

Required fields are shown with yellow backgrounds and asterisks.

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

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
 Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**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 EFFS website.

**Form 19b-4 Information \***

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

**Exhibit 1 - Notice of Proposed Rule Change \***

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

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

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to modify Phlx Options 8, Section 28, “Responsibilities of Floor Brokers” and Section 30, “Crossing, Facilitation and Solicited Orders.”

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 November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

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

<sup>2</sup> 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

Phlx proposes to amend its Trading Floor rules at Options 8, Section 28, “Responsibilities of Floor Brokers” and Section 30, “Crossing, Facilitation and Solicited Orders” to permit Floor Brokers<sup>3</sup> to utilize the Options Floor Based Management System (“FBMS”),<sup>4</sup> remotely,<sup>5</sup> to enter certain orders that do not require exposure in open outcry. This proposal is intended to provide greater accessibility to Floor Brokers for the portion of their business which does not require the physical infrastructure afforded by the Trading Floor and allow member organizations to more efficiently staff their operations.

Background

Today, Phlx Rules provide a Business Continuity and Disaster Recovery Plan for its Trading Floor (“BCP”) which is described within Options 8, Section 26(g).<sup>6</sup> The

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<sup>3</sup> The term “Floor Broker” means an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders. See Options 8, Section 2(2).

<sup>4</sup> FBMS, an order management system, is the gateway for the electronic execution of equity, equity index and U.S. dollar-settled foreign currency option orders represented by Floor Brokers on the Exchange’s Options Floor. Floor Brokers 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 to FBMS, which creates an electronic audit trail. The execution of orders to Phlx’s electronic trading system also occurs via FBMS. The FBMS application is available on hand-held tablets and stationary desktops.

<sup>5</sup> Utilizing FBMS while not physically present on the Trading Floor would be considered remote access.

<sup>6</sup> Options 8, Section 26(g) provides:

(1) *Loss of Trading Floor.* If the physical location designated as the “Trading

Exchange may activate its business continuity and disaster recovery plans to maintain fair and orderly markets in the event of a System failure, disaster, or other unusual circumstance that may threaten the ability to conduct business on the Exchange. On March 17, 2019,<sup>7</sup> Phlx suspended open outcry trading as a result of precautions taken with respect to COVID-19. The Trading Floor re-opened on June 3, 2020.<sup>8</sup> During that period from March 17, 2019 to June 3, 2020, open outcry trading was unavailable.

At the time of the Phlx Trading Floor closure in March 2020, the Exchange permitted Floor Brokers, who otherwise had no means of trading on Phlx in an electronic environment, to utilize FBMS remotely, solely for the purpose of submitting limit orders to the electronic limit order book pursuant to Options 8, Section 28(g), or submitting a Floor Qualified Contingent Cross Order to the System pursuant to Options 8, Section 30(e).<sup>9</sup> Submitting a limit order to the electronic limit order book does not require exposure of that order in open outcry trading as the order is immediately exposed on the electronic limit order book. Similarly, a Floor Qualified Contingent Cross Order

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Floor” becomes unavailable, Phlx will enact its Business Continuity Plan and designate the Philadelphia Navy Yard as its “Back-Up Trading Floor.”

(2) *Back-up Trading Floor Unavailable.* In the event that the Back-Up Trading Floor becomes inoperable, the Exchange will only operate its electronic market and will not operate a Trading Floor. The Exchange will operate only its electronic market until the Exchange’s Trading Floor facility is operational. Open outcry trading will not be available in the interim.

(3) *Other Back-Up Trading Arrangements.* This Rule does not preclude the Exchange from conducting business, in the event the Trading Floor and Back-Up Trading Floor are rendered inoperable, pursuant to Options 4, Section 10.

<sup>7</sup> See Options Trader Alert #2020 – 07.

<sup>8</sup> See Options Trader Alert #2020 – 13.

<sup>9</sup> See Options Trader Alert #2020 – 8.

submitted to the System does not require exposure in open outcry as this order type is immediately executed upon entry to the System, provided the order complies with the provisions of Options 8, Section 30(e) and therefore a Floor Broker was not required to be present on the Trading Floor to transact these order types. Floor Brokers were not permitted to transact other order types within Options 3, Section 32 through FBMS during the floor closure. Phlx Surveillance staff surveilled Floor Qualified Contingent Cross Orders submitted through FBMS in real-time. Electronic limit orders must comply with automated System entry checks for compliance with Exchange rules.

When the Trading Floor reopened on June 3, 2020, the Exchange permitted each Trading Floor member organization to be represented on the Trading Floor. However, due to the social distancing measures that were put in place to comply with Commonwealth of Pennsylvania health standards as well as Nasdaq's safety measures designed to prevent the spread of COVID-19, not all members and employees associated with a Phlx member organization were able to return to the Trading Floor. Floor Brokers were permitted to continue remotely submitting the aforementioned orders through FBMS, due to the Exchange's inability to allow all Floor Members access to the physical Trading Floor.

#### Proposal

At this time, the Exchange proposes to amend Options 8, Section 28(g) and Options 8, Section 30(e) to continue to allow Floor Brokers the ability to submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System via FBMS remotely, notwithstanding the existence of BCP measures. Floor

Brokers may continue to submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System while on the Trading Floor.

Prior to permitting Floor Brokers to access FBMS remotely for the limited purpose of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System, the Exchange permitted Floor Brokers to submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System utilizing FBMS while on the Trading Floor.<sup>10</sup> Phlx Options 8 Trading Rules apply to members and member organizations engaging in to transact options transactions while physically located on the Trading Floor, including trading crowds.<sup>11</sup> The Options 8 Trading Rules do not permit options transactions to be submitted to the Trading Floor through FBMS remotely by Floor Brokers.<sup>12</sup> Today, Phlx utilizes its Business Continuity Plan to permit Floor Brokers to access the Exchange's System remotely, through FBMS, for the limited purpose of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System. Due to the social distancing measures that were put in place to comply with Commonwealth of Pennsylvania health standards as well as Nasdaq's safety measures designed to prevent the spread of COVID-19, not all members and employees associated with a Phlx member organization were able to return to the Trading Floor. This proposal would create an exception to the Options 8 Rules for a limited purpose.

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<sup>10</sup> See Options 8, Section 28(g) and 30(e).

<sup>11</sup> See Options 8, Section 1(a).

<sup>12</sup> See note 3 above, by definition Floor Brokers accept and handle options orders while on the Options Floor.

