Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2016 - * 82

Amendment No. (req. for Amendments *)

Filing by   NASDAQ PHLX LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑	Amendment * ☐	Withdrawal ☐	Section 19(b)(2) * ☑	Section 19(b)(3)(A) * ☐	Section 19(b)(3)(B) * ☐

Rule

Pilot ☐	Extension of Time Period for Commission Action * ☐	Date Expires *	

🔲 19b-4(f)(1)	🔲 19b-4(f)(4)
🔲 19b-4(f)(2)	🔲 19b-4(f)(5)
🔲 19b-4(f)(3)	🔲 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document 🔲

Exhibit 3 Sent As Paper Document 🔲

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to adopt a new exception in Rule 1000(f) permitting Floor Brokers to execute certain split price orders in the trading crowd rather than electronically through the Options Floor Broker Management System.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *	Jeffrey	Last Name *	Davis

Title * Deputy General Counsel

E-mail * Jeffrey.Davis@nasdaq.com

Telephone * (301) 978-8484   Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 08/03/2016

By Edward S. Knight

Executive Vice President and General Counsel

(Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

edward.knight@nasdaq.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document
☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document
☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add   Remove   View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add   Remove   View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1.   Text of the Proposed Rule Change

(a)   NASDAQ PHLX LLC ("Phlx" or "Exchange"), pursuant to Section

19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is

filing with the Securities and Exchange Commission ("SEC" or "Commission") a

proposal to adopt a new exception in Rule 1000(f) permitting Floor Brokers to execute

certain split price orders in the trading crowd rather than electronically through the

Options Floor Broker Management System, as described in detail below.

A notice of the proposed rule change for publication in the Federal Register is

attached as Exhibit 1. The text of the proposed rule change is set forth below. Proposed

new language is underlined.

* * * * *

NASDAQ PHLX Rules
                                               * * * * *

Options Rules
                                               * * * * *

Rule 1000. Applicability, Definitions and References

(a) – (e)   No change.

(f) All Exchange options transactions shall be executed in one of the following ways[,
once the Exchange's new Options Floor Broker Management System functionality has
been operating for a certain period to be established by the Exchange]:

  (i) automatically by the Exchange Trading System pursuant to Rule 1080 and other
    applicable options rules;

  (ii) by and among members in the Exchange's options trading crowd none of whom is
    a Floor Broker; or

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

2   17 CFR 240.19b-4.

(iii) through the Options Floor Broker Management System for trades involving at least one Floor Broker. Although Floor Brokers may represent orders in the trading crowd, Floor Brokers are not permitted to execute orders in the Exchange's options trading crowd, except as follows:

(A) The Exchange may determine to permit executions otherwise than in accordance with subparagraphs (i) - (iii) above respecting an option or all options in the event of a problem with Exchange systems.

(B) In addition, Floor Brokers can execute orders in the options trading crowd pursuant to Rule 1059, Accommodation Transactions (cabinet trades), and Rule 1079, FLEX Equity, Index and Currency Options.

(C) Multi-leg orders with more than 15 legs can be executed in the trading crowd.

(D) The following split price orders that, due to FBMS system limitations, require manual calculation:

(I) simple orders not expressed in the applicable minimum increment ("sub-MPV") and that cannot be evenly split into two whole numbers to create a price at the midpoint of the minimum increment; and

(II) complex and multi-leg orders with at least one option leg with an odd-numbered volume that must trade at a sub-MPV price or one leg that qualifies under (I) above.

Surveillance staff must approve all executions submitted under this Rule 1000(f)(iii) to validate that each abides by applicable priority and trade through rules, and that rounding of prices is used only where necessary to execute the trade at the MPV, and only to the benefit of a customer order or, where multiple customers' orders are involved, for the customer order that is earliest in time.

(g)   No change.

<p style="text-align:center">* * * * *</p>

(b)   Not applicable.

(c)   Not applicable.

2.   Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the

Exchange on July 28, 2016. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Jeffrey Davis
Deputy General Counsel
Nasdaq, Inc.
215-496-5179

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

       a.   Purpose

The purpose of the proposal is to provide an exception to the mandatory use of the

Floor Broker Management System ("FBMS") pursuant to Rule 1000(f) to permit Floor

Brokers to execute certain split price orders in the trading crowd rather than

electronically and to facilitate these transactions. Through the use of a surveillance

process to verify that the conditions of the exception are met, the Exchange will ensure

that the proposed exception is used only rarely.

Development of FBMS System

Until April 1, 2016, the Exchange operated two Options Floor Broker

Management Systems concurrently on the options trading floor: the original Floor Broker

Management System operating since 2005 ("FBMS 1");[3] and the enhanced Floor Broker

Management System ("FBMS 2"). After March 31, 2016, FBMS 1 was retired and Floor

Brokers were required to use FBMS 2.

FBMS 2 was launched in March 2014 in order to prevent certain types of

violations and enhance order handling protections. Currently, with FBMS 2, all options

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[3]   Under FBMS 1, orders were executed in the trading crowd by the Floor Broker
        and that execution was recorded in FBMS 1, which enabled the Exchange to
        electronically process the order in terms of trade reporting and clearing. If a trade
        that occurred in the trading crowd fails to give priority to an order on the book,
        for example, such violation is addressed by the Exchange's surveillance and
        enforcement programs after the fact.

transactions on the Exchange involving at least one Floor Broker are required to be

executed by FBMS 2 as opposed to being executed by the Floor Broker in the trading

crowd.[4] All orders must continue to be represented in the trading crowd, but the

negotiation and agreement that occurs in the trading crowd does not result in a final trade,

but rather a "meeting of the minds" that is then submitted through FBMS 2 for execution

in the matching engine.

The Exchange received approval to implement FBMS 2 as of June 1, 2013,[5] and

delayed its implementation until July 2013,[6] until September 2013,[7] until December

2013,[8] and until March 2014.[9] Implementation began on March 7, 2014, with FBMS 2

operating concurrently with FBMS 1. FBMS 2 has been made available to all Floor

Brokers in all options and, on March 31, 2016, FBMS 1 was retired.[10] As a result, FBMS

2 is the only system currently in use.

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[4]   Securities Exchange Act Release No. 69471 (April 29, 2013), 78 FR 26096 (May 3, 2013) (SR-Phlx-2013-09).

