

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="50"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2020"/> - * <input type="text" value="22"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by **Nasdaq PHLX LLC**
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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Description

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

Proposal to amend Options 6, Section 5, titled Transfer of Positions

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 * Last Name *

Title *

E-mail *

Telephone * 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 By

(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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF 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

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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 Options 6, Section 5, titled “Transfer of Positions.” The Exchange also proposes to update certain citations.

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 25, 2019. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Options 6, Section 5, titled "Transfer of Positions." The Exchange also proposes to update certain citations. This proposed rule would continue to permit market participants to move positions from one account to another without first exposure of the transaction on the Phlx. The proposed rule change is similar to Cboe Rule 6.7.³

Options 6, Section 5 specifies the circumstances under which a member or member organization may effect transfers of positions to permit market participants to move positions from one account to another and to permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Cboe Rule 6.7.

Current Phlx Options 6, Section 5 lists the circumstances in which a member or member organization may transfer positions off the floor in any class of options listed on its books. The circumstances currently listed include: (1) the dissolution of a joint account in which the remaining member or member organization assumes the positions of the joint account; (2) the dissolution of a corporation or partnership in which a former nominee of that corporation or partnership assumes the positions; (3) positions transferred as part of a member or member organization's capital contribution to a new joint account, partnership, or corporation; (4) the donation of positions to a not-for-profit

³ See Securities and Exchange Act Release No. 88424 (March 19, 2020), 85 FR 16981 (March 25, 2020) (SR-Cboe-2019-035) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers).

corporation; (5) the transfer of positions to a minor under the Uniform Gifts to Minors Act; (6) a merger or acquisition resulting in a continuity of ownership or management; or (7) consolidation of accounts within a member or member organization.

The Exchange proposes to amend Options 6, Section 5(a) which currently provides, “A member or member organization may transfer positions off the floor in any class of options listed on its books if the transfer involves one or more of the following events....” The Exchange proposes to instead state, “Existing positions in options listed on the Exchange of a member or member organization or non-member or non-member organization that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves one or more of the following events....” The proposed rule text intends to clarify that Options 6, Section 5 does not apply to products other than options listed on the Exchange, consistent with the Exchange's other trading rules.⁴ This new rule text also clarifies that a member or member organization must be on at least one side of the transfer. The proposed rule change also clarifies that transferred positions must be on, from, or to the books of a Clearing Member. This language is consistent with how transfers are currently effected. The proposed rule change also clarifies that existing positions of a member or member organization or a non-member or non-member organization may be subject to a transfer, except under specified circumstances in which a transfer may only be effected for positions of a member or member organization.⁵

⁴ Proposed paragraph (h) also clarifies that the transfer procedure only applies to positions in options listed on the Exchange, and that transfers of non-Exchange-listed options and other financial instruments are not governed by Options 6, Section 5.

⁵ See proposed subparagraphs (a)(5) and (7).

The Exchange notes transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.⁶ Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (g) makes this clear in the rule.

The proposed rule change adds four events where an transfer would be permitted to occur.

- Proposed subparagraph (a)(1) permits an transfer to occur if it, pursuant to Options 9, Section 1 is an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error.

- Proposed subparagraph (a)(2) permits an transfer if it is a transfer of positions from one account to another account where there is no change in ownership involved (*i.e.*, the accounts are for the same Person⁷), provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements. The proposed rule change provides market participants with flexibility to maintain positions in accounts used for the same trading purpose in a manner consistent with their businesses. Such transfers are not intended to be transactions among different market participants, as there would be no change in ownership permitted under the provision, and would also not permit transfers among different trading units for which accounts are otherwise required to be maintained separately.⁸

⁶ See proposed paragraph (h).

⁷ The Exchange proposes to define the term “Person” within this proposed Rule 1058 as “For purposes of this rule, the term “Person” shall be defined as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.” This definition is identical to Cboe Rule 1.1.

⁸ Various rules (for example, Regulation SHO in certain circumstances) require accounts to be maintained separately, and the proposed rule change is consistent with those rules.

· Proposed subparagraph (a)(3) similarly permits an transfer if it is a consolidation of accounts⁹ where no change in ownership is involved.

· Proposed subparagraph (a)(10) permits an transfer if it is a transfer of positions through operation of law from death, bankruptcy, or otherwise. This provision is consistent with applicable laws, rules, and regulations that legally require transfers in certain circumstances. This proposed rule change is consistent with the purposes of other circumstances in the current rule, such as the transfer of positions to a minor or dissolution of a corporation.

The Exchange believes these proposed events have similar purposes as those in current Options 6, Section 5, which is to permit market participants to move positions from one account to another and to permit transfers upon the occurrence of significant, non-recurring events.¹⁰ As noted above, the proposed rule change is consistent with current Exchange guidance or rules of other self-regulatory organizations.