Today, Options 8, Section 28(g) permits a Floor Broker who wishes to place a limit order on the electronic limit order book to submit such a limit order electronically through FBMS. This capability exists to enable Floor Brokers to access electronic liquidity and/or to clear priority orders on the limit order book prior to transacting an order in the trading crowd through FBMS.<sup>13</sup> Placing limit orders on the order book does not require exposure in open outcry. The Exchange desires to permit Floor Brokers, by rule, the ability to continue to remotely submit limit orders to the electronic limit order book on a permanent basis. This would specifically allow Floor Brokers the ability to clear resting Customers orders from the limit order book for their customers in the event that a Customer order had priority on the limit order book that would otherwise prevent a Floor Qualified Contingent Cross Order from being entered in compliance with Options 8, Section 30(e).

Today, Options 8, Section 30(e) permits Floor Qualified Contingent Cross Orders to be submitted to the System by Floor Brokers on the Floor via FBMS. These orders are

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<sup>13</sup> See Securities Exchange Act Release No. 68960 (February 20, 2013), 78 FR 13132, 13134 (February 26, 2013) (SR-Phlx-2013-09) (Notice of Filing of Proposed Rule Change To Enhance the Functionality Offered on Its Options Floor Broker Management System (“FBMS”) by, Among Other Things, Automating Functions Currently Performed by Floor Brokers). This filing provided the following explanation, “For example, if a Floor Broker enters a two-sided order through the new FBMS and there is an order on the book at a price that prevents the Floor Broker's order from executing, FBMS will indicate to the Floor Broker how many contracts need to be satisfied before the Floor Broker's order can execute at the agreed-upon price. If the Floor Broker agrees to satisfy that order, consistent with the order placed in his care, he can cause FBMS to send a portion of one of his orders to Phlx XL to trade against the order on the book, thereby clearing it and permitting the remainder of the Floor Broker's order to trade. This functionality is optional in the sense that the Floor Broker can decide not to trade against the book, consistent with order instructions he has been given, and therefore not execute his two-sided order at that particular price.” Phlx XL refers to the electronic order book.



not required to be exposed in open outcry. In 2011, Phlx established a Floor Qualified Contingent Cross Order.<sup>14</sup> The proposal specifically provided that “... PHLX proposes to amend Rule 1064 to provide that a PHLX member effectuating a trade on the floor of the Exchange pursuant to the Regulation NMS Qualified Contingent Trade Exemption to Rule 611(a) (“QCT Exemption”) can cross the options legs of the trade on PHLX as a Floor QCC Order immediately upon entry and without order exposure if no Customer Orders exist on the Exchange’s order book at the same price. Floor QCC Orders will be electronically entered by a Floor Broker on the floor of the Exchange using the Floor Broker Management System and the execution will then be executed electronically. Only Floor Brokers will be permitted to enter Floor QCC Orders.”<sup>15</sup> The proposal specifically provided for a Floor Qualified Contingent Cross Order to be entered by Floor Brokers through FBMS while on the Trading Floor without order exposure. The filing further provides that “...it would be incorrect to say that the Floor QCC Order differs from the electronic QCC Order due to the Options Floor Broker’s presence on the Floor.”<sup>16</sup>

The Exchange’s proposal seeks to continue to permit Floor Brokers to enter both limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System through FBMS, albeit remotely, without amending the manner in which these orders, which require no order exposure, are handled by FBMS or the System.

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<sup>14</sup> See Securities Exchange Act Release No. 64415 (May 5, 2011), 76 FR 27732 (May 12, 2011) (SR-Phlx-2011-56) (Notice of Filing of Proposed Rule Change To Establish a Qualified Contingent Cross Order for Execution on the Floor of the Exchange).

<sup>15</sup> Id at 27732 and 27733.

<sup>16</sup> Id at 27733.

The Exchange believes that permitting Floor Brokers the ability to utilize FBMS remotely, for the limited purposes of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Order to the System, would allow Floor Brokers to conduct the portion of their business which does not require the infrastructure afforded by the Trading Floor remotely and, therefore, allow member organizations flexibility to more efficiently staff their operations. The ability to service certain orders, such as limit orders and Floor Qualified Contingent Cross Orders, which do not require open outcry exposure, is a relevant part of a Floor Broker's business. The Exchange is proposing to expand the ability of a member organization to conduct this limited portion of the Floor Broker business model to assist firms in being able to continuously operate this portion of their business, notwithstanding any closures or halts of the Trading Floor. Every Floor Broker must be registered with the Exchange pursuant to Options 8, Section 6 and would be assessed applicable fees provided for within Options 7. The Exchange notes that this proposal does not amend the manner in which fees or other pricing incentives, such as caps, apply to Floor Brokers. Any transaction originating from open outcry on the Trading Floor is considered a floor transaction. With offering FBMS remotely, the Exchange has not amended the manner in which fees are assessed or rebates are paid for purposes of Options 7 pricing to Floor Brokers. A limit order entered to the limit order book via FBMS was subject to electronic fees and rebates prior to the introduction of remote FBMS and that remains the case with the introduction of remote FBMS. These transactions are submitted to the electronic order book directly and are assessed the same fees and rebates as other limit orders submitted to the electronic order book. Also, the Exchange does not distinguish the manner in which it assesses pricing

for Floor Qualified Contingent Cross Orders or electronic Qualified Contingent Cross Orders. The pricing is the same regardless of the manner in which the Qualified Contingent Cross Order was submitted. The Exchange proposes to add a sentence to Options 7, Section 1 to define a floor transaction to add clarity to the manner in which floor based pricing is assessed. The Exchange proposes to add the following definition to Options 7, Section 1, “A ‘floor transaction’ is a transaction that is effected in open outcry on the Exchange’s Trading Floor.”

Finally, the Exchange represents that it has the proper security infrastructure in place to offer FBMS remotely and securely to Floor Brokers.

#### Technical Amendment

The Exchange proposes a technical amendment to Options 8, Section 1(a) to add the word “System” to the end of “Options Floor Based Management” within the first sentence to conform the manner in which the Exchange utilizes this term within Options 8.

#### b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> 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.

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

The Exchange's proposal to permit Floor Brokers the ability to utilize FBMS remotely, for the limited purposes of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Order to the System, is consistent with the Act. This proposal would allow member organizations to utilize their Floor Brokers, who may be located off the Trading Floor to conduct certain aspects of their business that do not require open outcry, remotely. Every Floor Broker would continue to be required to be registered with the Exchange pursuant to Options 8, Section 6 and would be assessed applicable fees provided for within Options 7.

