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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-14910 Filed 7-13-23; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-818, OMB Control No. 3235-0774]

### Submission for OMB Review; Comment Request; Extension: Amendments to the National Market System Plan Governing the Consolidated Audit Trail

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for approval of extension of the previously approved collection of information provided for in connection with amendments<sup>1</sup> adopted pursuant to the statutory authority provided by the Securities Exchange Act of 1934,<sup>2</sup> including Sections 11A(a)(3)(B),<sup>3</sup> 17(a),<sup>4</sup> 19(b),<sup>5</sup> and 23(a)<sup>6</sup> thereof, and pursuant to Rule 608(a)(2) and (b)(2),<sup>7</sup> to a National Market System (NMS) Plan filed with the Commission under Rule 613 (17 CFR 242.613), under

the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

The amendments, as adopted, required two new collections of information:

a. *Implementation Plan.* The amendments require the Participants, within 30 calendar days following the effective date of the amendments, to prepare, file with the Commission, and make publicly available on a website a complete CAT implementation plan (“Implementation Plan”) that includes a detailed timeline for achieving various implementation milestones.

b. *Quarterly Progress Reports.* The amendments require the Participants, within 30 calendar days after the end of each calendar quarter, to prepare, file with the Commission, and make publicly available on a website a complete report (the “Quarterly Progress Report”) that provides a detailed and up-to-date description of the progress made by the Participants toward each of the milestones identified in the Implementation Plan.

The one-time information collection associated with the Implementation Plan was completed by the Participants, so there will be no further burdens associated with the Implementation Plan. The Quarterly Progress Report information collection continues.

There are currently 25 Participants, who must complete four Quarterly Progress Reports per year. The Commission staff estimates that, on the average, most Quarterly Progress Reports require approximately 72 hours per Participant, and cost approximately \$8,000 per Participant. The Commission staff estimates Participants spend a total of approximately 7,200 hours per year (25 × 4 × 72) and \$800,000 per year (25 × 4 × \$8,000) complying with the rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent by August 14, 2023 to (i) [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: July 11, 2023.

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97871; File No. SR-Phlx-2023-27]

### Self-Regulatory Organizations; Nasdaq Phlx LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx Options 3 and 4A Rules

July 10, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 27, 2023, 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 amend its Rules at Options 3, Options Trading Rules, at: Section 4 Entry and Display of Quotes; Section 5, Entry and Display of Orders; Section 7, Types of Orders and Order and Quote Protocols; Section 8, Options Opening Process; Section 10, Electronic Execution Priority and Processing in the System; Section 14, Complex Orders; and Section 15, Risk Protections.

The Exchange also proposes to amend Phlx Options 4A, Sections 6, Position Limits, and Section 12, Terms of Index Options Contracts.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

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

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

<sup>32</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322 (May 22, 2020) (File No. S7-13-19) (“Adopting Release”).

<sup>2</sup> See 15 U.S.C. 78a *et seq.*

<sup>3</sup> See 15 U.S.C. 78k-1(a)(3)(B).

<sup>4</sup> See 15 U.S.C. 78q(a).

<sup>5</sup> See 15 U.S.C. 78s(b).

<sup>6</sup> See 15 U.S.C. 78w(a).

<sup>7</sup> See 17 CFR 242.608(a)(2), (b)(2).

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Phlx proposes to amend Options 3, Options Trading Rules, at: Section 4 Entry and Display of Quotes; Section 5, Entry and Display of Orders; Section 7, Types of Orders and Order and Quote Protocols; Section 8, Options Opening Process; Section 10, Electronic Execution Priority and Processing in the System; Section 14, Complex Orders; and Section 15, Risk Protections. The amendments proposed to the Options 3 Rules seek to codify the current System functionality and will not result in System changes.

The Exchange also proposes to amend Phlx Options 4A, Sections 6, Position Limits, and Section 12, Terms of Index Options Contracts. Each change will be discussed below.

Option 3, Sections 4 and 5

The Exchange proposes to codify existing functionality that allows Market Makers to submit their quotes to the Exchange in block quantities as a single bulk message. In other words, a Market Maker may submit a single message to the Exchange, which may contain bids and offers in multiple series. The Exchange's current rules do not specify bulk messaging for orders. The Exchange has historically provided Market Makers with information regarding bulk messaging in its publicly available technical specifications.<sup>3</sup> To promote greater transparency, the Exchange is seeking to codify this functionality in its Rulebook. Specifically, the Exchange proposes to amend Phlx Options 3, Section 4(b)(3) to memorialize that quotes may be submitted as a bulk message. The Exchange also proposes to add a definition of "bulk message" in new subparagraph (i) of Options 3, Section 4(b)(3), which will provide that a bulk message means a single electronic

message submitted by a Market Maker to the Exchange which may contain a specified number of quotations as designated by the Exchange.<sup>4</sup> The bulk message, submitted via SQF,<sup>5</sup> may enter, modify, or cancel quotes. Bulk messages are handled by the System in the same manner as it handles a single quote message. MRX recently added bulk messages to MRX Options 3, Section 4(b)(3).<sup>6</sup> The proposed amendment to the Rulebook to add Phlx Options 3, Section 4(b)(3) will not result in a System change.