[5]   Id.

[6]   Securities Exchange Act Release No. 69811 (June 20, 2013), 78 FR 38422 (June 26, 2013) (SR-Phlx-2013-67).

[7]   Securities Exchange Act Release No. 70141 (August 8, 2013), 78 FR 49565 (August 14, 2013) (SR-Phlx-2013-83).

[8]   Securities Exchange Act Release No. 70629 (October 8, 2013), 78 FR 62852 (October 22, 2013) (SR-Phlx-2013-100).

[9]   Securities Exchange Act Release No. 71212 (December 31, 2013), 79 FR 888 (January 7, 2014) (SR-Phlx-2013-129).

[10]   See Securities Exchange Act Release Nos. 72135 (May 9, 2014), 79 FR 27966 (May 15, 2014) (SR-Phlx-2014-33). Accordingly, the Exchange proposes to delete language from the first sentence of Rule 1000(f) that refers to the continued operation of FBMS 1. Nevertheless, the Exchange delayed the retirement of FBMS 1 until September 1, 2014, November 3, 2014, November 3, 2015, and,

The Exchange has contracted with a third-party to build an alternative system ("FBMS 3") to replace FBMS 2. The Exchange had intended to implement FBMS 3 by November 3, 2015, and then by March 2016, but, based on recent estimates from the third-party entity, it will be ready by November 30, 2016.[11] Despite the delays in launching FBMS 3, the new system is still needed to reduce the occurrence of latencies and abnormalities that have occurred with FBMS 2 that has affected multiple firms multiple times per week. The Exchange is committed to distributing a next-generation product in the form of FBMS 3.

Beginning last year, the Exchange explained the state of FBMS 3 to Commission staff in the spirit of sharing the context around the delay and the Exchange's then-current thoughts about deployment going forward. The Commission's notice of filing and immediate effectiveness of the proposed rule change extending the operation of FBMS 1 until March 31, 2016 stated that until FBMS 3 becomes available, the Exchange would continue to operate FBMS 1 and FBMS 2 concurrently and that all Floor Brokers may use either FBMS. Although that was the Exchange's intent at the time, the Exchange did not intend to tie the retirement of FBMS 1 to the deployment of FBMS 3; the availability

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most recently, until April 1, 2016. See also Securities Exchange Act Release Nos. 72135 (May 9, 2014), 79 FR 27966 (May 15, 2014) (SR-Phlx-2014-33); 73246 (September 29, 2014), 79 FR 59874 (October 3, 2014) (SR-Phlx-2014-59); 73586 (November 13, 2014), 79 FR 68931 (November 19, 2014) (SR-Phlx-2014-71); and 67187 (October 19, 2015), 80 FR 64462 (October 23, 2015) (SR-Phlx-2015-80).

[11]   Before FBMS 3 becomes available, the Exchange will provide notice in the form of an options circular to the Floor Broker community establishing a schedule for training and a reasonable implementation period. The Exchange does not expect that this will be a long or difficult transition from FBMS 2 to FBMS 3 because the functionality is the same and the interface to the Floor Broker is as well; the principal differences lie in the background, involving the architecture that is the backbone of the system.

of FBMS 1 until FBMS 3 became available was a likely assumption, but not the only possible outcome.

Despite the possibility that FBMS 2 may experience some latency or potential glitches, the Exchange determined in its regulatory discretion to retire FBMS 1 and not seek an extension of the rule permitting the concurrent operation of FBMS 1 and FBMS 2, a determination the Exchange announced on March 14, 2016.[12] Specifically, the Exchange believed that the regulatory and other benefits of exclusively using FBMS 2 across the trading floor should no longer be delayed. The electronic protections associated with the Commission's Market Access Rule[13] requirements are available on FBMS 2 (but not FBMS 1) such that the Exchange concluded this was a key reason to require the use of FBMS 2. The Floor Brokers themselves benefit from using FBMS 2 because they avoid certain violations, process complicated multi-leg orders more quickly and manage their orders, overall, better. The FBMS 3 delay and the importance of the Exchange's compliance record changed the situation such that the Exchange determined to let the permission to operate FBMS 1 expire.[14] FBMS 1 has not operated since March 31, 2016.

Proposal

The Exchange proposes to adopt a new exception to the mandatory use of FBMS to execute trades for the processing of split-price orders. Currently, Rule 1000(f)

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[12]   http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2016-8.

[13]   17 CFR 240.15c3-5.

[14]   See note 10 above.

provides that all Exchange options transactions shall be executed in one of the following ways:

(i)   automatically by the Exchange Trading System pursuant to Rule 1080 and other applicable options rules;

(ii)   by and among members in the Exchange's options trading crowd none of whom is a Floor Broker; or

(iii)   through the Options Floor Broker Management System for trades involving at least one Floor Broker. Although Floor Brokers may represent orders in the trading crowd, Floor Brokers are not permitted to execute orders in the Exchange's options trading crowd.

There are currently three exceptions to Rule 1000(f)(iii) that permit executions otherwise than in accordance with subparagraphs (i) - (iii) above. The first, under subparagraph (A), applies to executions respecting an option or all options in the event of a problem with Exchange systems. In addition, under subparagraph (B), Floor Brokers can execute orders in the options trading crowd pursuant to Rule 1059, Accommodation Transactions (cabinet trades), and Rule 1079, FLEX Equity, Index and Currency Options. Finally, under subparagraph (C), Multi-leg orders with more than 15 legs can be executed in the trading crowd. These three exceptions in (A) – (C) have been narrowly crafted to address specific situations, such as the complexity of a trade involving more than 15 legs. Each time a Floor Broker invokes an exception to Rule 1000(f), the Floor Broker is required by Rule 1063(e)(ii) to record the information required by Rule 1063(e)(i) on paper trade tickets, and may not represent an order for

execution that has not been time stamped with the time of entry on the trading floor; such

trade tickets must be time stamped upon the execution of such an order.