Prior to permitting Floor Brokers to access FBMS remotely for the limited purpose of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System, the Exchange permitted Floor Brokers to submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Order to the System utilizing FBMS while on the Trading Floor.<sup>19</sup> Phlx Options 8 Trading Rules require members and member organizations to transact options transactions while physically located on the Trading Floor, including trading crowds.<sup>20</sup> The Options 8 Trading Rules do not permit options transactions to be submitted to the Trading Floor through FBMS remotely by Floor Brokers.<sup>21</sup> This proposal would create an exception to the Options 8 Rules to allow Floor Brokers to submit limit orders and Floor Qualified Contingent Cross Orders remotely through FBMS.

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<sup>19</sup> See Options 8, Section 28(g) and 30(e).

<sup>20</sup> See Options 8, Section 1(a).

<sup>21</sup> See note 3 above, by definition Floor Brokers accept and handle options orders while on the Options Floor.

Today, Options 8, Section 28(g) permits a Floor Broker who wishes to place a limit order on the electronic limit order book to submit such a limit order electronically through the FBMS. This capability exists to enable Floor Brokers to access electronic liquidity and/or to clear a priority orders on the limit order book prior to transacting an order in the trading crowd with the help of the FBMS.<sup>22</sup> Placing limit orders on the Order Book does not require exposure in open outcry. The Exchange desires to continue to grant this capability remotely to allow Floor Brokers the ability to continue to clear Customer orders on the limit order book for their customers in the event that a Customer order had priority on the limit order book and prevents a Floor Qualified Contingent Cross Order from being entered.

Today, Options 8, Section 30(e) permits Floor Qualified Contingent Cross Orders to be submitted to the System by Floor Brokers on the Floor via FBMS. These orders are not required to be exposed in open outcry. In 2011, Phlx established a Floor Qualified

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<sup>22</sup> See Securities Exchange Act Release No. 68960 (February 20, 2013), 78 FR 13132, 13134 (February 26, 2013) (SR-Phlx-2013-09) (Notice of Filing of Proposed Rule Change To Enhance the Functionality Offered on Its Options Floor Broker Management System (“FBMS”) by, Among Other Things, Automating Functions Currently Performed by Floor Brokers). This filing provided, “For example, if a Floor Broker enters a two-sided order through the new FBMS and there is an order on the book at a price that prevents the Floor Broker's order from executing, FBMS will indicate to the Floor Broker how many contracts need to be satisfied before the Floor Broker's order can execute at the agreed-upon price. If the Floor Broker agrees to satisfy that order, consistent with the order placed in his care, he can cause FBMS to send a portion of one of his orders to Phlx XL to trade against the order on the book, thereby clearing it and permitting the remainder of the Floor Broker's order to trade. This functionality is optional in the sense that the Floor Broker can decide not to trade against the book, consistent with order instructions he has been given, and therefore not execute his two-sided order at that particular price.”

Contingent Cross Order.<sup>23</sup> The proposal specifically provided for a Floor Qualified Contingent Cross Order to be entered by Floor Brokers through FBMS while on the Trading Floor without order exposure.

The Exchange's proposal seeks to continue to permit Floor Brokers to enter both limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System through FBMS, albeit remotely, without amending the manner in which these orders, which require no order exposure, are handled by FBMS or the System.

Floor Brokers are an essential part of the Trading Floor and their business is largely dependent on access to the physical Trading Floor and the ability of market participants to expose orders in open outcry. Floor Brokers service multiple customer segments and several subsets of order flow. Their largest customers are bank trading desks, inter-dealer brokerage desks, liquidity providers, and hedge funds. Each of these client types direct certain orders to Floor Brokers. Banks and inter-dealers primarily utilize Floor Brokers for manual handling of stock-tied Floor Qualified Contingent Cross Orders, complicated order structures with abnormal ratios (beyond 3:1 allowable electronically) and "cash spreads," where a notional trade value is negotiated and relayed to the trading crowd for participation. Banks also look to facilitate larger bank customer orders that exhibit considerable real-time risk. While Floor Brokers represent the bank side of these transactions, Floor Market Makers provide additional liquidity and efficiently perform the price discovery process through manual handling and exposure.

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<sup>23</sup> See Securities Exchange Act Release No. 64415 (May 5, 2011), 76 FR 27732 (May 12, 2011) (SR-Phlx-2011-56) (Notice of Filing of Proposed Rule Change To Establish a Qualified Contingent Cross Order for Execution on the Floor of the Exchange).

Inter-dealers will also utilize Floor Brokers for price discovery and additional sourcing of liquidity for larger orders where they need assistance. Finally, complicated strategy transactions are often represented by Floor Brokers. End-users are more inclined to use their services due to their expertise in order handling and knowledge of the trading ecosystem.

Notwithstanding the importance of Floor Brokers on the Exchange's Trading Floor, the ability to service other orders, such as limit orders and Floor Qualified Contingent Cross Orders, which do not require open outcry exposure, is a relevant part of a Floor Broker's business. The Exchange is proposing to expand the ability of a member organization to conduct this limited portion of the Floor Broker business model to assist firms in being able to continuously operate this portion of their business, notwithstanding any closures or halts of the Trading Floor.

The Exchange notes that a closure of the Trading Floor renders the Floor Broker business, which is largely reliant on open outcry trading, inoperable. The Exchange believes that this proposal is designed to protect investors and the public interest as a form of risk mitigation as the proposal would allow the portion of the Floor Broker business, which is not dependent on open outcry, to continue regardless of the status of the Trading Floor. Further, the proposal would allow member organizations to more efficiently staff their operations. For example, member organizations may utilize staff in other locations as the remote access removes the dependency on physical presence on the Trading Floor.