The Exchange also proposes to amend Phlx Options 3, Section 4(b)(6) to provide the following,

A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through, violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) *as non-displayed*, and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.

Where a quote is re-priced to avoid a locked or crossed market, the best bid or offer will be non-displayed and the re-priced order will be displayed at a price that is one minimum trading increment inferior to the ABBO. A similar change is proposed for Options 3, Section 5(d). MRX recently amended Options 3, Section 4(b)(6) and Options 3, Section

<sup>4</sup> *Id.* As noted above, quote bulk messages can presently contain up to 200 quotes per message. This is the maximum amount that is permitted in a bulk message. The Exchange would announce any change to these specifications in an Options Technical Update distributed to all members and member organizations.

<sup>5</sup> "Specialized Quote Feed" or "SQF" is an interface that allows Lead Market Makers, Streaming Quote Traders ("SQTs") and Remote Streaming Quote Traders ("RSQTs") to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from 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) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Lead Market Maker, SQT or RSQT. Lead Market Makers, SQTs and RSQTs may only enter interest into SQF in their assigned options series. See Options 3, Section 7(a)(i)(B).

<sup>6</sup> See Securities Exchange Act, Release No. 95982 (October 4, 2022), 87 FR 61391 (October 11, 2022) (SR-MRX-2022-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality) ("SR-MRX-2022-18").

5(d) to include this language.<sup>7</sup> At this time, the Exchange proposes to amend Phlx's rule text to reflect that the actual price remains non-displayed in this scenario. The proposed amendment to the Rulebook to add Phlx Options 3, Section 4(b)(6) will not result in a System change.

Similarly, the Exchange proposes to add a new Phlx Options 3, Section 4(b)(7) to clarify that, today, Phlx's System will automatically execute eligible quotes using the Exchange's displayed best bid and offer ("BBO") or the Exchange's non-displayed order book ("internal BBO")<sup>8</sup> if the best bid and/or offer on the Exchange has been repriced pursuant to Options 3, Section 5(d) and Options 3, Section 4(b)(6). This rule text seeks to codify the current System function and make clear that the internal BBO is comprised of both orders and quotes.<sup>9</sup> MRX recently amended Options 3, Section 4(b)(7) to include the same language.<sup>10</sup> At this time, the Exchange proposes to align Phlx's rule text in Options 3, Section 4(b)(7) to MRX's rule text in Options 3, Section 4(b)(7). The proposed amendment to the Rulebook to add Phlx Options 3, Section 4(b)(7) will not result in a System change.

Finally, the Exchange proposes to amend Phlx Options 3, Section 5(c) to include a citation to Options 3, Section 4(b)(6) as the internal BBO is comprised of both orders and quotes, similar to MRX.<sup>11</sup>

The amendments proposed to Options 3, Sections 4 and 5 do not change the current System functionality.

Options 3, Section 7

The Exchange proposes to amend the description of Specialized Quote Feed or "SQF" within Phlx Options 3, Section 7(a)(i)(B) to add rule text which states, "Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, Market Order Spread Protection, or Size Limitation Protection in Options 3, Section 15(a)(1), (a)(2), and (b)(2) respectively." This rule text is currently noted within Options 3, Section 7(c)(2)(B). The Exchange is adding the same language into the description of SQF to provide

<sup>7</sup> See Securities Exchange Act, Release No. 95807 (September 16, 2022), 87 FR 57933 (September 22, 2022) (SR-MRX-2022-16) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality) ("SR-MRX-2022-16").

<sup>8</sup> The internal BBO refers to the Exchange's non-displayed book.

<sup>9</sup> The Exchange also proposes to re-number current Options 3, Section 4(b)(7) as (8).

<sup>10</sup> See SR-MRX-2022-16.

<sup>11</sup> *Id.*

<sup>3</sup> See [https://www.nasdaq.com/docs/2023/01/12/0054-Q23\\_SQF\\_8.2b%20akg\\_NAM.pdf](https://www.nasdaq.com/docs/2023/01/12/0054-Q23_SQF_8.2b%20akg_NAM.pdf) (specifying for bulk quoting of up to 200 quotes per quote block message). The specifications note in other places the manner in which a member or member organization can send such quote block messages.

a more complete description. The addition of this information would align the level of information of Phlx's rule text to Phlx's rule text at Options 3, Section 7(a)(i)(B). The proposed amendment to Phlx Options 3, Section 77(a)(i)(B) will not result in System changes.

The Exchange proposes to relocate, without amendment, the Legging Order type from Phlx Options 3, Section 14(f)(iii)(C) to Options 3, Section 7(b)(10) to place the order type with other simple order book order types.