Creation of Split-Price Orders. The Exchange first recognized the complexity of

the split-price order in 2005 when it filed to create an exception from existing priority

rules for split-price orders under Rule 1014(g)(i)(B).[15] The purpose behind the split-price

priority exception was "to bring about the execution of large orders, which by virtue of

their size and the need to execute them at multiple prices may be difficult to execute

without a limited exception to the priority rules." The proposed exception allows a

member effecting a trade that betters the market to have priority on the balance of that

trade at the next pricing increment, even if there are orders in the book at the same price.

Floor Brokers that avail themselves of the split-price priority rule are obligated to ensure

compliance with Section 11(a) of the Act.[16]

Today, split-price orders are processed via either FBMS 2 or paper ticket. If the

split-price order is evenly split and requires simple calculations to determine the number

of contracts at two price points, the order is handled through FBMS 2. If the split-price

order computation is more complicated, involving non-even integers and sub MPV price

points, the surveillance staff declare an FBMS 2 system malfunction – in accordance with

PHLX Rules 1000(f)(iii)(A) and 1063(e)(ii) – and allow the floor broker to utilize a

paper ticket and oral execution of the split-price order in the trading crowd. The

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[15]   Securities Exchange Act Release No. 51820 (June 10, 2005), 70 FR 35759 (June 21, 2005) (SR-Phlx-2005-028) (pilot approval). *See also* Securities Exchange Act Release No. 55993 (June 29, 2007), 72 FR 37301 (July 9, 2007) (SR-Phlx-2007-044) (permanent approval).

[16]   Id.

Exchange believes that the treatment of split-price orders under Rule 1000(f) should be made clearer.

Therefore, the Exchange proposes to add an additional exception to Rule 1000(f)(iii), also narrowly crafted to reflect the complexities of executing split-price orders. Specifically, pursuant to proposed Rule 1000(f)(iii)(D), the following split price orders that require, due to a system limitation, a manual calculation to determine specific volumes at different prices can be executed in the trading crowd: (I) simple orders with a price not expressed in the applicable minimum increment ("sub-MPV")[17] and that cannot be evenly split into two whole numbers to create a price at the midpoint of the minimum increment; and (II) complex and multi-leg orders with at least one option leg with an odd-numbered volume that must trade at a sub-MPV price or one leg that qualifies under (I) above, thereby requiring the Floor Broker to determine the specific volumes to trade at each price. Surveillance staff must approve any such executions in open outcry to validate that such execution abides by applicable priority and trade through rules.

The proposed exception is similar to the existing exceptions in that it permits additional time when there is a system problem or when needed for the entry and completion of complicated trades. Here, the additional time provided by the proposed exception is needed when a split-price trade calculation is complicated or requires contracts be rounded in favor of the customer due to the fact that it requires manual intervention. If, at the end of the manual calculation, the Floor Broker is able to input the determined split prices into FBMS 2 he may do so; otherwise he may use paper tickets. The use of a paper ticket will be necessary where, for example, the NBBO has moved and

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[17]   See Nasdaq Rule 1034.

the trade no longer complies with the applicable trade through restrictions. Even if the

Floor Broker is unable to use FBMS 2 to complete the entry of the split-price trade, the

Floor Broker must still enter the order information into FBMS 2 for audit trail purposes.

The Surveillance staff will oversee Floor Brokers' use of the proposed exception

as it does today under the current exceptions. Currently, when a Floor Broker states that

there is a problem with the FBMS system, the Floor Broker will continue to input the

order into FBMS (to the extend order entry functionality is accessible) and continue to

announce the order in the trading crowd. Surveillance staff, knowing that the Floor

Broker stated that he is experiencing a system problem or limitation will attempt to

confirm the system problem with Exchange Operations staff. If Surveillance staff is able

to confirm that FBMS has a performance problem, Surveillance staff will approve the use

of a paper trade ticket and oral consummation of a transaction in the trading crowd that is

contingent on Surveillance staff's additional confirmation that the trade complies with the

time and price priority rules of the Exchange – a "pending trade."

If the pending trade complies with the time and price priority rules of the

Exchange, the trade is approved and determined to have occurred at the time it would

have occurred in the trading crowd but for the system problem or limitation. If the

pending trade does not comply with the time and price priority rules of the Exchange, the

Surveillance staff will inform the applicable trading crowd participants that the pending

trade does not comply with Exchange rules and not permit the trade to occur. This

manual process performed by the Surveillance staff parallels the electronic process

performed within the Exchange matching engine when FBMS is able to process a trade.

The delay attributable to this manual surveillance process does not change the time of

trade execution, which is set at the time the trade would have occurred in the trading crowd.

With respect to simple orders, if a Floor Broker attempts to execute a customer order to sell 357 contracts in symbol XYZ (with a Minimum Price Variation increment of $0.05) at a price of $0.11 by way of split price execution, the floor broker must perform a manual calculation. As a result of FBMS 2 being unable to calculate the number of contracts to split to determine a net price of at least $0.11, the floor broker will manually enter 285 contracts @ $0.10 and 72 contracts @ $0.15 to arrive at an execution price as close as possible to an $0.11 ($0.110084 in this case) aggregate price for the 357 contracts ensuring that, when applicable, the customer side of the trade benefits from the difference between the $0.11 limit and the actual average price. This example would qualify for the proposed exception because it is a sub-MPV price (not in $0.05 increments) and cannot be evenly split to obtain the desired aggregate price.[18]

With respect to complex and multi-leg orders, consider the following example: A Floor Broker receives a two legged call spread in XYZ (with a Minimum Price Variation increment of $0.05) to sell 456 contracts of leg A @ $1.23 and buy 229 contracts of leg B @ $0.50. Because a Floor Broker is restricted to trading in not less than the permitted MPV increments, the Floor Broker will need to manually calculate to trade 274 contracts of leg A @ $1.25 and 182 contracts of leg A @ $1.20. This equals a net price on leg A of $1.23004. This is the closest achievable net price that is at least equal to the limit price of the Floor Broker's client without breaking the limit price. This would qualify because the

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[18]   The exemption would not apply where an order for 500 contracts could be traded at a split price of .125 by splitting it into two lots of 250 contracts at .10 and 250 contracts at .15.

Floor Broker will need to determine at which of the price points the additional contract

will trade, given that the odd number of contracts cannot be split evenly across two price

points.