The proposed rule change renumbers current subparagraphs (a)(1) through (5) to be proposed subparagraphs (a)(5) through (9) and moves current subparagraph (a)(6) to proposed subparagraph (a)(3), with non-substantive changes.

Proposed Options 6, Section (b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment.¹¹ No position may net against another position (“netting”), and no position transfer may result in preferential margin or haircut treatment.¹² Netting occurs

⁹ This refers to the consolidation of entire accounts (e.g., combining two separate accounts (including the positions in each account into a single account)).

¹⁰ See proposed paragraph (g).

¹¹ See Phlx Options 6, Section 5(c).

¹² For example, positions may not transfer from a customer, joint back office, or firm account to a Market Maker account. However, positions may transfer from a Market Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

when long positions and short positions in the same series “offset” against each other, leaving no or a reduced position. For example, if a member or member organization wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the proposed Rule, the member or member organization could not transfer the offsetting series, as they would net against each other and close the positions.¹³

However, netting is permitted for transfers on behalf of a Market Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market Maker nominees are trading for the same member or member organization, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at the Clearing Corporation. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a “universal account”) at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market Maker may have a nominee with an appointment in class XYZ on Phlx, and have another nominee with an appointment in class XYZ on ISE, but due to account acronym naming conventions, those nominees may need to clear their transactions

¹³ See Cboe Rule 6.7(b).

into separate accounts (one for Phlx transactions and another for ISE transactions) at the Clearing Corporation rather into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market Maker's universal account in this circumstance to achieve this purpose.

Transfer Price

Currently Options 6, Section 5(c) provides, in part, that “members and member organizations must transfer positions pursuant to this Rule at the same prices that appear on the books of the transferring member or member organization, and the transfer must indicate the date when the original trade was made. In the course of transferring positions, no position shall net itself against another position.” The Exchange instead proposes to state within Options 6, Section 5(c) that the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which a transfer is effected may be: (1) the original trade prices of the positions that appear on the books of the trading Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading on the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date¹⁴; or (4) the then-current market price of the positions at the time the

¹⁴ For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

transfer is effected.¹⁵ The proposed rule text regarding permissible transfer prices provides market participants with flexibility to determine the transfer price at which the transfer may be effected. The Exchange proposes the four options noted above with respect to the transfer price.

This proposed rule change provides market participants that effect transactions with flexibility to select a transfer price based on circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Prior Written Notice

Current Phlx Options 6, Section 5(b) provides, “members and member organizations must notify the Exchange in writing prior to effecting an off the floor transfer. The written notification must indicate the positions to be transferred and the reason for the transfer.” Proposed Options 6, Section 5(d) requires a member or member organization and its Clearing Member (to the extent that the member or member organization is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an transfer from or to the account of a member or member organization(s).¹⁶ The notice must indicate: the Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under

¹⁵ See Cboe Rule 6.7(c).

¹⁶ This notice provision applies only to transfers involving a member’s or member organization’s positions and not to positions of non-member and non-member organization parties, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange.¹⁷ The proposed notice will continue to ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules. The proposed rule text requires additional information with respect to the prior written notification that is required to effect a transfer.

Additionally, requiring notice from the member or member organization(s) and its Clearing Member(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of an transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Section 10(b). Notwithstanding submission of written notice to the Exchange, member or member organizations and Clearing Members that effect transfers that do not conform to the requirements of proposed Section 10(b) will be subject to appropriate disciplinary action in accordance with the Rules.

Records

Current Phlx Rule at Options 6, Section 5(c) provides, in part, Each member or member organization that is a party to a transfer of positions must make and retain records stating the nature of the transaction, the name of the counter-party, and any other information required by the Exchange. Proposed Options 6, Section 5(e) requires each member or member organization and each Clearing Member that is a party to a transfer must make and retain records of the information provided in the written notice to

¹⁷ See Cboe Rule 6.7(d).

the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the member or member organization or Clearing Member provide.¹⁸ The records requirement is enhanced to require additional information that must be maintained by members, member organizations and each Clearing Member that is a party to a transfer.

Presidential Exemption

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the member or member organization (with respect to the member's or member organization's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer, the President or his or her designee, may permit an a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in

¹⁸ See Cboe Rule 6.7(e).

the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.¹⁹

Routine, Recurring Transfers

The Exchange proposes within Options 6, Section 5(g) that that the transfer procedure set forth in Options 6, Section 5 is intended to facilitate non-routine, nonrecurring movements of positions.²⁰ The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

Exchange-Listed Options

The Exchange proposes within Options 6, Section 5(h) notes that the transfer procedure set forth in Options 6, Section 5 is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.²¹

Updating Citations

The Exchange recently relocated its rules into a new Rulebook Shell.²² Certain rule citations within General 2, Section 4; Options 2, Section 6; Options 7, Section 4; Options 8, Section 28; Section 39, B-6 and C-2 were inadvertently not updated. The Exchange

¹⁹ See Cboe Rule 6.7(f).