#### Options 3, Section 8

The Exchange proposes to amend Phlx Options 3, Section 8(j)(3), which currently describes the determination of Opening Quote Range ("OQR") boundaries in certain scenarios.<sup>12</sup> Specifically, the Exchange proposes to replace "are marketable against the ABBO" with "cross the ABBO" to precisely describe the specified scenario within this rule. The Exchange notes that this is not a System change, rather this amendment clarifies the applicability of the rule text. This change is identical to a change recently made on MRX at Options 3, Section 8(i)(3).<sup>13</sup> The proposed amendment to Phlx Options 3, Section 8(j)(3) will not result in a System change.

Next, the Exchange proposes to amend Phlx Options 3, Section 8(k)(D) to align Phlx's rule text with that of MRX Options 3, Section 8(j)(6)(i) by stating "Pursuant to Options 3, Section 8(k)(C)(6), the System will re-price Do Not Route orders (that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur) to the current away best offer (for bids) or the current away best bid (for offers) as non-displayed, and display at a price that is one minimum trading increment inferior to the ABBO, and disseminate the re-priced DNR Order as part of the new PBBO." The proposed language more explicitly describes the manner in which the Exchange will re-price orders and would mirror rule text in Phlx Options 3, Section 4(b)(6). The proposed amendment to Phlx Options 3, Section 8(k)(D) will not result in a System change.

#### Options 3, Section 10

The Exchange proposes to amend Options 3, Section 10(a)(1)(C) to add a sentence which states that "This

participation entitlement will be considered after the Opening Process." The Directed Market Maker entitlement requires a Market Maker to quote at or better than the internal BBO or NBBO. The NBBO would not be available pre-opening. The Exchange proposes to add this language to provide clarity. The proposed amendment to Phlx Options 3, Section 10(a)(1)(C) will not result in a System change.

#### Options 3, Section 15

MRX recently amended its Order Price Protection ("OPP")<sup>14</sup> rule.<sup>15</sup> MRX's OPP rule utilized different rule text to explain the OPP functionality than is currently on Phlx. At this time, the Exchange proposes to amend Phlx Options 3, Section 15(a)(1) to align Phlx's rule text to MRX's rule text within Options 3, Section 15(a)(1)(A). Specifically, the Exchange proposes to remove the references to "Day Limit, Good til Cancelled, Immediate-or-Cancel and All-or-None Orders" and, instead, simply refer to "Limit" Orders as that order type accurately captures the scope of the orders subject to OPP. Further, the Exchange proposes to remove "Market Orders" from the next sentence since OPP only applies to Limit Orders. The Exchange also proposes to capitalize "Opening" and add Process in Options 2, Section 15(a)(1)(A) to refer to the Opening Process within Options 3, Section 8. The proposed amendment to Options 3, Section 15(a)(1) will not result in a System change.

Additionally, the Exchange proposes to amend its Acceptable Trade Range ("ATR") Rule within Phlx Options 3, Section 15(b)(1).<sup>16</sup> MRX recently amended its ATR rule.<sup>17</sup> MRX's ATR rule utilized different rule text to explain the ATR functionality. At this time, the Exchange proposes to amend Options 3, Section 15(b)(1)(A) to add the internal BBO concept described above with respect to Options 3, Sections 4 and 5. Where a quote is re-priced to avoid a locked or crossed market, the best bid or offer will be non-displayed and the re-priced order will be displayed at a price that is one minimum trading increment inferior to the ABBO. The best price on the order book could therefore be non-displayed. The addition of this language makes

clear the manner in which the System calculates the Reference Price.

The Exchange proposes to amend Options 3, Section 15(b)(1)(B) to add the words "after the Posting Period" to explain when a new ATR would be calculated to provide more context to the rule. The Exchange also proposes to amend Options 3, Section 15(b)(1)(B) and (C) to add the word "quote" where it was omitted.

Additionally, similar to MRX Options 3, Section 15(a)(2)(A)(v) the Exchange proposes to add the following rule text within Phlx Options 3, Section 15(b)(1)(D),

There will be three categories of options for Acceptable Trade Range: (1) Penny Interval Program Options trading in one cent increments for options trading at less than \$3.00 and increments of five cents for options trading at \$3.00 or more, (2) Penny Interval Program Options trading in one-cent increments for all prices, and (3) Non-Penny Interval Program Options.

This is how Phlx operates today. This rule text makes clear the application of Phlx Options 3, Section 3 to the ATR rule by explicitly stating the Exchange's ability to set different ATR values by options category. These ATR values are set forth in Phlx's System Settings document which is posted online.<sup>18</sup> The Exchange believes this rule text will add greater clarity to the ATR rule. The proposed amendment to Options 3, Section 15(b)(1) will not result in a System change.