Another example involving a simple order is if a Floor Broker has a customer

order to buy 479 GOOG May 440 calls for $3.67: GOOG has a Minimum Price Variation

of $0.10 in trades over $3.00 so the Floor Broker will need to determine the calculation

that will amount to a price closest to $3.67; namely, 70% of 479 equals 335.3 but 335.3 is

a non-round number and the customer buying the volume entered at the lower price gets a

price that is rounded up while the volume at the higher price is rounded down so as to

offer an advantage to the customer.[19] The result is 335 at $3.70 and 144 at $3.60.   Since

the customer is buying, the volume at the lower price of 3.60 gets rounded up to offer the

advantage of rounding to the customer. This transaction would qualify for the exception

because the simple order is for a sub-MPV price and cannot be evenly split.

Under this proposal, Surveillance staff must validate that split-price executions

abide by all applicable priority and trade through rules using the time of execution

recorded by the Floor Broker (and separately confirmed by Surveillance staff) on the

paper order ticket. Referring back to a prior example involving a simple customer order

to execute 357 contracts in symbol XYZ (with a Minimum Price Variation increment of

$0.05) at $0.11 (285 contracts @ $0.10 / 72 contracts @ $0.15), if FBMS 2 is unable to

determine the correct number of contracts to split to derive the net price of $0.11, the

Floor Broker, upon confirmation and approval of the Surveillance staff, can verbally

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[19]   Under Proposed Rule 1000(f)(iii)(D), Exchange surveillance staff would be
         required to validate the use of price rounding to ensure that it is necessary and to
         the benefit of the customer.

execute the order and Surveillance staff would capture the verbal execution time of the

pending transaction and determine if the Floor Broker established priority over the bids

and/or offers based on the documented verbal execution time. If the market was $0.05

bid and $0.15 offer, Surveillance staff would approve this transaction because the Floor

Broker established priority over the $0.15 offers by trading more contracts at the better

price of $0.10. However, if the market was $0.10 bid and $0.20 offer, On-Floor

Surveillance staff would not approve this transaction because the Floor Broker did not

establish priority over the $0.10 bids by trading the greater number of contracts at the

inferior price. Finally, if the market was $0.10 bid and $0.15 offer (with no public

customer orders on either side of the market), On-Floor Surveillance staff would approve

this transaction because the Floor Broker would have priority over the non-customer

book (bids/offers) given that customer orders always have priority pursuant to Rule

1014(g)(i)(A).

In conclusion, the Exchange believes that certain split-price orders warrant an

exception from the requirement that the order be executed by FBMS. First, the exception

is needed because FBMS is not currently programmed to perform the calculations

associated with split prices not at the minimum price variation. Accordingly, the Floor

Broker must do so manually, which can be time consuming; by the time the calculation is

made, the market may have changed such that FBMS would return the order to the Floor

Broker unexecuted. Second, heightened surveillance will be imposed. Under the

proposal, the execution would occur on the trading floor in open outcry as a pending

transaction. The transaction is completed only upon validation from Surveillance staff,

based on the market prices at the time of execution. The proposal clarifies the need for a

manual handling of the execution for these complicated split price trades, rather than

leaving ambiguous the question of whether a split-price trade amounts to an FBMS

system problem. This proposal does not change what is considered by the Exchange as a

FBMS system problem, but rather clearly sets forth a defined system limitation for a

split-price order with specific characteristics.

> b.   Statutory Basis

The Exchange believes that the proposed exception is consistent with Section 6(b)

of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in

particular, in that it is designed to promote just and equitable principles of trade and to

protect investors and the public interest by permitting split-price trades, which are

complicated, to be executed in the trading crowd, which should, in turn, result in a greater

likelihood that such orders are properly executed. FBMS 2 cannot calculate these

particular prices, as described in the examples above.

The Exchange believes that the proposed exception is consistent with the Act

because it is narrowly tailored to permit a small number of beneficial trades. As stated

earlier, the Commission has recognized the importance of split-price trades because they

permit the execution of large blocks, even permitting a limited exception to priority rules.

Although FBMS was designed to enhance compliance to the greatest extent possible,

FBMS does not have the capability to calculate and process certain split-price trades. If

an exception was denied, Floor Brokers' ability to execute these large, split-price trades

that benefit the market would be substantially impaired.

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[20]   15 U.S.C. 78f(b).

[21]   15 U.S.C. 78f(b)(5).

Additionally, Exchange surveillance is well-designed to protect customer when the exception is used. As set forth above, every split-price trade that invokes the proposed exception will require approval by Exchange surveillance staff in order to validate compliance with applicable priority and trade through rules. Additionally, all relevant trade data will be recorded on both paper tickets and in the FBMS system in order to ensure a proper audit trail for T+1 surveillance. Finally, to the extent the exception permits rounding of prices, rounding is required to occur in the customer's favor, a result that is itself consistent with the Act.

The proposal is not unfairly discriminatory because it applies to all Floor Brokers the same way. Nor is it unfairly discriminatory with respect to market participants other than Floor Brokers because only Floor Brokers use FBMS 2.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposal should allow it to compete with other floor-based exchanges and help the Exchange's Floor Brokers compete with floor brokers on other options exchanges by accommodating another type of complicated order. Through the use of a surveillance process to verify that the conditions of the exception are met, the Exchange will ensure that the exception is used only rarely.

5.   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 directly regarding this proposal, but the Exchange received a letter from a member organization that operates a floor brokerage business on the options trading floor requesting a meeting to discuss

postponing the retirement of FBMS 1.[22] The letter alleges that due to the functional

limitations of FBMS 2 there will be dire financial consequences to D&D and the

Exchange because FBMS 2 cannot handle the volume or pace of D&D's customers'

orders. Exchange staff met with the firm on March 29, 2016 and communicated the

intent to submit this proposal. The Exchange retired FBMS 1 on March 31, 2016. The

Exchange also received a copy of a letter to the Commission also referencing the

retirement of FBMS 1 and system issues associated with FBMS 2.[23]

6.   <u>Extension of Time Period for Commission Action</u>

     Not applicable.

7.   <u>Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)</u>

     Not applicable.

8.   <u>Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission</u>

     Not applicable.

9.   <u>Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act</u>

     Not applicable.

10.   <u>Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act</u>

     Not applicable.

