Stock have a TIF of IOC, these order types will execute either execute on entry or cancel. This amendment will make clear the manner in which the aforementioned order types trade, thereby protecting investors and the general public.

Options 3, Section 12

The Exchange's proposal to amend Options 3, Section 12(e)(4) to clarify that a Member may submit a QCC with Stock Order with a net price for the stock and options components through FIX and may not submit QCC with Stock Orders with separate prices for the stock and options components and that the System will perform the calculation is consistent with the Act because the amended rule text makes clear the format in which these orders may be submitted to the System. Today, the Exchange does not allow FIX to accept QCC with Stock Orders with separate prices for the stock and options components. Each exchange may specify the manner in which certain order types may be submitted to an exchange and the format for submitting those orders. The proposal protects investors and the general public by clarifying the manner in which Members may submit QCC with Stock Orders. The proposed language does not result in a change to the Exchange's System. As noted above, QCC with Stock Orders may not be entered through OTTO. The Exchange notes that requiring QCC with Stock Orders to be submitted through FIX is consistent with proposed Options 3, Section 7(t) which requires Members to enter QCC Orders through FIX.

Options 3, Section 15

The Exchange's proposal to amend its Market Wide Risk Protection within Options 3, Section 15(a)(1)(C) to add certain additional information concerning the current Market Wide Risk Protection along with new language that would apply as a result of the proposed changes to stock-tied functionality is consistent with the Act. The first provision, the total number of orders entered is being amended to simply add "in the regular order book" to distinguish the single-leg order book

[88] MRX offers each Member one FIX port at no cost. *See* Options 7, Section 6.

from the complex order book. This amendment is non-substantive and would serve to clarify which order book is impacted.

The proposed changes to MRX Options 3, Section 15(a)(1)(C) protect investors and the public interest by clearly describing the operation of the Market Wide Risk Protection. As discussed above, the functionality of proposed MRX Options 3, Section 15(a)(1)(C)(2) through (5) is consistent with functionality that currently exists on ISE.[89] Proposed MRX Options 3, Section 15(a)(1)(C)(6) adds the total number of contracts traded in Stock-Option Orders and Stock-Complex Orders to the Market Wide Risk Protection. This change protects investors and the general public because this risk protection by expanding the scope of the Market Wide Risk Protection to include additional contracts which will reduce risk associated with system errors or market events that may cause Members to send a large number of orders, or receive multiple, automatic executions, before they can adjust their exposure in the market. The Exchange notes that QCC Orders, Complex Qualified QCC Orders, QCC with Stock Orders, and Complex QCC with Stock Orders are considered, where applicable, in Options 3, Section 15(a)(1)(C)(1), (2), (4) and (5). Members will continue to be provided with the flexibility needed to appropriately tailor the Market Wide Risk Protection to their respective risk management needs.

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.

Re-Introduction of Stock-Related Strategies and Elimination of Trade Value Allowance

Stock-Tied Functionality

The Exchange's proposal to amend its stock-tied functionality and recommence offering this functionality does not impose an intra-market undue burden on competition as all Members may utilize the stock-tied functionality and would be uniformly subject to the requirements associated with executing a stock-tied transaction. Also, in lieu of this proposed arrangement with NES, Members could choose, instead, the following alternatives: (i) avoid using Complex Orders that involve stock/ETFs, (ii) use a trading floor to execute Complex Order with stock, or (iii) go to another options venue, several of which offer a similar feature.[90] The Exchange's proposal to amend its stock-tied functionality and recommence offering this functionality does not impose an inter-market undue burden on competition as other options exchanges today may offer a similar process for handling stock-tied transactions. Today, Phlx offers an identical process for handling stock-tied transactions.[91]

The Exchange's proposal to remove rule text from Options 3, Section 14 that states, ''When a Stock-Option Order or Stock-Complex Order has been matched with another Stock-Option Order or Stock-Complex Order that is for less than the full size of the Stock-Option Order or Stock-Complex Order, the full size of the Stock-Option Order or Stock Complex Order being processed by the stock execution venue will be unavailable for trading while the order is being processed,'' does not impose an undue burden on intra-market competition because the proposed new functionality will apply equally to all Members transacting Complex Orders on MRX. All Stock-Option Orders and Stock-Complex Orders will be handled in the same manner by the System. The Exchange's proposal to remove rule text from Options 3, Section 14 does not impose an undue burden on inter-market competition as the scope of this change is limited to MRX and its relationship with a broker-dealer handling the stock component of the order.