#### Options 4A, Sections 6 and 12

The Exchange no longer lists options on the Russell indexes. Specifically, the Exchange has not listed options on the Full Value Russell 2000®Options, Reduced Value Russell 2000®Options, Russell 3000®Index, Russell 3000®Value Index, Russell 3000®Growth Index, Russell 2500™ Index, Russell 2500™ Value Index, Russell 2500™ Growth Index, Russell 2000®Value Index, Russell 2000®Growth Index, Russell 1000®Index, Russell 1000®Value Index, Russell 1000®Growth Index, Russell Top 200®Index, Russell Top 200®Value Index, Russell Top 200®Growth Index, Russell MidCap®Index, Russell MidCap®Value Index, Russell MidCap®Growth Index, Russell Small Cap Completeness®Index, Russell Small Cap Completeness®Value Index and the Russell Small Cap Completeness®Growth Index (collectively "Russell U.S. Indexes") in several years. At this time, the Exchange

<sup>18</sup> <https://www.nasdaq.com/docs/PHLXSystemSettings>.

<sup>12</sup> OQR is an additional type of boundary used in the Opening Process, and is intended to limit the opening price to a reasonable, middle ground price, thus reducing the potential for erroneous trades during the Opening Process.

<sup>13</sup> See SR-MRX-2022-18.

<sup>14</sup> OPP prevents the execution of Limit Orders at prices outside pre-set parameters.

<sup>15</sup> See SR-MRX-2022-18.

<sup>16</sup> ATR is designed to guard against the System from experiencing dramatic price swings by preventing the immediate execution of quotes and orders beyond the thresholds set by the protection.

<sup>17</sup> See SR-MRX-2022-16.

proposes to remove the Russell Indexes from Options 4A, Sections 6(a)(i), (iii) and 6(c), as well as references within Options 4A, Section 12(a)(2) and Supplementary Material .01 and .03 of Options 4A, Section 12 because options on the Russell Indexes are no longer listed on Phlx.

The Exchange proposes to remove a reference to the Reduced Value Nasdaq 100® Index or “MNX” within Options 4A, Section 12(a)(2)(I). Phlx delisted MNX on April 7, 2017 and removed references to MNX in its rules.<sup>19</sup>

The Exchange proposes to remove the reference to “Reduced value long term options, also known as LEAPS” as this phrase is not necessary within Options 4A, Section 12(a)(2)(J). Options 4A, Section 12(b)(2) addresses Long-Term Option Series or “LEAPS” including those for certain reduced value index options such as the Micro Index Long Term Options Series.

The Exchange proposes to modify Options 4A, Section 12(a)(5) to remove Phlx’s Gold/Silver Sector<sup>SM</sup> Index or “XAU”<sup>SM</sup>.<sup>20</sup> Today, XAU has an American-style<sup>21</sup> expiration and is currently reflected as having a European-style<sup>22</sup> expiration in Options 4A, Section 12(a)(5). In 2021, Phlx amended Options 4A, Section 12 to reflect XAU as a having a European-style expiration;<sup>23</sup> the change was incorrect. XAU was originally filed as having an American-style exercise and not a European-style-exercise.<sup>24</sup> The Exchange proposes to re-letter the remaining subparagraphs within Options 4A, Section 12(b)(5).

At this time, the Exchange proposes to add the Phlx Gold/Silver Index to

proposed new Options 4A, Section (a)(7) which would state,

“*American-Style Exercise.*”

American-style index options, some of which may be A.M.-settled as provided in subparagraph (e) or P.M.-settled as provided for in paragraph (f), are approved for trading on the Exchange on the following indexes:.

The Exchange would list Phlx Gold/Silver Index within subparagraph (i) and would list Phlx’s Semiconductor Sector<sup>SM</sup> Index or “SOX”<sup>25</sup> within subparagraph (ii). Currently, SOX is not listed as either having a European-style or American-style exercise within Options 4A, Section 12. SOX has an American-style expiration<sup>26</sup> and the Exchange proposes to list the index as such.

Next, the Exchange proposes to amend Options 4A, Section 12(e)(II) to remove the Phlx Gold/Silver Sector Index from the list of a.m.-settled options. In 2021, Phlx amended Options 4A, Section 12 to reflect XAU as a having an a.m.-settlement;<sup>27</sup> the change was incorrect. The Phlx Gold/Silver Sector Index has always been a p.m.-settled index option<sup>28</sup> and the Exchange proposes to list the index as such. The Exchange proposes to re-letter the remaining subparagraphs within Options 4A, Section 12(e)(II).

At this time, the Exchange proposes to add the Phlx Gold/Silver Sector Index to the list of p.m.-settled indexes within Options 4A, Section 12(f).

Finally, the Exchange proposes to add a hyphen to the term “Nasdaq 100” within Options 4A, Sections 6 and 12 where the hyphen is missing.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>29</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>30</sup> in particular, in that it is designed to

<sup>25</sup> Phlx’s Semiconductor Sector<sup>SM</sup> Index or “SOX”<sup>SM</sup> is an a.m.-settled modified market capitalization-weighted index composed of companies primarily involved in the design, distribution, manufacture, and sale of semiconductors.