²⁰ See Cboe Rule 6.7(g).

²¹ See Cboe Rule 6.7(h).

²² See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (“Phlx Rulebook Relocation Rule Change”).

proposes to update those citations and also remove an unnecessary header within General 9, Section 58.²³

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the Exchange believes the proposed transfer rule is consistent with the Section 6(b)(5)²⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

²³ The header “SUPPLEMENTARY INFORMATION REGARDING RULE 605” is unnecessary as the language which follows explains the text.

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ Id.

The Exchange believes that permitting the transfers in very limited circumstances, such as where there is no change in beneficial ownership, a transfer by operation of law or an adjustment or transfer in connection with the correction of a bona fide error, is reasonable to allow a member or member organization to accomplish certain goals efficiently. The Exchange currently permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations or mergers. For example, a member or member organization that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a member or member organization that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a member or member organization may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts – even if there is no change in beneficial ownership as a result of the transfer – is inconsistent with the purposes for which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (f) to proposed Options 6, Section 5 that the transfer of positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

The Exchange believes the proposed rule change benefits investors, as it adds transparency to the Rules. The purpose of the additional circumstances in which market participants may conduct transfers is consistent with the purpose of the circumstances

currently permitted in the proposed rule. Therefore, the proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will ensure the Exchange is able to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a-3 and 17a-4 under the Act.

Similar to Cboe Rule 6.7, the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(f) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the

Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. These standards within proposed Options 6, Section 5(f) are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within Options 6, Section 5(f) which are intended to protect investors and the general public. While Cboe grants an exemption to the President (or senior-level designee),²⁸ the Exchange has elected to grant an exemption to Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated with the organization as senior-level individuals.

Updating Citations

Updating rule citations and removing unnecessary text will bring greater clarity to the Rulebook.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose an undue burden on intra-market competition as the transfer procedure may be utilized by any

²⁸ See Cboe Rule 6.7(f).

member or member organization and the rule will apply uniformly to all members or member organizations. Use of the transfer procedure is voluntary, and all members or member organizations may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a member or member organization that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will ensure the Exchange is aware of transfers and would be able to monitor and review the transfers to ensure the transfer falls within the proposed rule.

Adopting an exemption, similar to Cboe Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to Options 6, Section 5(a) prohibition if, in his or her judgment, does not impose an undue burden on competition. Circumstances where, due to unusual or extraordinary circumstances such as the market value of the Person's positions would be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, would be taken into consideration in each case where, in the judgment of the Exchange's Chief Executive Officer or President (or senior-level designee), market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change will impose an undue burden on inter-market competition. The proposed position transfer procedure is not intended to be a competitive trading tool. The proposed rule change permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions. As provided for in proposed Options 6, Section 5(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(a) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Rule 6.7. The Exchange believes having similar rules related to transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

Updating Citations

The updates to the rule citations and removal of unnecessary rule text are non-substantive rule changes.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Members, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not Applicable.

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)²⁹ of the Act and Rule 19b-4(f)(6) thereunder³⁰ 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.

The Exchange's proposal does not significantly affect the protection of investors or the public interest because the proposed transfer rule is similar to Cboe Rule 6.7. The proposed rule permits transfers pursuant to proposed Options 6, Section 5 under limited circumstances for non-recurring situations where transfers may be achieved to facilitate non-recurring movements of positions. The Exchange's proposal does not impose any significant burden on competition because the transfer procedure may be utilized by any member or member organization and the rule will apply uniformly to all members or member organizations. Use of the transfer procedure is voluntary, and all members and member organizations may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied.

²⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁰ 17 CFR 240.19b-4(f)(6).

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 requests that the Commission waive the operative delay to permit the Exchange to amend its transfer rule similar to CBOE Rule 6.7. The Exchange believes adopting this rule will benefit investors and the general public because it will provide Members with the ability to request a transfer, for limited, non-recurring types of transfers, without the need for exposing those orders on the Exchange, similar to Cboe.³¹

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

This proposal is similar to CBOE Rule 6.7.

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

³¹ See CBOE Rule 6.7.