This proposal does not amend the manner in which fees or other pricing incentives, such as caps, apply to Floor Brokers. Any transaction originating from open

outcry on the Trading Floor is considered a floor transaction. With offering FBMS remotely, the Exchange has not amended the manner in which fees are assessed or rebates are paid for purposes of Options 7 pricing to Floor Brokers. A limit order entered to the limit order book via FBMS was subject to electronic fees and rebates prior to the introduction of remote FBMS and that remains the case with the introduction of remote FBMS. These transactions are submitted to the electronic order book directly and are assessed the same fees and rebates as other limit orders submitted to the electronic order book. Also, the Exchange does not distinguish the manner in which it assesses pricing for Floor Qualified Contingent Cross Orders or electronic Qualified Contingent Cross Orders. The pricing is the same regardless of the manner in which the Qualified Contingent Cross Order was submitted. Phlx Surveillance staff surveilled Floor Qualified Contingent Cross Orders submitted through FBMS in real-time. Electronic limit orders must comply with automated System entry checks for compliance with Exchange rules. Finally, the Exchange represents that it has the proper security infrastructure in place to offer FBMS remotely and securely to Floor Brokers.

#### Technical Amendment

The Exchange's proposal to amend Options 8, Section 1(a) to add the word "System" to the end of "Options Floor Based Management" within the first sentence is consistent with the Act as this term conforms the manner in which the Exchange utilizes the term "Options Floor Based Management System" throughout Options 8.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.



The Exchange's proposal to permit Floor Brokers the ability to utilize FBMS remotely, for the limited purposes of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Order to the System, does not impose an undue burden on competition. A Floor Broker, unlike a Market Maker, is mostly dependent on the infrastructure provided by a Trading Floor in order to operate its business model. Market Makers on the other hand may transact their business in either of the two models provide by Phlx, the Trading Floor or electronic model. Market Makers have the infrastructure to continue to conduct their business, even in the event of the closure of the Trading Floor, while Floor Brokers are mostly reliant on open outcry trading and this portion of their business is inoperable if open outcry is unavailable.

The Exchange's proposal seeks to provide greater accessibility to Floor Brokers for the portion of their business which does not require the infrastructure afforded by the Trading Floor while not amending the manner in which those orders are handled by either FBMS or the System. This proposal is competitive in that it allows Floor Brokers the ability to participate more continuously and efficiently on Phlx. All Floor Brokers have access to FBMS and therefore would be able to remotely submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System as well as continue to submit these types of orders while on the Trading Floor. Further, the Exchange believes that this proposal, which would allow member organizations to utilize their Floor Brokers, who may be located in other locations, to more efficiently staff their operations and also to conduct their business, even in the event of a closure of the Trading Floor.

Finally, this proposal does not amend the manner in which fees or other pricing incentives, such as caps, apply to Floor Brokers.

Technical Amendment

The Exchange's proposal to amend Options 8, Section 1(a) to add the word "System" to the end of "Options Floor Based Management" within the first sentence does not impose an undue burden on competition as this term conforms the manner in which the Exchange utilizes the term "Options Floor Based Management System" throughout Options 8.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not Applicable.

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)<sup>24</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>25</sup> 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.

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<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

The Exchange's proposal to permit Floor Brokers the ability to utilize FBMS remotely, for the limited purposes of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Order to the System does not significantly affect the protection of investors or the public interest, rather this proposal provides Floor Brokers greater accessibility to the portion of their business which does not require the infrastructure afforded by the Trading Floor and allows Floor Brokers the ability to participate more continuously and efficiently on Phlx. Prior to permitting Floor Brokers to access FBMS remotely for the limited purpose of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System, the Exchange permitted Floor Brokers to submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System utilizing FBMS while on the Trading Floor.<sup>26</sup> Phlx Options 8 Trading Rules require members and member organizations to transact options transactions while physically located on the Trading Floor, including trading crowds.<sup>27</sup> The Options 8 Trading Rules do not permit options transactions to be submitted to the Trading Floor through FBMS remotely by Floor Brokers.<sup>28</sup> This proposal would create an exception to the Options 8 Rules for a limited purpose. The Exchange's proposal seeks to continue to permit Floor Brokers to enter both limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System through FBMS, albeit remotely, without amending the manner in

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<sup>26</sup> See Options 8, Section 28(g) and 30(e).

<sup>27</sup> See Options 8, Section 1(a).

<sup>28</sup> See note 3 above, by definition Floor Brokers accept and handle options orders while on the Options Floor.

which these orders, which require no order exposure, are handled by FBMS or the System.

The Exchange's proposal to permit Floor Brokers the ability to utilize FBMS remotely, for the limited purposes of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Order to the System, does not impose any significant burden on competition. Market Makers have the infrastructure to continue to conduct their business, even in the event of the closure of the Trading Floor, while Floor Brokers are mostly reliant on open outcry trading and this portion of their business is inoperable if open outcry is unavailable. All Floor Brokers have access to FBMS and therefore would be able to remotely submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System as well as continue to submit these types of orders while on the Trading Floor. This proposal does not amend the manner in which fees or other pricing incentives, such as caps, apply to Floor Brokers. Since March 2020, the Exchange has permitted Floor Brokers to utilize FBMS remotely, solely for the purpose of submitting limit orders to the electronic limit order book and submitting Floor Qualified Contingent Cross Orders to the System. The Exchange has surveillance in place to monitor for violations of its rules. Phlx Surveillance staff continues to surveil Floor Qualified Contingent Cross Orders submitted through FBMS in real-time while electronic limit orders must continue to comply with automated System entry checks for compliance with Exchange rules. The Exchange notes that this framework has operated effectively since March 2020.

Furthermore, Rule 19b-4(f)(6)(iii)<sup>29</sup> requires a self-regulatory organization to give

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<sup>29</sup> 17 CFR 240.19b-4(f)(6)(iii).

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.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Rule text.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2021-02)

January \_\_, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Phlx Options 8, Section 28, “Responsibilities of Floor Brokers” and Section 30, “Crossing, Facilitation and Solicited Orders”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 4, 2021, 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 modify Phlx Options 8, Section 28, “Responsibilities of Floor Brokers” and Section 30, “Crossing, Facilitation and Solicited Orders.”

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

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

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

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

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

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

1. Purpose

Phlx proposes to amend its Trading Floor rules at Options 8, Section 28, "Responsibilities of Floor Brokers" and Section 30, "Crossing, Facilitation and Solicited Orders" to permit Floor Brokers<sup>3</sup> to utilize the Options Floor Based Management System ("FBMS"),<sup>4</sup> remotely,<sup>5</sup> to enter certain orders that do not require exposure in open outcry. This proposal is intended to provide greater accessibility to Floor Brokers for the portion of their business which does not require the physical infrastructure afforded by

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<sup>3</sup> The term "Floor Broker" means an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders. See Options 8, Section 2(2).