The Exchange's proposal to remove the rule text within Supplementary Material .02 of Options 3, Section 14 [92] does not impose an undue burden on intra-market competition because all Members will have the ability to use the new workflow in which the stock or ETF component of the order will be routed to NES for execution instead of a third-party broker-dealer. The proposed new functionality will apply equally to all Members transacting Complex Orders on MRX. All Stock-Option Orders and Stock-Complex Orders will be handled in the same manner by the System. Additionally, this proposed amendment will not impose an undue burden on inter-market competition because all market participants that direct orders to MRX will have their orders handled in a similar manner. The proposed stock-tied functionality is identical to Phlx Options 3, Sections 13(b)(10)(ii) and 14(a)(i) with respect to utilizing NES to process and report the stock or ETF component of a Complex Order.

Similarly, the Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 14 to provide that Stock-Option Strategies and Stock-Complex Strategies will open pursuant to the Complex Opening Price Determination described in Supplementary Material .05 to Options 3, Section 14, instead of the Complex Uncrossing Process described in Supplementary Material .06(b) to Options 3, Section 14, does not impose an undue burden on intra-market competition because all Stock-Option Strategies and Stock-Complex Strategies will be subject to the same process. All Stock-Option Orders and Stock-Complex Orders will be transacted in the Complex Opening by the System. The Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 14 to provide that Stock-Option Strategies and Stock-Complex Strategies will open pursuant to the Complex Opening Price Determination described in Supplementary Material .05 to Options 3, Section 14, instead of the Complex Uncrossing Process described in Supplementary Material .06(b) to Options 3, Section 14 does not impose an undue burden on inter-market competition because other options markets may also elect to permit similar order types to trade in their complex opening process.

Trade Value Allowance

The Exchange's proposal to no longer offer Trade Value Allowance does not impose an undue burden on intra-market competition because no Member would be able to utilize the Trade Value Allowance. The proposed stock-tied functionality is identical to Phlx Options 3, Sections 13(b)(10)(ii) and 14(a)(i) with respect to utilizing NES to process and report the stock or ETF component of a Complex Order.

The Exchange's proposal to no longer offer Trade Value Allowance does not impose an undue burden on inter-market competition because other

[89] *See* ISE Options 3, Section 15(a)(1)(C)(2) through (5).

[90] *See supra* note 43.

[91] *See* Phlx Options 3, Sections 13(b)(10) and 14(a)(i).

[92] Supplementary Material .02 of Options 3, Section 14 states that, ''Members may also indicate preferred execution brokers, and such preferences will determine order routing priority whenever possible. A trade of a Stock-Option Order or a Stock-Complex Order will be automatically cancelled if market conditions prevent the execution of the stock or option leg(s) at the prices necessary to achieve the agreed upon net price. When a Stock-Option Order or Stock-Complex Order has been matched with another Stock-Option Order or Stock-Complex Order that is for less than the full size of the Stock-Option Order or Stock-Complex Order, the full size of the Stock-Option Order or Stock Complex Order being processed by the stock execution venue will be unavailable for trading while the order is being processed.''

options exchanges could choose to offer a similar functionality.

Options 3, Section 7

The Exchange's proposal to make a clarifying change to MRX Options 3, Section 7, Types of Orders and Order and Quote Protocols does not impose an undue burden on intra-market competition because all Members may enter QCC with Stock Orders through FIX and the Exchange provides each Member with one FIX Port at no cost.

The Exchange's proposal to make a clarifying change to MRX Options 3, Section 7, Types of Orders and Order and Quote Protocols does not impose an undue burden on inter-market competition because other options exchanges may also create order entry protocols for their markets.

Additionally, the Exchange's proposal to amend Supplementary Material .02(d) to Options 3, Section 7 to add QCC with Stock Orders and Complex QCC with Stock to the list of order types that have a Time in Force or ''TIF'' of Immediate-or-Cancel or ''IOC'' does not impose an undue burden on intra-market competition because this amendment reflects the description of these particular order types which will either execute on entry or cancel. All QCC with Stock Orders and Complex QCC with Stock that are entered on MRX will be handled in the same manner. Further, all Members may trade QCC with Stock Orders and Complex QCC with Stock Orders. Additionally, the Exchange's proposal to amend Supplementary Material .02(d) to Options 3, Section 7 related to Immediate-or-Cancel Orders does not impose an undue burden on inter-market competition because other options markets may adopt a similar requirement for such orders.

Options 3, Section 12

The Exchange's proposal to amend Options 3, Section 12(e)(4) to clarify that a Member may submit a QCC with Stock Order with a net price for the stock and options components through FIX and may not submit QCC with Stock Orders with separate prices for the stock and options components and the System will calculate the individual component prices does not impose an intra-market burden on competition because all Members are required to uniformly submit QCC with Stock Orders in this fashion.

The Exchange's proposal to amend Options 3, Section 12(e)(4) to clarify that a Member may submit a QCC with Stock Order with a net price for the stock and options components through FIX and may not submit QCC with Stock Orders with separate prices for the stock and options components and the System will calculate the individual component prices does not impose an inter-market burden on competition because each exchange may specify the manner in which certain order types may be submitted to an exchange and the format for submitting those orders. Also, requiring QCC with Stock Orders to be submitted through FIX is consistent with proposed Options 3, Section 7(t) which requires Members to enter QCC Orders through FIX.