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2020-22)

April __, 2020

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 6, Section 5, titled Transfer of Positions

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 April 16, 2020, 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 Options 6, Section 5, titled “Transfer of Positions.” The Exchange also proposes to update certain citations.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Options 6, Section 5, titled "Transfer of Positions." The Exchange also proposes to update certain citations. This proposed rule would continue to permit market participants to move positions from one account to another without first exposure of the transaction on the Phlx. The proposed rule change is similar to Cboe Rule 6.7.³

Options 6, Section 5 specifies the circumstances under which a member or member organization may effect transfers of positions to permit market participants to move positions from one account to another and to permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Cboe Rule 6.7.

Current Phlx Options 6, Section 5 lists the circumstances in which a member or member organization may transfer positions off the floor in any class of options listed on its books. The circumstances currently listed include: (1) the dissolution of a joint account in which the remaining member or member organization assumes the positions of the joint account; (2) the dissolution of a corporation or partnership in which a former

³ See Securities and Exchange Act Release No. 88424 (March 19, 2020), 85 FR 16981 (March 25, 2020) (SR-Cboe-2019-035) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers).

nominee of that corporation or partnership assumes the positions; (3) positions transferred as part of a member or member organization's capital contribution to a new joint account, partnership, or corporation; (4) the donation of positions to a not-for-profit corporation; (5) the transfer of positions to a minor under the Uniform Gifts to Minors Act; (6) a merger or acquisition resulting in a continuity of ownership or management; or (7) consolidation of accounts within a member or member organization.

The Exchange proposes to amend Options 6, Section 5(a) which currently provides, “A member or member organization may transfer positions off the floor in any class of options listed on its books if the transfer involves one or more of the following events....” The Exchange proposes to instead state, “Existing positions in options listed on the Exchange of a member or member organization or non-member or non-member organization that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves one or more of the following events....” The proposed rule text intends to clarify that Options 6, Section 5 does not apply to products other than options listed on the Exchange, consistent with the Exchange's other trading rules.⁴ This new rule text also clarifies that a member or member organization must be on at least one side of the transfer. The proposed rule change also clarifies that transferred positions must be on, from, or to the books of a Clearing Member. This language is consistent with how transfers are currently effected. The proposed rule change also clarifies that existing positions of a member or member organization or a non-member or non-member organization may be subject to a transfer,

⁴ Proposed paragraph (h) also clarifies that the transfer procedure only applies to positions in options listed on the Exchange, and that transfers of non-Exchange-listed options and other financial instruments are not governed by Options 6, Section 5.

except under specified circumstances in which a transfer may only be effected for positions of a member or member organization.⁵

The Exchange notes transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.⁶ Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (g) makes this clear in the rule.

The proposed rule change adds four events where an transfer would be permitted to occur.

- Proposed subparagraph (a)(1) permits an transfer to occur if it, pursuant to Options 9, Section 1 is an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error.

- Proposed subparagraph (a)(2) permits an transfer if it is a transfer of positions from one account to another account where there is no change in ownership involved (*i.e.*, the accounts are for the same Person⁷), provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements. The proposed rule change provides market participants with flexibility to maintain positions in accounts used for the same trading purpose in a manner consistent with their businesses. Such transfers are not intended to be transactions among different market participants, as there would be no change in ownership permitted under the provision, and would also not

⁵ See proposed subparagraphs (a)(5) and (7).

⁶ See proposed paragraph (h).

⁷ The Exchange proposes to define the term “Person” within this proposed Rule 1058 as “For purposes of this rule, the term “Person” shall be defined as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.” This definition is identical to Cboe Rule 1.1.

permit transfers among different trading units for which accounts are otherwise required to be maintained separately.⁸

· Proposed subparagraph (a)(3) similarly permits an transfer if it is a consolidation of accounts⁹ where no change in ownership is involved.

· Proposed subparagraph (a)(10) permits an transfer if it is a transfer of positions through operation of law from death, bankruptcy, or otherwise. This provision is consistent with applicable laws, rules, and regulations that legally require transfers in certain circumstances. This proposed rule change is consistent with the purposes of other circumstances in the current rule, such as the transfer of positions to a minor or dissolution of a corporation.

The Exchange believes these proposed events have similar purposes as those in current Options 6, Section 5, which is to permit market participants to move positions from one account to another and to permit transfers upon the occurrence of significant, non-recurring events.¹⁰ As noted above, the proposed rule change is consistent with current Exchange guidance or rules of other self-regulatory organizations.

The proposed rule change renumbers current subparagraphs (a)(1) through (5) to be proposed subparagraphs (a)(5) through (9) and moves current subparagraph (a)(6) to proposed subparagraph (a)(3), with non-substantive changes.

Proposed Options 6, Section (b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment.¹¹ No position may net against another position (“netting”), and no

⁸ Various rules (for example, Regulation SHO in certain circumstances) require accounts to be maintained separately, and the proposed rule change is consistent with those rules.

⁹ This refers to the consolidation of entire accounts (e.g., combining two separate accounts (including the positions in each account into a single account)).