<sup>26</sup> See Securities Exchange Act Release No. 61539 (February 18, 2010), 75 FR 8765 (February 25, 2010) (SR-Phlx-2010-20).

<sup>27</sup> See Securities Exchange Act Release No. 93898 (January 4, 2022), 87 FR1238 (January 10, 2022) (SR-Phlx-2021-76) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Options 4A, Sections 4 and 14, Related to Index Options, and Amend Other Phlx Rules).

<sup>28</sup> See Securities Exchange Act Release Nos. 37123 (April 18, 1996), 61 FR 18554 (April 25, 1996) (SR-Phlx-96-03); 43070 (July 25, 2000), 65 FR 47551 (August 2, 2000) (SR-Phlx-00-69); and 64549 (May 26, 2011), 76 FR 32004 (June 2, 2011) (SR-Phlx-2011-46).

<sup>29</sup> 15 U.S.C. 78f(b).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Option 3, Sections 4 and 5

The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) is consistent with the Act as it will codify existing functionality, thereby promoting transparency in the Exchange’s rules and reducing any potential confusion.<sup>31</sup> This functionality provides Market Makers with an additional tool to meet their various quoting obligations in a manner they deem appropriate, consistent with the purpose of the bulk message functionality to facilitate Market Makers’ provision of liquidity. By providing Market Makers with additional control over the quotes they use to provide liquidity to the Exchange, this tool may benefit all investors through additional execution opportunities at potentially improved prices. Today, MRX offers this same functionality within Options 3, Section 4(b)(3). Further, the Exchange does not believe that the offering the bulk message functionality to only Market Makers would permit unfair discrimination. Market Makers play a unique and critical role in the options market by providing liquidity and active markets, and are subject to various quoting obligations which other market participants are not, including obligations to maintain active markets, update quotes in response to changed market conditions, to compete with other Market Makers in its appointed classes, and to provide intra-day quotes in its appointed classes.<sup>32</sup> Bulk message functionality provides Market Makers with a means to help them satisfy these obligations. The proposed amendment to the Rulebook to add Phlx Options 3, Section 4(b)(3) will not result in a System change.

The Exchange’s proposal to amend Options 3, Section 4(b)(6) to make clear that the actual price remains non-displayed during re-pricing is consistent with the Act and removes impediments to and perfects the mechanism of a free and open market and a national market system because it displays a re-priced order that does not lock or cross an away market. The rule text clearly explains that the best bid or offer will

<sup>31</sup> As discussed above, this existing functionality is currently described in the Exchange’s publicly available technical specifications. See *supra* note 3.

<sup>32</sup> See Options 2, Sections 4 and 5.

<sup>19</sup> See Securities Exchange Act Release No. 80474 (April 17, 2017), 82 FR 18795 (April 21, 2017) (SR-Phlx-2017-30).

<sup>20</sup> Phlx’s Gold/Silver Sector<sup>SM</sup> Index or “XAU”<sup>SM</sup> is a p.m.-settled capitalization-weighted index composed of the stocks of widely held U.S. listed companies involved in the gold/silver mining industry.

<sup>21</sup> American-style exercise permits option holders to exercise their options on any Exchange business day up to and including the last business day immediately prior to the expiration date.

<sup>22</sup> European-style exercise permits option holders only to exercise their options on the expiration date.

<sup>23</sup> See Securities Exchange Act Release No. 93898 (January 4, 2022), 87 FR1238 (January 10, 2022) (SR-Phlx-2021-76) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Options 4A, Sections 4 and 14, Related to Index Options, and Amend Other Phlx Rules).

<sup>24</sup> See Securities Exchange Act Release No. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983) (SR-Phlx-83-17). See also Securities Exchange Act Release Nos. 37123 (April 18, 1996), 61 FR 18554 (April 25, 1996) (SR-Phlx-96-03); 43070 (July 25, 2000), 65 FR 47551 (August 2, 2000) (SR-Phlx-00-69); and 64549 (May 26, 2011), 76 FR 32004 (June 2, 2011) (SR-Phlx-2011-46).

be non-displayed and the re-priced order will be displayed. A similar change is proposed for Phlx Options 3, Section 5(d). MRX recently amended Options 3, Section 4(b)(6) and Options 3, Section 5(d) to include the same language.<sup>33</sup> The proposed change aligns Phlx's rule text to MRX's rule text. The proposed amendment to the Rulebook to add Phlx Options 3, Section 4(b)(6) will not result in a System change.

The Exchange's proposal to add a new Options 3, Section 4(b)(7) to clarify that, today, Phlx's System will automatically execute eligible quotes using the Exchange's displayed best bid and offer ("BBO") or the Exchange's non-displayed order book ("internal BBO") if the best bid and/or offer on the Exchange has been repriced pursuant to Options 3, Section 5(d) and Options 3, Section 4(b)(6) is consistent with the Act and protects investors and the public interest. This rule text seeks to codify the current System function and make clear that the internal BBO is comprised of both orders and quotes, both of which are considered for price checks. MRX recently amended Options 3, Section 4(b)(7) to include this language.<sup>34</sup> The proposed change aligns Phlx's rule text to MRX's rule text. The proposed amendment to the Rulebook to add Phlx Options 3, Section 4(b)(7) will not result in a System change.