11.   <u>Exhibits</u>

    1.   Notice of Proposed Rule Change for publication in the <u>Federal Register</u>.

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[22]   <u>See</u> letter from Mark Schepps, General Counsel and Chief Compliance Officer, D&D Securities, Inc. ("D&D"), dated March 24, 2016.

[23]   <u>See</u> letter from William A. Mahoney, Jr., Stradley Ronon Stevens & Young, LLP to Mary Jo White, Chairwoman, U.S. Securities and Exchange Commission, dated March 30, 2016.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No.   ; File No. SR-Phlx-2016-82)

August __, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed
Rule Change to Adopt a New Exception in Exchange Rule 1000(f)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and

Rule 19b-4 thereunder,[2] notice is hereby given that on August 3, 2016, NASDAQ PHLX

LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC"

or "Commission") the proposed rule change as described in Items I, II, and III, below,

which Items have been prepared by the Exchange. The Commission is publishing this

notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt a new exception in Rule 1000(f) permitting

Floor Brokers to execute certain split price orders in the trading crowd rather than

electronically through the Options Floor Broker Management System, as described in

detail below.

The text of the proposed rule change is set forth below. Proposed new language is

underlined.

* * * * *

NASDAQ PHLX Rules
                                        * * * * *

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

2   17 CFR 240.19b-4.

Options Rules

* * * * *

Rule 1000. Applicability, Definitions and References

(a) – (e)   No change.

(f) All Exchange options transactions shall be executed in one of the following ways[, once the Exchange's new Options Floor Broker Management System functionality has been operating for a certain period to be established by the Exchange]:

  (i) automatically by the Exchange Trading System pursuant to Rule 1080 and other

    applicable options rules;

  (ii) by and among members in the Exchange's options trading crowd none of whom is

    a Floor Broker; or

  (iii) through the Options Floor Broker Management System for trades involving at

    least one Floor Broker. Although Floor Brokers may represent orders in the trading

    crowd, Floor Brokers are not permitted to execute orders in the Exchange's options

    trading crowd, except as follows:

    (A) The Exchange may determine to permit executions otherwise than in

    accordance with subparagraphs (i) - (iii) above respecting an option or all options

    in the event of a problem with Exchange systems.

    (B) In addition, Floor Brokers can execute orders in the options trading crowd

    pursuant to Rule 1059, Accommodation Transactions (cabinet trades), and Rule

    1079, FLEX Equity, Index and Currency Options.

    (C) Multi-leg orders with more than 15 legs can be executed in the trading crowd.

(D) The following split price orders that, due to FBMS system limitations, require

manual calculation:

> (I) simple orders not expressed in the applicable minimum increment
>
> ("sub-MPV") and that cannot be evenly split into two whole numbers to
>
> create a price at the midpoint of the minimum increment; and
>
> (II) complex and multi-leg orders with at least one option leg with an odd-
>
> numbered volume that must trade at a sub-MPV price or one leg that
>
> qualifies under (I) above.

Surveillance staff must approve all executions submitted under this Rule

1000(f)(iii) to validate that each abides by applicable priority and trade through

rules, and that rounding of prices is used only where necessary to execute the

trade at the MPV, and only to the benefit of a customer order or, where multiple

customers' orders are involved, for the customer order that is earliest in time.

(g)   No change.

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

        In its filing with the Commission, the Exchange included statements concerning

the purpose of and basis for the proposed rule change and discussed any comments it

received on the proposed rule change. The text of these statements may be examined at

the places specified in Item IV below. The Exchange has prepared summaries, set forth

in sections A, B, and C below, of the most significant aspects of such statements.

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

1.   Purpose

The purpose of the proposal is to provide an exception to the mandatory use of the

Floor Broker Management System ("FBMS") pursuant to Rule 1000(f) to permit Floor

Brokers to execute certain split price orders in the trading crowd rather than

electronically and to facilitate these transactions. Through the use of a surveillance

process to verify that the conditions of the exception are met, the Exchange will ensure

that the proposed exception is used only rarely.

Development of FBMS System

Until April 1, 2016, the Exchange operated two Options Floor Broker

Management Systems concurrently on the options trading floor: the original Floor Broker

Management System operating since 2005 ("FBMS 1");[3] and the enhanced Floor Broker

Management System ("FBMS 2"). After March 31, 2016, FBMS 1 was retired and Floor

Brokers were required to use FBMS 2.

FBMS 2 was launched in March 2014 in order to prevent certain types of

violations and enhance order handling protections. Currently, with FBMS 2, all options

transactions on the Exchange involving at least one Floor Broker are required to be

executed by FBMS 2 as opposed to being executed by the Floor Broker in the trading

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[3]   Under FBMS 1, orders were executed in the trading crowd by the Floor Broker
        and that execution was recorded in FBMS 1, which enabled the Exchange to
        electronically process the order in terms of trade reporting and clearing. If a trade
        that occurred in the trading crowd fails to give priority to an order on the book,
        for example, such violation is addressed by the Exchange's surveillance and
        enforcement programs after the fact.

crowd.[4] All orders must continue to be represented in the trading crowd, but the

negotiation and agreement that occurs in the trading crowd does not result in a final trade,

but rather a "meeting of the minds" that is then submitted through FBMS 2 for execution

in the matching engine.

The Exchange received approval to implement FBMS 2 as of June 1, 2013,[5] and

delayed its implementation until July 2013,[6] until September 2013,[7] until December

2013,[8] and until March 2014.[9] Implementation began on March 7, 2014, with FBMS 2

operating concurrently with FBMS 1. FBMS 2 has been made available to all Floor

Brokers in all options and, on March 31, 2016, FBMS 1 was retired.[10] As a result, FBMS

2 is the only system currently in use.

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[4]   Securities Exchange Act Release No. 69471 (April 29, 2013), 78 FR 26096 (May 3, 2013) (SR-Phlx-2013-09).

[5]   Id.

[6]   Securities Exchange Act Release No. 69811 (June 20, 2013), 78 FR 38422 (June 26, 2013) (SR-Phlx-2013-67).

[7]   Securities Exchange Act Release No. 70141 (August 8, 2013), 78 FR 49565 (August 14, 2013) (SR-Phlx-2013-83).