¹⁰ See proposed paragraph (g).

¹¹ See Phlx Options 6, Section 5(c).

position transfer may result in preferential margin or haircut treatment.¹² Netting occurs when long positions and short positions in the same series “offset” against each other, leaving no or a reduced position. For example, if a member or member organization wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the proposed Rule, the member or member organization could not transfer the offsetting series, as they would net against each other and close the positions.¹³

However, netting is permitted for transfers on behalf of a Market Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market Maker nominees are trading for the same member or member organization, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at the Clearing Corporation. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a “universal account”) at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing

¹² For example, positions may not transfer from a customer, joint back office, or firm account to a Market Maker account. However, positions may transfer from a Market Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

¹³ See Cboe Rule 6.7(b).

Corporation. A Market Maker may have a nominee with an appointment in class XYZ on Phlx, and have another nominee with an appointment in class XYZ on ISE, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Phlx transactions and another for ISE transactions) at the Clearing Corporation rather into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market Maker's universal account in this circumstance to achieve this purpose.

Transfer Price

Currently Options 6, Section 5(c) provides, in part, that “members and member organizations must transfer positions pursuant to this Rule at the same prices that appear on the books of the transferring member or member organization, and the transfer must indicate the date when the original trade was made. In the course of transferring positions, no position shall net itself against another position.” The Exchange instead proposes to state within Options 6, Section 5(c) that the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which a transfer is effected may be: (1) the original trade prices of the positions that appear on the books of the trading Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading on the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to

the transfer date¹⁴; or (4) the then-current market price of the positions at the time the transfer is effected.¹⁵ The proposed rule text regarding permissible transfer prices provides market participants with flexibility to determine the transfer price at which the transfer may be effected. The Exchange proposes the four options noted above with respect to the transfer price.

This proposed rule change provides market participants that effect transactions with flexibility to select a transfer price based on circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Prior Written Notice

Current Phlx Options 6, Section 5(b) provides, “members and member organizations must notify the Exchange in writing prior to effecting an off the floor transfer. The written notification must indicate the positions to be transferred and the reason for the transfer.” Proposed Options 6, Section 5(d) requires a member or member organization and its Clearing Member (to the extent that the member or member organization is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an transfer from or to the account of a member

¹⁴ For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

¹⁵ See Cboe Rule 6.7(c).

or member organization(s).¹⁶ The notice must indicate: the Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange.¹⁷ The proposed notice will continue to ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules. The proposed rule text requires additional information with respect to the prior written notification that is required to effect a transfer.

Additionally, requiring notice from the member or member organization(s) and its Clearing Member(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of an transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Section 10(b). Notwithstanding submission of written notice to the Exchange, member or member organizations and Clearing Members that effect transfers that do not conform to the requirements of proposed Section 10(b) will be subject to appropriate disciplinary action in accordance with the Rules.

¹⁶ This notice provision applies only to transfers involving a member's or member organization's positions and not to positions of non-member and non-member organization parties, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

¹⁷ See Cboe Rule 6.7(d).

Records

Current Phlx Rule at Options 6, Section 5(c) provides, in part, Each member or member organization that is a party to a transfer of positions must make and retain records stating the nature of the transaction, the name of the counter-party, and any other information required by the Exchange. Proposed Options 6, Section 5(e) requires each member or member organization and each Clearing Member that is a party to a transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the member or member organization or Clearing Member provide.¹⁸ The records requirement is enhanced to require additional information that must be maintained by members, member organizations and each Clearing Member that is a party to a transfer.

Presidential Exemption

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the member or member organization (with respect to the member's or member organization's positions) or a Clearing Member

¹⁸ See Cboe Rule 6.7(e).

(with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer, the President or his or her designee, may permit an a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.¹⁹

Routine, Recurring Transfers

The Exchange proposes within Options 6, Section 5(g) that that the transfer procedure set forth in Options 6, Section 5 is intended to facilitate non-routine, nonrecurring movements of positions.²⁰ The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

Exchange-Listed Options

The Exchange proposes within Options 6, Section 5(h) notes that the transfer procedure set forth in Options 6, Section 5 is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory

¹⁹ See Cboe Rule 6.7(f).

²⁰ See Cboe Rule 6.7(g).

organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.²¹

Updating Citations

The Exchange recently relocated its rules into a new Rulebook Shell.²² Certain rule citations within General 2, Section 4; Options 2, Section 6; Options 7, Section 4; Options 8, Section 28; Section 39, B-6 and C-2 were inadvertently not updated. The Exchange proposes to update those citations and also remove an unnecessary header within General 9, Section 58.²³

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the Exchange believes the proposed transfer rule is consistent with the Section 6(b)(5)²⁶ requirements that the rules of an exchange be designed to prevent

²¹ See Cboe Rule 6.7(h).