#### Options 3, Section 7

The Exchange's proposal to amend the description of SQF within Options 3, Section 7(e)(1)(B) is consistent with the Act as this rule text is currently noted within Options 3, Section 7(a)(i)(B). The addition of this language into the description of SQF provides a more complete description of this protocol. The addition of this information also aligns the level of information with that offered on MRX for SQF within Options 3, Section 7(e)(1)(B). The proposed amendment to Phlx Options 3, Section 7(e)(1)(B) will not result in a System change.

The Exchange's proposal to relocate, without amendment, the Legging Order type from Phlx Options 3, Section 14(f)(iii)(C) to Options 3, Section 7(b)(10) is a non-substantive amendment that will place the order type with other simple order book order types.

#### Options 3, Section 8

The Exchange's proposal to amend Phlx Options 3, Section 8(j)(3) to replace "are marketable against the ABBO" with "cross the ABBO" is consistent with the

Act as the proposed new language precisely describes the specified scenario within in this rule. The Exchange notes that this is not a System change, rather this amendment clarifies the applicability of the rule text. This change is identical to a change recently made on MRX at Options 3, Section 8(i)(3).<sup>35</sup>

The Exchange's proposal to amend Phlx Options 3, Section 8(k)(D) to align Phlx's rule text with that of MRX Options 3, Section 8(j)(6)(i) is consistent with the Act as the proposed language more explicitly describes the manner in which the Exchange will re-price orders and would mirror rule text in Phlx Options 3, Section 4(b)(6). The proposed amendment to Phlx Options 3, Section 8(k)(D) will not result in a System change.

#### Options 3, Section 10

The Exchange's proposal to amend Options 3, Section 10(a)(1)(C) to add a sentence which states that "This participation entitlement will be considered after the Opening Process" is consistent with the Act because the NBBO would not be available pre-opening. The Exchange proposes to add this language to provide clarity. The proposed amendment to Phlx Options 3, Section 10(a)(1)(C) will not result in a System change.

#### Options 3, Section 15

The Exchange's proposal to amend Phlx Options 3, Section 15(a)(1) to align Phlx's OPP rule text to MRX's OPP rule text within Options 3, Section 15(a)(1)(A) is consistent with the Act<sup>36</sup> because removing the references to "Day Limit, Good til Cancelled, Immediate-or-Cancel and All-or-None Orders" and, instead, referring to "Limit" Orders accurately captures the scope of the orders subject to OPP. This change would also make unnecessary the reference to Market Orders. The proposed amendment to Options 3, Section 15(a)(1) will not result in a System change.

The Exchange's proposal to amend the ATR Rule within Options 3, Section 15(b)(1) is consistent with the Act. MRX recently amended its ATR rule.<sup>37</sup> MRX's ATR rule utilized different rule text to explain the ATR functionality. Amending Options 3, Section 15(b)(1)(A) to add the internal BBO concept similar to language proposed for Options 3, Sections 4 and 5 is consistent with the Act. Where a quote

is re-priced to avoid a locked or crossed market, the best bid or offer will be non-displayed and the re-priced order will be displayed at a price that is one minimum trading increment inferior to the ABBO. The best price on the order book could therefore be non-displayed. The addition of this language makes clear the manner in which the System calculates the Reference Price.

Amending Phlx Section 15(b)(1) to add the words "after the Posting Period" to explain when a new ATR would be calculated provides more context to the rule will provide greater context to the sentence. Additionally, adding the word "quote" in Options 3, Section 15(b)(1)(B) and (C), where it is omitted, will add clarity. The proposed amendment to Options 3, Section 15(b)(1) will not result in a System change. Also, adding rule text within Phlx Options 3, Section 15(b)(1)(D) to make clear the Exchange's ability to set different ATR values by options category is consistent with the Act because the ATR risk protection limits the range of prices at which an order and quote trades and would take into account the minimum increment. The ability for the Exchange to set the ATR based on the increment allows the Exchange to set appropriate limits. The Exchange believes this rule text will add greater clarity to the ATR rule. The proposed amendment to Options 3, Section 15(b)(1) will not result in a System change.

#### Options 4A, Sections 6 and 12

The Exchange's proposal to remove the Russell Indexes from Options 4A, Sections 6(a)(i), (iii) and 6(c), as well as references within Options 4A, Section 12(a)(2) and Supplementary Material .01 and .03 of Options 4A, Section 12 is consistent with the Act and protect investors and the public interest because options on the Russell Indexes are no longer listed on Phlx.