[8]   Securities Exchange Act Release No. 70629 (October 8, 2013), 78 FR 62852 (October 22, 2013) (SR-Phlx-2013-100).

[9]   Securities Exchange Act Release No. 71212 (December 31, 2013), 79 FR 888 (January 7, 2014) (SR-Phlx-2013-129).

[10]   See Securities Exchange Act Release Nos. 72135 (May 9, 2014), 79 FR 27966 (May 15, 2014) (SR-Phlx-2014-33). Accordingly, the Exchange proposes to delete language from the first sentence of Rule 1000(f) that refers to the continued operation of FBMS 1. Nevertheless, the Exchange delayed the retirement of FBMS 1 until September 1, 2014, November 3, 2014, November 3, 2015, and, most recently, until April 1, 2016. See also Securities Exchange Act Release Nos. 72135 (May 9, 2014), 79 FR 27966 (May 15, 2014) (SR-Phlx-2014-33); 73246 (September 29, 2014), 79 FR 59874 (October 3, 2014) (SR-Phlx-2014-59); 73586 (November 13, 2014), 79 FR 68931 (November 19, 2014) (SR-Phlx-2014-71);

The Exchange has contracted with a third-party to build an alternative system ("FBMS 3") to replace FBMS 2. The Exchange had intended to implement FBMS 3 by November 3, 2015, and then by March 2016, but, based on recent estimates from the third-party entity, it will be ready by November 30, 2016.[11] Despite the delays in launching FBMS 3, the new system is still needed to reduce the occurrence of latencies and abnormalities that have occurred with FBMS 2 that has affected multiple firms multiple times per week. The Exchange is committed to distributing a next-generation product in the form of FBMS 3.

Beginning last year, the Exchange explained the state of FBMS 3 to Commission staff in the spirit of sharing the context around the delay and the Exchange's then-current thoughts about deployment going forward. The Commission's notice of filing and immediate effectiveness of the proposed rule change extending the operation of FBMS 1 until March 31, 2016 stated that until FBMS 3 becomes available, the Exchange would continue to operate FBMS 1 and FBMS 2 concurrently and that all Floor Brokers may use either FBMS. Although that was the Exchange's intent at the time, the Exchange did not intend to tie the retirement of FBMS 1 to the deployment of FBMS 3; the availability of FBMS 1 until FBMS 3 became available was a likely assumption, but not the only possible outcome.

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and 67187 (October 19, 2015), 80 FR 64462 (October 23, 2015) (SR-Phlx-2015-80).

[11]   Before FBMS 3 becomes available, the Exchange will provide notice in the form of an options circular to the Floor Broker community establishing a schedule for training and a reasonable implementation period. The Exchange does not expect that this will be a long or difficult transition from FBMS 2 to FBMS 3 because the functionality is the same and the interface to the Floor Broker is as well; the principal differences lie in the background, involving the architecture that is the backbone of the system.

Despite the possibility that FBMS 2 may experience some latency or potential

glitches, the Exchange determined in its regulatory discretion to retire FBMS 1 and not

seek an extension of the rule permitting the concurrent operation of FBMS 1 and FBMS

2, a determination the Exchange announced on March 14, 2016.[12] Specifically, the

Exchange believed that the regulatory and other benefits of exclusively using FBMS 2

across the trading floor should no longer be delayed. The electronic protections

associated with the Commission's Market Access Rule[13] requirements are available on

FBMS 2 (but not FBMS 1) such that the Exchange concluded this was a key reason to

require the use of FBMS 2. The Floor Brokers themselves benefit from using FBMS 2

because they avoid certain violations, process complicated multi-leg orders more quickly

and manage their orders, overall, better. The FBMS 3 delay and the importance of the

Exchange's compliance record changed the situation such that the Exchange determined

to let the permission to operate FBMS 1 expire.[14] FBMS 1 has not operated since March

31, 2016.

Proposal

The Exchange proposes to adopt a new exception to the mandatory use of FBMS

to execute trades for the processing of split-price orders. Currently, Rule 1000(f)

provides that all Exchange options transactions shall be executed in one of the following

ways:

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[12]   http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2016-8.

[13]   17 CFR 240.15c3-5.

[14]   See note 10 above.

(i)   automatically by the Exchange Trading System pursuant to Rule 1080 and other

          applicable options rules;

(ii)   by and among members in the Exchange's options trading crowd none of whom is

          a Floor Broker; or

(iii)   through the Options Floor Broker Management System for trades involving at

          least one Floor Broker. Although Floor Brokers may represent orders in the

          trading crowd, Floor Brokers are not permitted to execute orders in the

          Exchange's options trading crowd.

          There are currently three exceptions to Rule 1000(f)(iii) that permit executions

otherwise than in accordance with subparagraphs (i) - (iii) above. The first, under

subparagraph (A), applies to executions respecting an option or all options in the event of

a problem with Exchange systems. In addition, under subparagraph (B), Floor Brokers

can execute orders in the options trading crowd pursuant to Rule 1059, Accommodation

Transactions (cabinet trades), and Rule 1079, FLEX Equity, Index and Currency

Options. Finally, under subparagraph (C), Multi-leg orders with more than 15 legs can

be executed in the trading crowd. These three exceptions in (A) – (C) have been

narrowly crafted to address specific situations, such as the complexity of a trade

involving more than 15 legs. Each time a Floor Broker invokes an exception to Rule

1000(f), the Floor Broker is required by Rule 1063(e)(ii) to record the information

required by Rule 1063(e)(i) on paper trade tickets, and may not represent an order for

execution that has not been time stamped with the time of entry on the trading floor; such

trade tickets must be time stamped upon the execution of such an order.

Creation of Split-Price Orders. The Exchange first recognized the complexity of

the split-price order in 2005 when it filed to create an exception from existing priority

rules for split-price orders under Rule 1014(g)(i)(B).[15] The purpose behind the split-price

priority exception was "to bring about the execution of large orders, which by virtue of

their size and the need to execute them at multiple prices may be difficult to execute

without a limited exception to the priority rules." The proposed exception allows a

member effecting a trade that betters the market to have priority on the balance of that

trade at the next pricing increment, even if there are orders in the book at the same price.

