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) *

Pilot

Extension of Time Period for Commission Action *

Date Expires *


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

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

Section 806(e)(1) * Section 806(e)(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 *).

A proposal to amend Rule 1034 Minimum Increments to specify replacement issues that may be added to the Penny Pilot on a quarterly basis without altering the expiration date of the Pilot which is June 30 2019.

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 * Angela Last Name * Dunn

Title * Principal Associate General Counsel

E-mail * Angela.Dunn@Nasdaq.com

Telephone * (215) 496-5692 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 03/20/2019

Global Chief Legal and Policy Officer

By Edward S. Knight

(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
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 amend Rule 1034, “Minimum Increments,” to specify replacement issues that may be added to the Penny Pilot (“Pilot”) on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019.

   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 attached as Exhibit 5.

   (b) Not applicable.

   (c) Not applicable.

2. **Procedures of the Self-Regulatory Organization**

   The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on September 26, 2018. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

   Angela Saccomandi Dunn  
   Principal Associate General Counsel  
   Nasdaq, Inc.  
   215-496-5692

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

   a. **Purpose**

   The Exchange proposes to amend Rule 1034, “Minimum Increments,” to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.³ Currently, Rule 1034(a)(i)(B) permits the Exchange to replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months.

   The Exchange proposes to amend Rule 1034(a)(i)(B) to permit the Exchange to add replacement issues for Pilot issues that have been delisted on a quarterly basis. The Exchange added replacement issues in January 2019, pursuant to Rule 1034 and, with this proposal, would add eligible replacement issues in April, July and October 2019. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot by replacing delisted issues on a quarterly basis as opposed to semi-annual and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the “six month lookback”) but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation’s trading volume data from August 1, 2018 through February 28, 2019. The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (i.e., it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot. All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

b. **Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act. Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act.

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4 The Exchange would announce any replacement issues via an Options Trader Alert. See Rule 1034(a)(i)(B).

Act,\(^6\) because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in the a more current list of Pilot eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (i.e., it would result in a more reliable measure of average daily trading volume than would a shorter period). The Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchanges notes that it not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

4. **Self-Regulatory Organization’s Statement on Burden on Competition**

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

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.

6. **Extension of Time Period for Commission Action**

Not applicable.

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7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)\(^8\) of the Act and Rule 19b-4(f)(6) thereunder\(^9\) in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate. The Exchange believes the proposal to allow the Exchange to replace delisted issues in the Pilot on a quarterly basis would not impose any significant burden on competition but would instead be pro-competitive as it would render the list of Pilot-eligible issues more current because it allows for quarterly updates and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Replacement issues have routinely been added to the Pilot on a semi-annual basis and the Exchange merely seeks to increase the frequency of such replacements to a quarterly basis; thus, the Exchange has not proposed any new policies or provisions that are unique or unproven. The Exchange would continue to utilize the six month lookback to determine trading activity for Pilot-eligible issues, as


this time period would help reduce the impact of unusual trading activity as a result of
unique market events, such as a corporate action. Moreover, the Exchanges is not
making any other substantive changes to the Pilot and therefore the Exchange will
continue to participate in a program that has been viewed as beneficial to traders,
investors and public customers and viewed as successful by the other options exchanges
participating in it. The Exchange believes that the Pilot Program permits public
customers and other market participants to express their true prices to buy and sell
options and results in additional flexibility when making investment decisions, which can
help promote a fair, competitive and orderly options market.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give
the Commission written notice of its intent to file a proposed rule change under that
subsection at least five business days prior to the date of filing, or such shorter time as
designated by the Commission. The Exchange has provided such notice.

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become
operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits
the Commission to designate a shorter time if such action is consistent with the protection
of investors and the public interest. The Exchange respectfully requests the Commission
waive the 30-day operative delay so that the Exchange may add new issues at the start of
the second quarter (i.e., in April 2019), resulting in a more up-to-date list of issues in the
Pilot, which would enable further analysis of the Pilot, including for a determination of
how the Pilot should be structured in the future.

   or of the Commission

   The proposed rule change is based on a NYSE Arca, Inc. rule change.\textsuperscript{10}

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

   Not applicable.

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

   Not applicable.

11. Exhibits


   5. Text of the proposed rule change.

March__, 2019

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to specify replacement issues that may be added to the Penny Pilot in Rule 1034

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 March 20, 2019, 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 amend Rule 1034, “Minimum Increments,” to specify replacement issues that may be added to the Penny Pilot (“Pilot”) on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019.

The text of the proposed rule change is available on the Exchange’s Website at http://nasdaqphlx.cchwallstreet.com/, at the principal office of the Exchange, and at the Commission’s Public Reference Room.


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

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

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

1. Purpose

The Exchange proposes to amend Rule 1034, “Minimum Increments,” to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.3 Currently, Rule 1034(a)(i)(B) permits the Exchange to replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months.

The Exchange proposes to amend Rule 1034(a)(i)(B) to permit the Exchange to add replacement issues for Pilot issues that have been delisted on a quarterly basis. The Exchange added replacement issues in January 2019, pursuant to Rule 1034 and, with

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this proposal, would add eligible replacement issues in April, July and October 2019.
The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot by replacing delisted issues on a quarterly basis as opposed to semi-annual and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the “six month lookback”) but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation’s trading volume data from August 1, 2018 through February 28, 2019.\(^4\) The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (i.e., it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot. All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

\(^{4}\) The Exchange would announce any replacement issues via an Options Trader Alert. \texttt{See Rule 1034(a)(i)(B).}
2. **Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.\(^5\) Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,\(^6\) because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in the a more current list of Pilot eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (i.e., it would result in a more reliable measure of average daily trading volume than would a shorter period). The Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchanges notes that it not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will

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continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

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

In accordance with Section 6(b)(8) of the Act,\(^7\) the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

\(^7\) 15 U.S.C. 78f(b)(8).
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 Act8 and subparagraph (f)(6) of Rule 19b-4 thereunder.9

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:


9 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.
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-2019-05 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-2019-05. 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-2019-05 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.10

Eduardo A. Aleman
Assistant Secretary

Nasdaq PHLX Rules

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Rule 1034. Minimum Increments

(a) Except as provided in sub-paragraphs (i)(B) and (iii) below, all options on stocks, index options, and Exchange Traded Fund Shares quoting in decimals at $3.00 or higher shall have a minimum increment of $.10, and all options on stocks and index options quoting in decimals under $3.00 shall have a minimum increment of $.05.

(i) (A) No change.

(B) For a pilot period scheduled to expire June 30, 2019 or the date of permanent approval, if earlier (the “pilot”), certain options shall be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00, and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher, except that options overlying the PowerShares QQQ Trust (“QQQ”), SPDR S&P 500 Exchange Traded Funds (“SPY”), and iShares Russell 2000 Index Funds (“IWM”) shall be quoted and traded in minimum increments of $0.01 for all series regardless of the price. A list of such options shall be communicated to membership via an Options Trader Alert (“OTA”) posted on the Exchange's web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity in the previous six months. The replacement issues may be added to the pilot on the second trading day in the first month of each quarter following January 1, 2019.

(C) No change.

(ii) – (v) No change.

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