The Exchange's proposal to remove a reference to the Reduced Value Nasdaq 100<sup>®</sup> Index or "MNX" within Options 4A, Section 12(a)(2)(I) is consistent with the Act because Phlx delisted MNX on April 7, 2017<sup>38</sup> and no longer trades MNX.

The Exchange's proposal to remove the reference to "Reduced value long term options, also known as LEAPS" is consistent with the Act because Options 4A, Section 12(b)(2) addresses Long-Term Option Series or "LEAPS" including those for certain reduced

<sup>35</sup> See SR-MRX-2022-18.

<sup>36</sup> MRX recently amended its Order Price Protection ("OPP") rule. See SR-MRX-2022-18.

<sup>37</sup> See SR-MRX-2022-16.

<sup>38</sup> See Securities Exchange Act Release No. 80474 (April 17, 2017), 82 FR 18795 (April 21, 2017) (SR-Phlx-2017-30).

<sup>33</sup> See SR-MRX-2022-16.

<sup>34</sup> *Id.*

value index options such as the Micro Index Long Term Options Series.

The Exchange's proposal to modify Options 4A, Section 12(a)(5) to XAU from Options 4A, Section 12(a)(5) and add it to proposed new Options 4A, Section (a)(7), relating to American-style exercise is consistent with the Act and protect investors and the public interest because it would reflect the indexes correct exercise style. XAU was originally filed as having an American-style exercise and not a European-style exercise.<sup>39</sup>

The Exchange's proposal to list SOX within proposed new Options 4A, Section (a)(7) is consistent with the Act and protect investors and the public interest because it would reflect the indexes exercise style. SOX has an American-style expiration<sup>40</sup> and the Exchange proposes to list the index as such.

The Exchange's proposal to amend Options 4A, Section 12(e)(II) to remove XAU from the list of a.m.-settled options and add it to the list of p.m.-settled indexes within Options 4A, Section 12(f) is consistent with the Act and protect investors and the public interest because it would reflect the indexes correct settlement style. XAU has always been a p.m.-settled index option.<sup>41</sup>

#### *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.

#### *Option 3, Sections 4 and 5*

The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) does not impose an undue burden on intra-market competition. While the Exchange currently offers this functionality to Market Makers only, bulk messaging is intended to provide Market Makers with an additional tool to meet their various

quoting obligations in a manner they deem appropriate. As such, the Exchange believes that this functionality may facilitate Market Makers' provision of liquidity, thereby benefiting all market participants through additional execution opportunities at potentially improved prices. Furthermore, while the Exchange will offer the proposed Post-Only Quote Configuration to Market Makers only, the proposed risk protection will enhance the ability of Market Makers to add liquidity and avoid removing liquidity from the Exchange's order book in the manner described above. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by Market Makers. The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) does not impose an undue burden on inter-market competition as other options exchanges may adopt this functionality.

The Exchange's proposal to amend Phlx's rules at Options 3, Section 4(b)(6) and Options 3, Section 4(b)(7) do not impose an undue burden on competition because all options markets must not trade-through other orders on their markets as well as away markets. The proposed change aligns Phlx's rule text to MRX's rule text.

#### *Options 3, Section 7*

Amending the description of SQF within Options 3, Section 7(e)(1)(B) does not impose an undue burden on competition. The addition of this language into the description of SQF provides a more complete description of this protocol.

The Exchange's proposal to relocate, without amendment, the Legging Order type from Phlx Options 3, Section 14(f)(iii)(C) to Options 3, Section 7(b)(10) is a non-substantive amendment that will place the order type with other simple order book order types.

#### *Options 3, Section 8*

The Exchange's proposal to amend Phlx Options 3, Section 8(j)(3) to replace "are marketable against the ABBO" with "cross the ABBO" does not impose an undue burden on competition, rather this proposed new language precisely describes the specified scenario within in this rule.

The Exchange's proposal to amend Phlx Options 3, Section 8(k)(D) to align Phlx's rule text with that of MRX Options 3, Section 8(j)(6)(i) does not impose an undue burden on competition, rather the proposed language more explicitly describes the

manner in which the Exchange will re-price orders and would mirror rule text in Phlx Options 3, Section 4(b)(6).

#### *Options 3, Section 10*

The Exchange's proposal to amend Options 3, Section 10(a)(1)(C) to add a sentence which states that "This participation entitlement will be considered after the Opening Process" is consistent with the Act because the NBBO would not be available pre-opening. The Exchange proposes to add this language to provide clarity. The proposed amendment to Phlx Options 3, Section 10(a)(1)(C) will not result in a System change.

#### *Options 3, Section 15*

The Exchange's proposal to amend Phlx Options 3, Section 15(a)(1) to align Phlx's OPP rule text to MRX's OPP rule text within Options 3, Section 15(a)(1)(A) does not impose an undue burden on competition because removing the references to "Day Limit, Good til Cancelled, Immediate-or-Cancel and All-or-None Orders" and, instead, referring to "Limit" Orders accurately captures the scope of the orders subject to OPP. This change would also make unnecessary the reference to Market Orders.