Floor Brokers that avail themselves of the split-price priority rule are obligated to ensure

compliance with Section 11(a) of the Act.[16]

Today, split-price orders are processed via either FBMS 2 or paper ticket. If the

split-price order is evenly split and requires simple calculations to determine the number

of contracts at two price points, the order is handled through FBMS 2. If the split-price

order computation is more complicated, involving non-even integers and sub MPV price

points, the surveillance staff declare an FBMS 2 system malfunction – in accordance with

PHLX Rules 1000(f)(iii)(A) and 1063(e)(ii) – and allow the floor broker to utilize a

paper ticket and oral execution of the split-price order in the trading crowd. The

Exchange believes that the treatment of split-price orders under Rule 1000(f) should be

made clearer.

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[15]   Securities Exchange Act Release No. 51820 (June 10, 2005), 70 FR 35759 (June 21, 2005) (SR-Phlx-2005-028) (pilot approval). *See also* Securities Exchange Act Release No. 55993 (June 29, 2007), 72 FR 37301 (July 9, 2007) (SR-Phlx-2007-044) (permanent approval).

[16]   Id.

Therefore, the Exchange proposes to add an additional exception to Rule

1000(f)(iii), also narrowly crafted to reflect the complexities of executing split-price

orders. Specifically, pursuant to proposed Rule 1000(f)(iii)(D), the following split price

orders that require, due to a system limitation, a manual calculation to determine specific

volumes at different prices can be executed in the trading crowd: (I) simple orders with a

price not expressed in the applicable minimum increment ("sub-MPV")[17] and that cannot

be evenly split into two whole numbers to create a price at the midpoint of the minimum

increment; and (II) complex and multi-leg orders with at least one option leg with an odd-

numbered volume that must trade at a sub-MPV price or one leg that qualifies under (I)

above, thereby requiring the Floor Broker to determine the specific volumes to trade at

each price. Surveillance staff must approve any such executions in open outcry to

validate that such execution abides by applicable priority and trade through rules.

The proposed exception is similar to the existing exceptions in that it permits

additional time when there is a system problem or when needed for the entry and

completion of complicated trades. Here, the additional time provided by the proposed

exception is needed when a split-price trade calculation is complicated or requires

contracts be rounded in favor of the customer due to the fact that it requires manual

intervention. If, at the end of the manual calculation, the Floor Broker is able to input the

determined split prices into FBMS 2 he may do so; otherwise he may use paper tickets.

The use of a paper ticket will be necessary where, for example, the NBBO has moved and

the trade no longer complies with the applicable trade through restrictions. Even if the

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[17]   See Nasdaq Rule 1034.

Floor Broker is unable to use FBMS 2 to complete the entry of the split-price trade, the

Floor Broker must still enter the order information into FBMS 2 for audit trail purposes.

The Surveillance staff will oversee Floor Brokers' use of the proposed exception

as it does today under the current exceptions. Currently, when a Floor Broker states that

there is a problem with the FBMS system, the Floor Broker will continue to input the

order into FBMS (to the extend order entry functionality is accessible) and continue to

announce the order in the trading crowd. Surveillance staff, knowing that the Floor

Broker stated that he is experiencing a system problem or limitation will attempt to

confirm the system problem with Exchange Operations staff. If Surveillance staff is able

to confirm that FBMS has a performance problem, Surveillance staff will approve the use

of a paper trade ticket and oral consummation of a transaction in the trading crowd that is

contingent on Surveillance staff's additional confirmation that the trade complies with the

time and price priority rules of the Exchange – a "pending trade."

If the pending trade complies with the time and price priority rules of the

Exchange, the trade is approved and determined to have occurred at the time it would

have occurred in the trading crowd but for the system problem or limitation. If the

pending trade does not comply with the time and price priority rules of the Exchange, the

Surveillance staff will inform the applicable trading crowd participants that the pending

trade does not comply with Exchange rules and not permit the trade to occur. This

manual process performed by the Surveillance staff parallels the electronic process

performed within the Exchange matching engine when FBMS is able to process a trade.

The delay attributable to this manual surveillance process does not change the time of

trade execution, which is set at the time the trade would have occurred in the trading crowd.

With respect to simple orders, if a Floor Broker attempts to execute a customer order to sell 357 contracts in symbol XYZ (with a Minimum Price Variation increment of $0.05) at a price of $0.11 by way of split price execution, the floor broker must perform a manual calculation. As a result of FBMS 2 being unable to calculate the number of contracts to split to determine a net price of at least $0.11, the floor broker will manually enter 285 contracts @ $0.10 and 72 contracts @ $0.15 to arrive at an execution price as close as possible to an $0.11 ($0.110084 in this case) aggregate price for the 357 contracts ensuring that, when applicable, the customer side of the trade benefits from the difference between the $0.11 limit and the actual average price. This example would qualify for the proposed exception because it is a sub-MPV price (not in $0.05 increments) and cannot be evenly split to obtain the desired aggregate price.[18]

With respect to complex and multi-leg orders, consider the following example: A Floor Broker receives a two legged call spread in XYZ (with a Minimum Price Variation increment of $0.05) to sell 456 contracts of leg A @ $1.23 and buy 229 contracts of leg B @ $0.50. Because a Floor Broker is restricted to trading in not less than the permitted MPV increments, the Floor Broker will need to manually calculate to trade 274 contracts of leg A @ $1.25 and 182 contracts of leg A @ $1.20. This equals a net price on leg A of $1.23004. This is the closest achievable net price that is at least equal to the limit price of the Floor Broker's client without breaking the limit price. This would qualify because the

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[18]   The exemption would not apply where an order for 500 contracts could be traded at a split price of .125 by splitting it into two lots of 250 contracts at .10 and 250 contracts at .15.

Floor Broker will need to determine at which of the price points the additional contract

will trade, given that the odd number of contracts cannot be split evenly across two price

points.

Another example involving a simple order is if a Floor Broker has a customer

order to buy 479 GOOG May 440 calls for $3.67: GOOG has a Minimum Price Variation

of $0.10 in trades over $3.00 so the Floor Broker will need to determine the calculation

that will amount to a price closest to $3.67; namely, 70% of 479 equals 335.3 but 335.3 is

a non-round number and the customer buying the volume entered at the lower price gets a

price that is rounded up while the volume at the higher price is rounded down so as to

offer an advantage to the customer.[19] The result is 335 at $3.70 and 144 at $3.60.   Since

the customer is buying, the volume at the lower price of 3.60 gets rounded up to offer the

advantage of rounding to the customer. This transaction would qualify for the exception

because the simple order is for a sub-MPV price and cannot be evenly split.