<sup>4</sup> FBMS, an order management system, is the gateway for the electronic execution of equity, equity index and U.S. dollar-settled foreign currency option orders represented by Floor Brokers on the Exchange's Options Floor. Floor Brokers 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 to FBMS, which creates an electronic audit trail. The execution of orders to Phlx's electronic trading system also occurs via FBMS. The FBMS application is available on hand-held tablets and stationary desktops.

<sup>5</sup> Utilizing FBMS while not physically present on the Trading Floor would be considered remote access.

the Trading Floor and allow member organizations to more efficiently staff their operations.

### Background

Today, Phlx Rules provide a Business Continuity and Disaster Recovery Plan for its Trading Floor (“BCP”) which is described within Options 8, Section 26(g).<sup>6</sup> The Exchange may activate its business continuity and disaster recovery plans to maintain fair and orderly markets in the event of a System failure, disaster, or other unusual circumstance that may threaten the ability to conduct business on the Exchange. On March 17, 2019,<sup>7</sup> Phlx suspended open outcry trading as a result of precautions taken with respect to COVID-19. The Trading Floor re-opened on June 3, 2020.<sup>8</sup> During that period from March 17, 2019 to June 3, 2020, open outcry trading was unavailable.

At the time of the Phlx Trading Floor closure in March 2020, the Exchange permitted Floor Brokers, who otherwise had no means of trading on Phlx in an electronic

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<sup>6</sup> Options 8, Section 26(g) provides:

(1) *Loss of Trading Floor.* If the physical location designated as the “Trading Floor” becomes unavailable, Phlx will enact its Business Continuity Plan and designate the Philadelphia Navy Yard as its “Back-Up Trading Floor.”

(2) *Back-up Trading Floor Unavailable.* In the event that the Back-Up Trading Floor becomes inoperable, the Exchange will only operate its electronic market and will not operate a Trading Floor. The Exchange will operate only its electronic market until the Exchange’s Trading Floor facility is operational. Open outcry trading will not be available in the interim.

(3) *Other Back-Up Trading Arrangements.* This Rule does not preclude the Exchange from conducting business, in the event the Trading Floor and Back-Up Trading Floor are rendered inoperable, pursuant to Options 4, Section 10.

<sup>7</sup> See Options Trader Alert #2020 – 07.

<sup>8</sup> See Options Trader Alert #2020 – 13.



environment, to utilize FBMS remotely, solely for the purpose of submitting limit orders to the electronic limit order book pursuant to Options 8, Section 28(g), or submitting a Floor Qualified Contingent Cross Order to the System pursuant to Options 8, Section 30(e).<sup>9</sup> Submitting a limit order to the electronic limit order book does not require exposure of that order in open outcry trading as the order is immediately exposed on the electronic limit order book. Similarly, a Floor Qualified Contingent Cross Order submitted to the System does not require exposure in open outcry as this order type is immediately executed upon entry to the System, provided the order complies with the provisions of Options 8, Section 30(e) and therefore a Floor Broker was not required to be present on the Trading Floor to transact these order types. Floor Brokers were not permitted to transact other order types within Options 3, Section 32 through FBMS during the floor closure. Phlx Surveillance staff surveilled Floor Qualified Contingent Cross Orders submitted through FBMS in real-time. Electronic limit orders must comply with automated System entry checks for compliance with Exchange rules.

When the Trading Floor reopened on June 3, 2020, the Exchange permitted each Trading Floor member organization to be represented on the Trading Floor. However, due to the social distancing measures that were put in place to comply with Commonwealth of Pennsylvania health standards as well as Nasdaq's safety measures designed to prevent the spread of COVID-19, not all members and employees associated with a Phlx member organization were able to return to the Trading Floor. Floor Brokers were permitted to continue remotely submitting the aforementioned orders through

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<sup>9</sup> See Options Trader Alert #2020 – 8.

FBMS, due to the Exchange's inability to allow all Floor Members access to the physical Trading Floor.

Proposal

At this time, the Exchange proposes to amend Options 8, Section 28(g) and Options 8, Section 30(e) to continue to allow Floor Brokers the ability to submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System via FBMS remotely, notwithstanding the existence of BCP measures. Floor Brokers may continue to submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System while on the Trading Floor.

Prior to permitting Floor Brokers to access FBMS remotely for the limited purpose of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System, the Exchange permitted Floor Brokers to submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System utilizing FBMS while on the Trading Floor.<sup>10</sup> Phlx Options 8 Trading Rules apply to members and member organizations engaging in to transact options transactions while physically located on the Trading Floor, including trading crowds.<sup>11</sup> The Options 8 Trading Rules do not permit options transactions to be submitted to the Trading Floor through FBMS remotely by Floor Brokers.<sup>12</sup> Today, Phlx utilizes its Business Continuity Plan to permit Floor Brokers to access the Exchange's

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<sup>10</sup> See Options 8, Section 28(g) and 30(e).

<sup>11</sup> See Options 8, Section 1(a).

<sup>12</sup> See note 3 above, by definition Floor Brokers accept and handle options orders while on the Options Floor.

System remotely, through FBMS, for the limited purpose of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System.

Due to the social distancing measures that were put in place to comply with Commonwealth of Pennsylvania health standards as well as Nasdaq's safety measures designed to prevent the spread of COVID-19, not all members and employees associated with a Phlx member organization were able to return to the Trading Floor. This proposal would create an exception to the Options 8 Rules for a limited purpose.

Today, Options 8, Section 28(g) permits a Floor Broker who wishes to place a limit order on the electronic limit order book to submit such a limit order electronically through FBMS. This capability exists to enable Floor Brokers to access electronic liquidity and/or to clear priority orders on the limit order book prior to transacting an order in the trading crowd through FBMS.<sup>13</sup> Placing limit orders on the order book does not require exposure in open outcry. The Exchange desires to permit Floor Brokers, by rule, the ability to continue to remotely submit limit orders to the electronic limit order

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<sup>13</sup> See Securities Exchange Act Release No. 68960 (February 20, 2013), 78 FR 13132, 13134 (February 26, 2013) (SR-Phlx-2013-09) (Notice of Filing of Proposed Rule Change To Enhance the Functionality Offered on Its Options Floor Broker Management System ("FBMS") by, Among Other Things, Automating Functions Currently Performed by Floor Brokers). This filing provided the following explanation, "For example, if a Floor Broker enters a two-sided order through the new FBMS and there is an order on the book at a price that prevents the Floor Broker's order from executing, FBMS will indicate to the Floor Broker how many contracts need to be satisfied before the Floor Broker's order can execute at the agreed-upon price. If the Floor Broker agrees to satisfy that order, consistent with the order placed in his care, he can cause FBMS to send a portion of one of his orders to Phlx XL to trade against the order on the book, thereby clearing it and permitting the remainder of the Floor Broker's order to trade. This functionality is optional in the sense that the Floor Broker can decide not to trade against the book, consistent with order instructions he has been given, and therefore not execute his two-sided order at that particular price." Phlx XL refers to the electronic order book.

book on a permanent basis. This would specifically allow Floor Brokers the ability to clear resting Customers orders from the limit order book for their customers in the event that a Customer order had priority on the limit order book that would otherwise prevent a Floor Qualified Contingent Cross Order from being entered in compliance with Options 8, Section 30(e).