²² See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (“Phlx Rulebook Relocation Rule Change”).

²³ The header “SUPPLEMENTARY INFORMATION REGARDING RULE 605” is unnecessary as the language which follows explains the text.

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 15 U.S.C. 78f(b)(5).

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting the transfers in very limited circumstances, such as where there is no change in beneficial ownership, a transfer by operation of law or an adjustment or transfer in connection with the correction of a bona fide error, is reasonable to allow a member or member organization to accomplish certain goals efficiently. The Exchange currently permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations or mergers. For example, a member or member organization that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a member or member organization that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a member or member organization may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts – even if there is no change in beneficial

²⁷Id.

ownership as a result of the transfer – is inconsistent with the purposes for which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (f) to proposed Options 6, Section 5 that the transfer of positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

The Exchange believes the proposed rule change benefits investors, as it adds transparency to the Rules. The purpose of the additional circumstances in which market participants may conduct transfers is consistent with the purpose of the circumstances currently permitted in the proposed rule. Therefore, the proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will ensure the Exchange is able to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a-3 and 17a-4 under the Act.

Similar to Cboe Rule 6.7, the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would

consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(f) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. These standards within proposed Options 6, Section 5(f) are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within Options 6, Section 5(f) which are intended to protect investors and the general public. While Cboe grants an exemption to the President (or senior-level designee),²⁸ the Exchange has elected to grant an exemption to Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated with the organization as senior-level individuals.

²⁸ See Cboe Rule 6.7(f).

Updating Citations

Updating rule citations and removing unnecessary text will bring greater clarity to the Rulebook.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose an undue burden on intra-market competition as the transfer procedure may be utilized by any member or member organization and the rule will apply uniformly to all members or member organizations. Use of the transfer procedure is voluntary, and all members or member organizations may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a member or member organization that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will ensure the Exchange is aware of transfers and would be able to monitor and review the transfers to ensure the transfer falls within the proposed rule.

Adopting an exemption, similar to Cboe Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to

Options 6, Section 5(a) prohibition if, in his or her judgment, does not impose an undue burden on competition. Circumstances where, due to unusual or extraordinary circumstances such as the market value of the Person's positions would be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, would be taken into consideration in each case where, in the judgment of the Exchange's Chief Executive Officer or President (or senior-level designee), market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change will impose an undue burden on inter-market competition. The proposed position transfer procedure is not intended to be a competitive trading tool. The proposed rule change permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions. As provided for in proposed Options 6, Section 5(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(a) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Rule 6.7. The Exchange believes having similar rules related to transfer positions to those of other options exchanges will reduce the

administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

Updating Citations

The updates to the rule citations and removal of unnecessary rule text are non-substantive rule changes.

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 Act²⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.³⁰

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

²⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2020-22 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-2020-22. 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-2020-22 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.³¹

J. Matthew DeLesDernier
Assistant Secretary

³¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq PHLX LLC Rules

* * * * *

General 2 Organization and Administration

* * * * *

Section 4. Affiliation and Ownership Restrictions

* * * * *

(b) Restrictions on Affiliation

* * * * *

(ii) Nothing in this Rule shall prohibit, or require a filing under Section 19(b) of the Exchange Act, for:

(A) an Exchange member or member organization, or an affiliate of an Exchange member or member organization, acquiring or holding an equity interest in Nasdaq, Inc. that is permitted by the ownership limitations contained in [Rule 985]subparagraph (a), or

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General 9 Regulation

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Section 58. Advertisements, Market Letters, Research Reports and Sales Literature

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[SUPPLEMENTARY INFORMATION REGARDING RULE 605]

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Options 2 Options Market Participants

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Section 6. Market Maker Orders

(a) ROTs and Specialists may enter all order types defined in [Rule 1080]Options 3, Section 7(b) in the options classes to which they are appointed and non-appointed, except for Market Orders as provided in [Rule 1080]Options 3, Section 7(b)(1), Stop Orders as provided in [Rule 1080]Options 3, Section 7(b)(4), All-or-None Orders as provided in [Rule 1080]Options 3, Section 7(b)(5), Directed Orders as provided for in [Rule

1068]Options 2, Section 10, and Public Customer-to-Public Customer Cross Orders subject to [Rule 1087]Options 3, Section 13(a) and (f). The total number of contracts executed during a quarter by a ROT or Specialist in options series to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts executed by the ROT or Specialist in options series.