The Exchange's proposal to amend the ATR Rule within Options 3, Section 15(b)(1) does not impose an undue burden on competition. Amending Options 3, Section 15(b)(1)(A) to add the internal BBO concept similar to language proposed for Options 3, Sections 4 and 5 does not impose an undue burden on competition. Where a quote is re-priced to avoid a locked or crossed market, the best bid or offer will be non-displayed and the re-priced order will be displayed at a price that is one minimum trading increment inferior to the ABBO. The best price on the order book could therefore be non-displayed. The addition of this language makes clear the manner in which the System calculates the Reference Price.

Amending Phlx Section 15(b)(1) to add the words "after the Posting Period" to explain when a new ATR would be calculated provides more context to the rule will provide greater context to the sentence. Additionally, adding the word "quote" in Options 3, Section 15(b)(1)(B) and (C), where it is omitted, will add clarity. Adding rule text within Phlx Options 3, Section 15(b)(1)(D) to make clear the Exchange's ability to set different ATR values by options category does not impose an undue burden on competition because the ability for the Exchange to set the ATR based on the increment allows the Exchange to set appropriate limits. The

<sup>39</sup> See Securities Exchange Act Release No. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983) (SR-Phlx-83-17). See also Securities Exchange Act Release Nos. 37123 (April 18, 1996), 61 FR 18554 (April 25, 1996) (SR-Phlx-96-03); 43070 (July 25, 2000), 65 FR 47551 (August 2, 2000) (SR-Phlx-00-69); and 64549 (May 26, 2011), 76 FR 32004 (June 2, 2011) (SR-Phlx-2011-46).

<sup>40</sup> See Securities Exchange Act Release No. 61539 (February 18, 2010), 75 FR 8765 (February 25, 2010) (SR-Phlx-2010-20).

<sup>41</sup> See Securities Exchange Act Release Nos. 37123 (April 18, 1996), 61 FR 18554 (April 25, 1996) (SR-Phlx-96-03); 43070 (July 25, 2000), 65 FR 47551 (August 2, 2000) (SR-Phlx-00-69); and 64549 (May 26, 2011), 76 FR 32004 (June 2, 2011) (SR-Phlx-2011-46).

Exchange believes this rule text will add greater clarity to the ATR rule.

Options 4A, Sections 6 and 12

The Exchange's proposal to remove the Russell Indexes from Options 4A, Sections 6(a)(i), (iii) and 6(c), as well as references within Options 4A, Section 12(a)(2) and Supplementary Material .01 and .03 of Options 4A, Section 12 does not impose an undue burden on competition because no Phlx member or member organization would be able to trade Russell Indexes.

The Exchange's proposal to remove a reference to the Reduced Value Nasdaq 100® Index or "MNX" within Options 4A, Section 12(a)(2)(I) does not impose an undue burden on competition because Phlx delisted MNX on April 7, 2017<sup>42</sup> and no member or member organization may trade MNX.

The Exchange's proposal to remove the reference to "Reduced value long term options, also known as LEAPS" does not impose an undue burden on competition because all members and member organizations may trade LEAPs on certain reduced value index options such as the Micro Index Long Term Options Series pursuant to Options 4A, Section 12(b)(2).

The Exchange's proposal to modify Options 4A, Section 12(a)(5) to XAU from Options 4A, Section 12(a)(5) and add it to proposed new Options 4A, Section (a)(7), relating to American-style exercise does not impose an undue burden on competition because it would reflect the indexes correct exercise style. All Phlx members and member organizations would be able to transact XAU with an American-style exercise. The Exchange's proposal to list SOX within proposed new Options 4A, Section (a)(7) does not impose an undue burden on competition because it would reflect the indexes exercise style. All Phlx members and member organizations would be able to transact SOX with an American-style exercise. The Exchange's proposal to amend Options 4A, Section 12(e)(II) to remove XAU from the list of a.m.-settled options and add it to the list of p.m.-settled indexes within Options 4A, Section 12(f) does not impose an undue burden on competition because it would reflect the indexes correct settlement style. All Phlx members and member organizations would be able to transact XAU with a p.m.-settlement.

<sup>42</sup> See Securities Exchange Act Release No. 80474 (April 17, 2017), 82 FR 18795 (April 21, 2017) (SR-Phlx-2017-30).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>43</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>44</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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](mailto:rule-comments@sec.gov). Please include file number SR-Phlx-2023-27 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-Phlx-2023-27. This file

<sup>43</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>44</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

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 SR-Phlx-2023-27 and should be submitted on or before August 4, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-14911 Filed 7-13-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-524, OMB Control No. 3235-0582]

**Submission for OMB Review;  
Comment Request; Extension: Form N-PX**

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("Paperwork Reduction Act"), the Securities and Exchange Commission ("Commission")

<sup>45</sup> 17 CFR 200.30-3(a)(12).