Today, Options 8, Section 30(e) permits Floor Qualified Contingent Cross Orders to be submitted to the System by Floor Brokers on the Floor via FBMS. These orders are not required to be exposed in open outcry. In 2011, Phlx established a Floor Qualified Contingent Cross Order.<sup>14</sup> The proposal specifically provided that "... PHLX proposes to amend Rule 1064 to provide that a PHLX member effectuating a trade on the floor of the Exchange pursuant to the Regulation NMS Qualified Contingent Trade Exemption to Rule 611(a) ("QCT Exemption") can cross the options legs of the trade on PHLX as a Floor QCC Order immediately upon entry and without order exposure if no Customer Orders exist on the Exchange's order book at the same price. Floor QCC Orders will be electronically entered by a Floor Broker on the floor of the Exchange using the Floor Broker Management System and the execution will then be executed electronically. Only Floor Brokers will be permitted to enter Floor QCC Orders."<sup>15</sup> The proposal specifically provided for a Floor Qualified Contingent Cross Order to be entered by Floor Brokers through FBMS while on the Trading Floor without order exposure. The filing further

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<sup>14</sup> See Securities Exchange Act Release No. 64415 (May 5, 2011), 76 FR 27732 (May 12, 2011) (SR-Phlx-2011-56) (Notice of Filing of Proposed Rule Change To Establish a Qualified Contingent Cross Order for Execution on the Floor of the Exchange).

<sup>15</sup> Id at 27732 and 27733.

provides that "...it would be incorrect to say that the Floor QCC Order differs from the electronic QCC Order due to the Options Floor Broker's presence on the Floor."<sup>16</sup>

The Exchange's proposal seeks to continue to permit Floor Brokers to enter both limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System through FBMS, albeit remotely, without amending the manner in which these orders, which require no order exposure, are handled by FBMS or the System.

The Exchange believes that permitting Floor Brokers the ability to utilize FBMS remotely, for the limited purposes of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Order to the System, would allow Floor Brokers to conduct the portion of their business which does not require the infrastructure afforded by the Trading Floor remotely and, therefore, allow member organizations flexibility to more efficiently staff their operations. The ability to service certain orders, such as limit orders and Floor Qualified Contingent Cross Orders, which do not require open outcry exposure, is a relevant part of a Floor Broker's business. The Exchange is proposing to expand the ability of a member organization to conduct this limited portion of the Floor Broker business model to assist firms in being able to continuously operate this portion of their business, notwithstanding any closures or halts of the Trading Floor. Every Floor Broker must be registered with the Exchange pursuant to Options 8, Section 6 and would be assessed applicable fees provided for within Options 7. The Exchange notes that this proposal does not amend the manner in which fees or other pricing incentives, such as caps, apply to Floor Brokers. Any transaction originating from open

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<sup>16</sup> Id at 27733.

outcry on the Trading Floor is considered a floor transaction. With offering FBMS remotely, the Exchange has not amended the manner in which fees are assessed or rebates are paid for purposes of Options 7 pricing to Floor Brokers. A limit order entered to the limit order book via FBMS was subject to electronic fees and rebates prior to the introduction of remote FBMS and that remains the case with the introduction of remote FBMS. These transactions are submitted to the electronic order book directly and are assessed the same fees and rebates as other limit orders submitted to the electronic order book. Also, the Exchange does not distinguish the manner in which it assesses pricing for Floor Qualified Contingent Cross Orders or electronic Qualified Contingent Cross Orders. The pricing is the same regardless of the manner in which the Qualified Contingent Cross Order was submitted. The Exchange proposes to add a sentence to Options 7, Section 1 to define a floor transaction to add clarity to the manner in which floor based pricing is assessed. The Exchange proposes to add the following definition to Options 7, Section 1, “A ‘floor transaction’ is a transaction that is effected in open outcry on the Exchange’s Trading Floor.”

Finally, the Exchange represents that it has the proper security infrastructure in place to offer FBMS remotely and securely to Floor Brokers.

#### Technical Amendment

The Exchange proposes a technical amendment to Options 8, Section 1(a) to add the word “System” to the end of “Options Floor Based Management” within the first sentence to conform the manner in which the Exchange utilizes this term within Options 8.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> 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.

The Exchange's proposal to permit Floor Brokers the ability to utilize FBMS remotely, for the limited purposes of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Order to the System, is consistent with the Act. This proposal would allow member organizations to utilize their Floor Brokers, who may be located off the Trading Floor to conduct certain aspects of their business that do not require open outcry, remotely. Every Floor Broker would continue to be required to be registered with the Exchange pursuant to Options 8, Section 6 and would be assessed applicable fees provided for within Options 7.

Prior to permitting Floor Brokers to access FBMS remotely for the limited purpose of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System, the Exchange permitted Floor Brokers to submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Order to the System utilizing FBMS while on the Trading Floor.<sup>19</sup> Phlx Options 8 Trading Rules require members and member organizations to transact options

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> See Options 8, Section 28(g) and 30(e).

transactions while physically located on the Trading Floor, including trading crowds.<sup>20</sup>

The Options 8 Trading Rules do not permit options transactions to be submitted to the Trading Floor through FBMS remotely by Floor Brokers.<sup>21</sup> This proposal would create an exception to the Options 8 Rules to allow Floor Brokers to submit limit orders and Floor Qualified Contingent Cross Orders remotely through FBMS.