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Options 6 Options Trade Administration

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Section 5. Transfer of Positions

(a) Permissible Transfers. Existing positions in options listed on the Exchange of a member or member organization or non-member or non-member organization that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves one or more of the following events:

- (1) pursuant to Options 9, Section 1, an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;
- (2) the transfer of positions from one account to another account where no change in ownership is involved (i.e., accounts of the same Person, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;
- (3) the consolidation of accounts where no change in ownership is involved;
- (4) a merger, acquisition, consolidation, or similar non-recurring transaction for a Person;
- (5) the dissolution of a joint account in which the remaining member or member organization assumes the positions of the joint account;
- (6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;
- (7) positions transferred as part of a member or member organization's capital contribution to a new joint account, partnership, or corporation;
- (8) the donation of positions to a not-for-profit corporation;
- (9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or
- (10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.

For purposes of this rule, the term “Person” shall be defined as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

(b) Netting. Unless otherwise permitted by paragraph (f), when effecting a transfer pursuant to paragraph (a), no position may net against another position (“netting”), and no position transfer may result in preferential margin or haircut treatment.

(c) Transfer Price. The transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which a transfer is effected may be:

(1) the original trade prices of the positions that appear on the books of the transferring Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct errors under subparagraph (a)(1) must be transferred at the correct original trade prices;

(2) mark-to-market prices of the positions at the close of trading on the transfer date;

(3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date; or

(4) the then-current market price of the positions at the time the transfer is effected.

(d) Prior Written Notice. A member or member organization(s) and its Clearing Member(s) (to the extent that the member or member organization is not self-clearing) must submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting a transfer from or to the account(s) of a member or member organization(s), except that notification is not required for transfers to correct errors pursuant to subparagraph (a)(1) of this Rule.

(1) The notice must indicate (A) the Exchange-listed options positions to be transferred, (B) the nature of the transaction, (C) the enumerated provision(s) under paragraph (a) pursuant to which the positions are being transferred, (D) the name of the counterparty(ies), (E) the anticipated transfer date, (F) the method for determining the transfer price under paragraph (e) below, and (G) any other information requested by the Exchange.

(2) Receipt of notice of a transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of this Rule. Notwithstanding submission of written notice to Exchange, member or member organizations and Clearing Member that effect transfers that do not conform to the requirements of this Rule will be subject to appropriate disciplinary action in accordance with the Rules.

(e) Records. Each member or member organization and each Clearing Member that is a party to a transfer must make and retain records of the information provided in the notice to the

Exchange pursuant to subparagraph (d)(1), as well as information on (1) the actual Exchange-listed options transferred; (2) the actual transfer date; and (3) the actual transfer price (and the original trade dates, if applicable). The Exchange may also request the member or member organization Holder or Clearing Member to provide other information.

(f) *Presidential Exemptions.* In addition to the exemptions set forth in paragraph (a) of this Rule, the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this Rule, on his or her own motion or upon application of the member or member organization (with respect to the member or member organization's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members), when, in the judgment of the Chief Executive Officer or the President or his or her designee, allowing the transfer is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances, such as the possibility that the market value of the Person's positions will be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.

(g) *Routine, Recurring Transfers.* The transfer procedure set forth in this Rule is intended to facilitate non-routine, nonrecurring movements of positions. The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

(h) *Exchange-Listed Options.* The transfer procedure set forth in this Rule is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.

[(a) A member or member organization may transfer positions off the floor in any class of options listed on its books if the transfer involves one or more of the following events:

- (1) the dissolution of a joint account in which the remaining member or member organization assumes the positions of the joint account;
- (2) the dissolution of a corporation or partnership in which a former nominee of that corporation or partnership assumes the positions;
- (3) positions transferred as part of a member or member organization's capital contribution to a new joint account, partnership, or corporation;
- (4) the donation of positions to a not-for-profit corporation;
- (5) the transfer of positions to a minor under the Uniform Gifts to Minors Act;
- (6) a merger or acquisition resulting in a continuity of ownership or management; or

(7) consolidation of accounts within a member or member organization.

(b) Members and member organizations must notify the Exchange in writing prior to effecting an off the floor transfer. The written notification must indicate the positions to be transferred and the reason for the transfer.

(c) Members and member organizations must transfer positions pursuant to this Rule at the same prices that appear on the books of the transferring member or member organization, and the transfer must indicate the date when the original trade was made. In the course of transferring positions, no position shall net itself against another position. Each member or member organization that is a party to a transfer of positions must make and retain records stating the nature of the transaction, the name of the counter-party, and any other information required by the Exchange.]

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Options 7 Pricing Schedule

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Section 4. Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed)

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• QCC Transaction Fees for a Lead Market Maker, Market Maker, Firm and Broker- Dealer are \$0.20 per contract. Customers and Professionals are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e). A rebate, as specified in the below QCC Rebate Schedule, will be paid for all qualifying executed QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in [1064]Options 8, Section 30(e), except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional, (iii) Professional-to-Professional or (iv) a dividend, merger, short stock interest or reversal or conversion strategy execution (as defined in Options 7, Section 4).