Options 3, Section 15

The Exchange's proposal to amend its Market Wide Risk Protection within Options 3, Section 15(a)(1)(C) to add certain additional information concerning the current Market Wide Risk Protection along with new language does not impose an undue burden on intra-market competition because the counting programs within the Market Wide Risk Protections will apply equally to all Members. The proposal to amend the Market Wide Risk Protection does not impose an undue burden on inter-market competition because other options exchanges may adopt similar risk protections for their members.

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 [93] and subparagraph (f)(6) of Rule 19b–4 thereunder.[94]

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–MRX–2023–10 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–MRX–2023–10. 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 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

[93] 15 U.S.C. 78s(b)(3)(A)(iii).

[94] 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.

SR–MRX–2023–10 and should be submitted on or before July 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[95]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–13108 Filed 6–20–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97723; File No. SR–BOX–2023–16]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on the BOX Options Market LLC Facility To Offer Ad-Hoc Historical Requests for the Intraday Open-Close Data Report and Adopt Fees for This Data

June 14, 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 June 12, 2023, BOX Exchange LLC (''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 Exchange filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to amend the Fee Schedule [sic] on the BOX Options Market LLC (''BOX'') options facility to offer ad-hoc historical requests for the Intraday Open-Close Data Report and adopt fees for this data. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

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 recently adopted a new data product on BOX known as the Intraday Open-Close Data Report.[5] When the Exchange established the Intraday Open-Close Data Report data, it did not include ad-hoc requests for the Intraday Open-Close historical data. Since establishing the Intraday Open-Close Data Report, Participants and non-Participants have expressed interest in ad-hoc historical requests for the Intraday Open-Close Data Report. As such, the Exchange now proposes to offer ad-hoc historical requests for the Intraday Open-Close Data Report and adopt fees for this data. Specifically, the Exchange proposes to assess a $1,000 fee per request per month for the historical data.

Similar to the ad-hoc requests for the End-of-Day Open Close Data Report, ad-hoc requests for the Intraday Open-Close Data Report can be for any number of months beginning with January 2018 for which the data is available.[6] The proposed fee will apply to both Participants and non-Participants. The Exchange notes that another exchange provides similar data that may be purchased on an ad-hoc basis and is similarly priced.[7]

By way of background, the Exchange currently offers the Intraday Open-Close Data Report to Participants and non-Participants, which is a volume summary file for trading activity on BOX. The Exchange notes that the file contains proprietary BOX trade data and does not include trade data from any other exchanges. It is also a historical data product and not a real time data feed. The Intraday Open-Close Data Report is produced and updated every 10 minutes during the trading day. Data is captured in ''snapshots'' taken every 10 minutes throughout the trading day and available to subscribers within five minutes of the conclusion of each 10-minute period. Each update will represent combined data captured from the current ''snapshot'' and all previous ''snapshots'' and thus will provide open-close data on an aggregate basis. The Intraday Open-Close Data Report aggregates the volume by origin (Public Customer, Professional Customer, Broker Dealer, and Market Maker), buying/selling, and opening/closing criteria. Public Customer and Professional Customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). Ad-hoc requests for Intraday Open-Close Data Report will provide the same information for a requested historical time period for any number of months beginning with January 2018.[8]

This product is offered to Participants on a completely voluntary basis in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase the Intraday Open-Close Data Report or

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[95] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR–BOX–2023–09).

[6] For example, a Participant or non-Participant that requests historical Intraday Open-Close Data for the months of January 2018 and February 2018, would be assessed a total of $2,000. Participants and non-Participants are permitted to make ad-hoc requests for any number of days within a month for the Intraday Open-Close Data Report. For example, a Participant or non-Participant may make an ad-hoc request for the Intraday Open-Close Data Report from May 1st to May 20th. The accounting will be prorated based on the number of trading days in the month versus the number of trading days received. The Participant or non-Participant will be charged for the request on a prorated basis. The Exchange is proposing to allow ad-hoc requests for the Intraday Open-Close Data Report for any month starting January 2018, as this is what is currently offered for End-of-Day historical data requests. The Exchange notes that it may make historical data prior to January 2018 available in the future and that such historical data would be available to all Participants or non-Participants.

[7] *See* Miami International Securities Exchange, LLC (''MIAX'') Fee Schedule. MIAX assesses $1,000 per request per month for the Intra-Day Ad-Hoc Request for historical data.

[8] The historical monthly reports of the Intraday Open-Close Data Report will contain all series in an underlying security if the security had volume on BOX during that month. The Intraday Open-Close Data Report file format specifications can be found at *www.boxoptions.com.*