Today, Options 8, Section 28(g) permits a Floor Broker who wishes to place a limit order on the electronic limit order book to submit such a limit order electronically through the FBMS. This capability exists to enable Floor Brokers to access electronic liquidity and/or to clear a priority orders on the limit order book prior to transacting an order in the trading crowd with the help of the FBMS.<sup>22</sup> Placing limit orders on the Order Book does not require exposure in open outcry. The Exchange desires to continue to grant this capability remotely to allow Floor Brokers the ability to continue to clear

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<sup>20</sup> See Options 8, Section 1(a).

<sup>21</sup> See note 3 above, by definition Floor Brokers accept and handle options orders while on the Options Floor.

<sup>22</sup> See Securities Exchange Act Release No. 68960 (February 20, 2013), 78 FR 13132, 13134 (February 26, 2013) (SR-Phlx-2013-09) (Notice of Filing of Proposed Rule Change To Enhance the Functionality Offered on Its Options Floor Broker Management System (“FBMS”) by, Among Other Things, Automating Functions Currently Performed by Floor Brokers). This filing provided, “For example, if a Floor Broker enters a two-sided order through the new FBMS and there is an order on the book at a price that prevents the Floor Broker's order from executing, FBMS will indicate to the Floor Broker how many contracts need to be satisfied before the Floor Broker's order can execute at the agreed-upon price. If the Floor Broker agrees to satisfy that order, consistent with the order placed in his care, he can cause FBMS to send a portion of one of his orders to Phlx XL to trade against the order on the book, thereby clearing it and permitting the remainder of the Floor Broker's order to trade. This functionality is optional in the sense that the Floor Broker can decide not to trade against the book, consistent with order instructions he has been given, and therefore not execute his two-sided order at that particular price.”



Customer orders on the limit order book for their customers in the event that a Customer order had priority on the limit order book and prevents a Floor Qualified Contingent Cross Order from being entered.

Today, Options 8, Section 30(e) permits Floor Qualified Contingent Cross Orders to be submitted to the System by Floor Brokers on the Floor via FBMS. These orders are not required to be exposed in open outcry. In 2011, Phlx established a Floor Qualified Contingent Cross Order.<sup>23</sup> The proposal specifically provided for a Floor Qualified Contingent Cross Order to be entered by Floor Brokers through FBMS while on the Trading Floor without order exposure.

The Exchange's proposal seeks to continue to permit Floor Brokers to enter both limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System through FBMS, albeit remotely, without amending the manner in which these orders, which require no order exposure, are handled by FBMS or the System.

Floor Brokers are an essential part of the Trading Floor and their business is largely dependent on access to the physical Trading Floor and the ability of market participants to expose orders in open outcry. Floor Brokers service multiple customer segments and several subsets of order flow. Their largest customers are bank trading desks, inter-dealer brokerage desks, liquidity providers, and hedge funds. Each of these client types direct certain orders to Floor Brokers. Banks and inter-dealers primarily utilize Floor Brokers for manual handling of stock-tied Floor Qualified Contingent Cross

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<sup>23</sup> See Securities Exchange Act Release No. 64415 (May 5, 2011), 76 FR 27732 (May 12, 2011) (SR-Phlx-2011-56) (Notice of Filing of Proposed Rule Change To Establish a Qualified Contingent Cross Order for Execution on the Floor of the Exchange).

Orders, complicated order structures with abnormal ratios (beyond 3:1 allowable electronically) and “cash spreads,” where a notional trade value is negotiated and relayed to the trading crowd for participation. Banks also look to facilitate larger bank customer orders that exhibit considerable real-time risk. While Floor Brokers represent the bank side of these transactions, Floor Market Makers provide additional liquidity and efficiently perform the price discovery process through manual handling and exposure. Inter-dealers will also utilize Floor Brokers for price discovery and additional sourcing of liquidity for larger orders where they need assistance. Finally, complicated strategy transactions are often represented by Floor Brokers. End-users are more inclined to use their services due to their expertise in order handling and knowledge of the trading ecosystem.

Notwithstanding the importance of Floor Brokers on the Exchange’s Trading Floor, the ability to service other orders, such as limit orders and Floor Qualified Contingent Cross Orders, which do not require open outcry exposure, is a relevant part of a Floor Broker’s business. The Exchange is proposing to expand the ability of a member organization to conduct this limited portion of the Floor Broker business model to assist firms in being able to continuously operate this portion of their business, notwithstanding any closures or halts of the Trading Floor.

The Exchange notes that a closure of the Trading Floor renders the Floor Broker business, which is largely reliant on open outcry trading, inoperable. The Exchange believes that this proposal is designed to protect investors and the public interest as a form of risk mitigation as the proposal would allow the portion of the Floor Broker business, which is not dependent on open outcry, to continue regardless of the status of

the Trading Floor. Further, the proposal would allow member organizations to more efficiently staff their operations. For example, member organizations may utilize staff in other locations as the remote access removes the dependency on physical presence on the Trading Floor.

This proposal does not amend the manner in which fees or other pricing incentives, such as caps, apply to Floor Brokers. Any transaction originating from open outcry on the Trading Floor is considered a floor transaction. With offering FBMS remotely, the Exchange has not amended the manner in which fees are assessed or rebates are paid for purposes of Options 7 pricing to Floor Brokers. A limit order entered to the limit order book via FBMS was subject to electronic fees and rebates prior to the introduction of remote FBMS and that remains the case with the introduction of remote FBMS. These transactions are submitted to the electronic order book directly and are assessed the same fees and rebates as other limit orders submitted to the electronic order book. Also, the Exchange does not distinguish the manner in which it assesses pricing for Floor Qualified Contingent Cross Orders or electronic Qualified Contingent Cross Orders. The pricing is the same regardless of the manner in which the Qualified Contingent Cross Order was submitted. Phlx Surveillance staff surveilled Floor Qualified Contingent Cross Orders submitted through FBMS in real-time. Electronic limit orders must comply with automated System entry checks for compliance with Exchange rules. Finally, the Exchange represents that it has the proper security infrastructure in place to offer FBMS remotely and securely to Floor Brokers.

Technical Amendment

The Exchange's proposal to amend Options 8, Section 1(a) to add the word "System" to the end of "Options Floor Based Management" within the first sentence is consistent with the Act as this term conforms the manner in which the Exchange utilizes the term "Options Floor Based Management System" throughout Options 8.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange's proposal to permit Floor Brokers the ability to utilize FBMS remotely, for the limited purposes of submitting limit orders to the electronic limit order book and Floor Qualified Contingent Cross Order to the System, does not impose an undue burden on competition. A Floor Broker, unlike a Market Maker, is mostly dependent on the infrastructure provided by a Trading Floor in order to operate its business model. Market Makers on the other hand may transact their business in either of the two models provide by Phlx, the Trading Floor or electronic model. Market Makers have the infrastructure to continue to conduct their business, even in the event of the closure of the Trading Floor, while Floor Brokers are mostly reliant on open outcry trading and this portion of their business is inoperable if open outcry is unavailable.