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Options 8 Floor Trading

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Section 28. Responsibilities of Floor Brokers

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(e)(1) *Options Floor Based Management System*. In order to create an electronic audit trail for equity, equity index and U.S. dollar-settled foreign currency options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in

the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Based Management System ("FBMS") (as described in [Rule 1080]Options 3, Section 7(a)(i)(C)). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (i) the order type (i.e., Public Customer, firm, broker-dealer, Professional) and order receipt time; (ii) the option symbol; (iii) buy, sell, cross or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Option 8, Section 32; (v) number of contracts; (vi) limit price or market order or, in the case of a multi-leg order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position; and (viii) The Options Clearing Corporation ("OCC") clearing number of the broker-dealer that submitted the order (collectively, the "required information"). A Floor Broker must enter complete alpha/numeric identification assigned by the Exchange for all orders entered on behalf of Exchange Registered Option Traders. Any additional information with respect to the order shall be inputted into the Options Floor Based Management System contemporaneously upon receipt, which may occur after the representation and execution of the order. In the event of a malfunction in the Options Floor Based Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets also shall be time stamped upon the execution of such an order. Floor Brokers or their employees shall ensure the required information that is recorded on such trade tickets is entered into the Exchange's electronic trading system by DETs for inclusion in the electronic audit trail.

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Section 39. Option Minor Rule Violations and Order and Decorum Regulations

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B-6 Priority of Options Orders for Equity Options, Index Options and U.S. Dollar-Settled Foreign Currency Options by Account Type (EQUITY OPTION, INDEX OPTION AND U.S. DOLLAR-SETTLED FOREIGN CURRENCY OPTION ONLY)

Section A

Supplementary Material .02 and .03 to Options 8, Section 30 direct members in the establishment of priority of orders on the floor. An account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a broker-dealer. Customer accounts are all other accounts. Equity option, index option and U.S. dollar-settled foreign currency option orders of controlled accounts are required to yield priority to customer orders when competing at the same price, as described below. Orders of controlled accounts are not required to yield priority to other controlled account orders, except as provided in sub-paragraph (ii) below.

For the purposes of this Advice, "Initiating Order" means an incoming contra-side order.

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(ii) An Initiating Order executed manually by the Lead Market Maker shall be allocated as follows: first, to customer orders, and next to off-floor broker-dealer limit orders (as defined in [Rule 1080]Options 3, Section 7(b)(i)(C)) resting on the limit order book. This provision shall not apply to electronically executed contracts, the allocation of which is described in Section F of this Advice. "Remainder of the Order" means the portion of an Initiating Order that remains following the allocation of contracts to customers and to off-floor broker-dealers in accordance with this sub-paragraph (ii).

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Section F

Allocation of Automatically Executed Trades. After public customer market and marketable limit orders have been executed, trades automatically executed in such options shall be allocated among the Lead Market Maker and crowd participants with orders or quotations at the Exchange's disseminated price in the following manner:

(i) No change.

(ii) No change.

(A) No change.

(1) - (3) No change.

(4) If any contracts remain to be allocated after the Lead Market Maker, SQTs and non-SQT Floor Market Makers with limit orders on the limit order book have received their respective allocations, off-floor broker-dealers (as defined in [Rule 1080]Options 3, Section 7(b)(i)(C)) that have placed limit orders on the limit order book which represent the Exchange's disseminated price shall be entitled to receive a number of contracts that is the proportion of the aggregate size associated with off-floor broker-dealer limit orders on the limit order book at the disseminated price represented by the size of the limit order they have placed on the limit order book. Such off-floor broker-dealers shall not be entitled to receive a number of contracts that is greater than the size that is associated with each such limit order.

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C-2 Options Floor Based Management System

Options Floor Based Management System. In order to create an electronic audit trail for options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Based Management System (as described in [Rule 1080]Options 3, Section 7(a)(i)(C)). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (i) the order type (i.e., customer, firm, broker-dealer, professional, market

maker) and order receipt time; (ii) the option symbol; (iii) buy, sell, cross or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Options 8, Section 32; (v) number of contracts; (vi) limit price or Market Order or, in the case of a complex or multi-leg order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position; and (viii) The Options Clearing Corporation ("OCC") clearing number of the broker-dealer that submitted the order (collectively, the "required information"). A Floor Broker must enter complete alpha/numeric identification assigned by the Exchange for all orders entered on behalf of Exchange Registered Option Traders. Any additional information with respect to the order shall be inputted into the Options Floor Based Management System contemporaneously upon receipt, which may occur after the representation and execution of the order.

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