Under this proposal, Surveillance staff must validate that split-price executions

abide by all applicable priority and trade through rules using the time of execution

recorded by the Floor Broker (and separately confirmed by Surveillance staff) on the

paper order ticket. Referring back to a prior example involving a simple customer order

to execute 357 contracts in symbol XYZ (with a Minimum Price Variation increment of

$0.05) at $0.11 (285 contracts @ $0.10 / 72 contracts @ $0.15), if FBMS 2 is unable to

determine the correct number of contracts to split to derive the net price of $0.11, the

Floor Broker, upon confirmation and approval of the Surveillance staff, can verbally

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[19]   Under Proposed Rule 1000(f)(iii)(D), Exchange surveillance staff would be
         required to validate the use of price rounding to ensure that it is necessary and to
         the benefit of the customer.

execute the order and Surveillance staff would capture the verbal execution time of the

pending transaction and determine if the Floor Broker established priority over the bids

and/or offers based on the documented verbal execution time. If the market was $0.05

bid and $0.15 offer, Surveillance staff would approve this transaction because the Floor

Broker established priority over the $0.15 offers by trading more contracts at the better

price of $0.10. However, if the market was $0.10 bid and $0.20 offer, On-Floor

Surveillance staff would not approve this transaction because the Floor Broker did not

establish priority over the $0.10 bids by trading the greater number of contracts at the

inferior price. Finally, if the market was $0.10 bid and $0.15 offer (with no public

customer orders on either side of the market), On-Floor Surveillance staff would approve

this transaction because the Floor Broker would have priority over the non-customer

book (bids/offers) given that customer orders always have priority pursuant to Rule

1014(g)(i)(A).

In conclusion, the Exchange believes that certain split-price orders warrant an

exception from the requirement that the order be executed by FBMS. First, the exception

is needed because FBMS is not currently programmed to perform the calculations

associated with split prices not at the minimum price variation. Accordingly, the Floor

Broker must do so manually, which can be time consuming; by the time the calculation is

made, the market may have changed such that FBMS would return the order to the Floor

Broker unexecuted. Second, heightened surveillance will be imposed. Under the

proposal, the execution would occur on the trading floor in open outcry as a pending

transaction. The transaction is completed only upon validation from Surveillance staff,

based on the market prices at the time of execution. The proposal clarifies the need for a

manual handling of the execution for these complicated split price trades, rather than

leaving ambiguous the question of whether a split-price trade amounts to an FBMS

system problem. This proposal does not change what is considered by the Exchange as a

FBMS system problem, but rather clearly sets forth a defined system limitation for a

split-price order with specific characteristics.

        2.   Statutory Basis

The Exchange believes that the proposed exception is consistent with Section 6(b)

of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in

particular, in that it is designed to promote just and equitable principles of trade and to

protect investors and the public interest by permitting split-price trades, which are

complicated, to be executed in the trading crowd, which should, in turn, result in a greater

likelihood that such orders are properly executed. FBMS 2 cannot calculate these

particular prices, as described in the examples above.

The Exchange believes that the proposed exception is consistent with the Act

because it is narrowly tailored to permit a small number of beneficial trades. As stated

earlier, the Commission has recognized the importance of split-price trades because they

permit the execution of large blocks, even permitting a limited exception to priority rules.

Although FBMS was designed to enhance compliance to the greatest extent possible,

FBMS does not have the capability to calculate and process certain split-price trades. If

an exception was denied, Floor Brokers' ability to execute these large, split-price trades

that benefit the market would be substantially impaired.

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[20]   15 U.S.C. 78f(b).

[21]   15 U.S.C. 78f(b)(5).

Additionally, Exchange surveillance is well-designed to protect customer when the exception is used. As set forth above, every split-price trade that invokes the proposed exception will require approval by Exchange surveillance staff in order to validate compliance with applicable priority and trade through rules. Additionally, all relevant trade data will be recorded on both paper tickets and in the FBMS system in order to ensure a proper audit trail for T+1 surveillance. Finally, to the extent the exception permits rounding of prices, rounding is required to occur in the customer's favor, a result that is itself consistent with the Act.

The proposal is not unfairly discriminatory because it applies to all Floor Brokers the same way. Nor is it unfairly discriminatory with respect to market participants other than Floor Brokers because only Floor Brokers use FBMS 2.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposal should allow it to compete with other floor-based exchanges and help the Exchange's Floor Brokers compete with floor brokers on other options exchanges by accommodating another type of complicated order. Through the use of a surveillance process to verify that the conditions of the exception are met, the Exchange will ensure that the exception is used only rarely.

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

        Within 45 days of the date of publication of this notice in the Federal Register or

within such longer period (i) as the Commission may designate up to 90 days of such date

if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the Exchange consents, the Commission shall: (a) by order approve or

disapprove such proposed rule change, or (b) institute proceedings to determine whether

the proposed rule change should be disapproved.

IV.   Solicitation of Comments

        Interested persons are invited to submit written data, views, and arguments

concerning the foregoing, including whether the proposed rule change is consistent with

the Act. Comments may be submitted by any of the following methods:

        Electronic comments:

- Use the Commission's Internet comment form

    (http://www.sec.gov/rules/sro.shtml); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-

    Phlx-2016-82 on the subject line.

        Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and

    Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2016-82. This file number should

be included on the subject line if e-mail is used. To help the Commission process and

review your comments more efficiently, please use only one method. The Commission

will post all comments on the Commission's Internet Web site

(http://www.sec.gov/rules/sro.shtml).

Copies of the submission, all subsequent amendments, all written statements with

respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any

person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for website viewing and printing in the

Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on

official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing

also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change; the Commission does not edit

personal identifying information from submissions. You should submit only information

that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2016-82 and should be

submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to

delegated authority.[22]

>   Robert W. Errett
>   Deputy Secretary

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[22]   17 CFR 200.30-3(a)(12).