The Exchange's proposal seeks to provide greater accessibility to Floor Brokers for the portion of their business which does not require the infrastructure afforded by the Trading Floor while not amending the manner in which those orders are handled by either FBMS or the System. This proposal is competitive in that it allows Floor Brokers the ability to participate more continuously and efficiently on Phlx. All Floor Brokers have

access to FBMS and therefore would be able to remotely submit limit orders to the electronic limit order book and Floor Qualified Contingent Cross Orders to the System as well as continue to submit these types of orders while on the Trading Floor. Further, the Exchange believes that this proposal, which would allow member organizations to utilize their Floor Brokers, who may be located in other locations, to more efficiently staff their operations and also to conduct their business, even in the event of a closure of the Trading Floor.

Finally, this proposal does not amend the manner in which fees or other pricing incentives, such as caps, apply to Floor Brokers.

#### Technical Amendment

The Exchange's proposal to amend Options 8, Section 1(a) to add the word "System" to the end of "Options Floor Based Management" within the first sentence does not impose an undue burden on competition as this term conforms the manner in which the Exchange utilizes the term "Options Floor Based Management System" throughout Options 8.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant

to Section 19(b)(3)(A)(iii) of the Act<sup>24</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>25</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2021-02 on the subject line.

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<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>25</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2021-02. 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-2021-02 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.<sup>26</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12).



**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**NASDAQ PHLX LLC Rules**

\* \* \* \* \*

**Options Rules**

\* \* \* \* \*

**Options 7 Pricing Schedule**

\* \* \* \* \*

**Section 1 General Provisions**

\* \* \* \* \*

For purposes of assessing options fees and paying rebates, the following references should serve as guidance.

The term "**Customer**" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(b)(45)).

The term "**Lead Market Maker**" applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Rule Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11.

The term "**Market Maker, SQT and RSQT**" applies to transactions for the accounts of Market Makers, Streaming Quote Traders ("SQTs"), and Remote Streaming Quote Traders ("RSQTs"). For purposes of the Pricing Schedule, the term "Market Maker" will be utilized to describe fees and rebates applicable to Market Makers, SQTs and RSQTs. RSQTs may also be referred to as Remote Market Markers ("RMMs").

The term "**Market Maker**" is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as on and Floor Market Makers.

The term "**Streaming Quote Trader**" is defined in Options 1, Section 1(b)(54) as a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

The term "**Remote Streaming Quote Trader**" is defined in Options 1, Section 1(b)(49) as a Market Maker that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or "RSQTO," which may also be referred to as a Remote Market Making Organization ("RMO"), is a member organization in good standing that satisfies the RSQTO readiness requirements in Options 2, Section 1(a).

The term "**Firm**" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

The term "**Professional**" applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(43) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

The term "**Broker-Dealer**" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

The term "**Joint Back Office**" or "**JBO**" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Options 6D, Section 1.

The term "**Common Ownership**" shall mean members or member organizations under 75% common ownership or control.

The term "**Non-Customer**" applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs.

A "**floor transaction**" is a transaction that is effected in open outcry on the Exchange's Trading Floor.

\* \* \* \* \*

## **Options 8 Floor Trading**

\* \* \* \* \*

## **General Provisions**

### **Section 1. Applicability.**

(a) The Options 8 Rules shall apply to Exchange options transactions by and among members and member organizations physically located on the Exchange's options trading floor, including the trading crowds, and shall govern all activity that occurs in the physical space designated by

the Exchange as "trading floor" as well as trading conducted through the Options Floor Based Management System. All executions that occur automatically within the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions ("System" or "Electronic System") shall be governed by all other Options Rules except for the Options 8 Rules.

(b) All Options Rules shall apply to Exchange Floor Trading, in addition to the Options 8 Rules, however where the Options 8 Rules disagree with another Options Rule not within Options 8 a conflict shall be resolved in favor of the Options 8 Rule as it applies to the Exchange Trading Floor.

\* \* \* \* \*

### **Section 28. Responsibilities of Floor Brokers**

(a) –(f) No change.

(g) A Floor Broker who wishes to place a limit order on the limit order book must submit such a limit order electronically through the Options Floor Based Management System. A Floor Broker does not have to be present on the Exchange's Trading Floor to submit a limit order to the limit order book. A Floor Broker may remotely submit a limit order electronically to the limit order book through the Options Floor Based Management System.

\* \* \* \* \*

### **Section 30. Crossing, Facilitation and Solicited Orders**

(a) – (d) No change.

(e) *Floor Qualified Contingent Cross*. A Floor Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in subsection (3) below, coupled with a contra-side order or orders totaling an equal number of contracts.

(1) Floor Qualified Contingent Cross Orders are immediately executed upon entry into the System by an Options Floor Broker provided that (i) no Public Customer Orders are at the same price on the Exchange's limit order book and (ii) the price is at or between the better of the PBBO and the NBBO.

(a) Floor Qualified Contingent Cross Orders shall be submitted into the System by Floor Brokers on the Floor or remotely via the Options Floor Based Management System. A Floor Broker does not have to be present on the Exchange's Trading Floor to submit a Floor Qualified Contingent Cross Order to the System. A Floor Broker may remotely submit a Floor Qualified Contingent Cross Order to the System through the Options Floor Based Management System.

- (b) Floor Qualified Contingent Cross Orders will be automatically cancelled if they cannot be executed.
  - (c) Floor Qualified Contingent Cross Orders may only be entered in the regular trading increments applicable to the options class under Options 3, Section 3.
- (2) Options Floor Brokers shall not enter Floor Qualified Contingent Cross Orders for their own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion. Options Floor Brokers must maintain books and records demonstrating that each Floor Qualified Contingent Cross Order was not entered for a prohibited account. Any Floor Qualified Contingent Cross Order that does not have a corresponding record required by this subsection shall be deemed to have been entered for a prohibited account in violation of this Rule.
- (3) The term "qualified contingent trade" shall have the same meaning set forth in Rule Options 3, Section 12(a)(3).

\* \* \* \* \*