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

File No. \* SR 2023 - \* 22

Amendment No. (req. for Amendments \*)

Filing by Nasdaq PHLX LLC

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

Initial \*

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Amendment \*

☐

Withdrawal

☐

Section 19(b)(2) \*

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Section 19(b)(3)(A) \*

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Section 19(b)(3)(B) \*

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Pilot

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Extension of Time Period for  
Commission Action \*

☐

Date Expires \*

Rule

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19b-4(f)(1)

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19b-4(f)(4)

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19b-4(f)(2)

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19b-4(f)(5)

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19b-4(f)(3)

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19b-4(f)(6)

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

Section 806(e)(1) \*

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Section 806(e)(2) \*

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

Section 3C(b)(2) \*

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Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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## Description

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

Amend Various Options 8 Rules

## Contact Information

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

First Name \*

Angela

Last Name \*

Dunn

Title \*

Principal Associate General Counsel

E-mail \*

Angela.Dunn@nasdaq.com

Telephone \*

(215) 496-5692

Fax

## Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq PHLX LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date

05/31/2023

(Title \*)

By

John Zecca

(Name \*)

EVP and Chief Legal Officer

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



Date: 2023.05.31  
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Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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SR-Phlx-2023-22 19b-4.doc

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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SR-Phlx-2023-22 Exhibit 1.doc

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 Advanced 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 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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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.

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Exhibit Sent As Paper Document

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

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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.

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Exhibit Sent As Paper Document

**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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SR-Phlx-2023-22 Exhibit 5.doc

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 amend certain rule text within Options 8 related to Phlx’s trading floor. Specifically, the Exchange proposes to amend Options 8, Section 26, Trading Halts, Business Continuity and Disaster Recovery; Options 8, Section 28, Responsibilities of Floor Brokers; Options 8, Section 29, Use of Floor Based Management System by Floor Market Makers and Lead Market Makers; Options 8, Section 30, Crossing, Facilitation and Solicited Orders; Options 8, Section 32, Types of Floor-Based (non-System) Orders; Options 8, Section 33, Accommodation Transactions; Options 8, Section 34, FLEX Index, Equity, and Currency Options; and Options 8, Section 39, Option Minor Rule Violations and Order and Decorum Regulations.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1.

(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 (the “Board”). Exchange staff

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

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

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

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 various rules within Options 8 related to Phlx's trading floor. Specifically, the Exchange proposes to amend Options 8, Section 26, Trading Halts, Business Continuity and Disaster Recovery; Options 8, Section 28, Responsibilities of Floor Brokers; Options 8, Section 29, Use of Floor Based Management System by Floor Market Makers and Lead Market Makers; Options 8, Section 30, Crossing, Facilitation and Solicited Orders; Options 8, Section 32, Types of Floor-Based (non-System) Orders; Options 8, Section 33, Accommodation Transactions; Options 8, Section 34, FLEX Index, Equity, and Currency Options; and Options. Each change will be discussed below.

Automation of FLEX and Cabinet Orders

Today, Phlx permits members and member organizations to transact FLEX Options<sup>3</sup> and Cabinet Orders<sup>4</sup> on its trading floor.

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<sup>3</sup> The term "FLEX option" means a FLEX option contract that is traded subject to Options 8, Section 34(a). The Exchange proposes to replace the term "FLEX option" with "FLEX Option" in the rule text.

<sup>4</sup> A "cabinet order" is a closing limit order at a price of \$1 per option contract for the account of a Public Customer, firm, Lead Market Maker or ROT. An opening

*FLEX Options*

FLEX Options provide investors with the ability to customize basic option features including expiration date, exercise style, and certain exercise prices. Phlx FLEX Options may be FLEX index, equity, or currency options. Today, Phlx FLEX Options transactions are exposed in open outcry on the trading floor similar to other options that trade on Phlx's trading floor. Today, the Requesting Member<sup>5</sup> initiates a Request-for-Quote ("RFQ") by submitting a ticket to Market Operations staff prior to requesting a quote in open outcry by announcing certain contract terms to the trading crowd of the non-FLEX option.<sup>6</sup> Members may enter, modify, or withdraw FLEX Quotes at any point during the Request Response Time,<sup>7</sup> which is currently set to two minutes, at the Market Operations post. At the expiration of the Request Response Time, the open outcry BBO is identified in accordance with the price and time priority principles set forth by the Exchange. Thereafter, on receipt of an RFQ in proper form, the assigned Lead Market

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order is not a "Cabinet Order" but may in certain cases be matched with a Cabinet Order pursuant to subsection (a)(iii) of Options 8, Section 33. Only Floor Brokers may represent Cabinet Orders. See Options 8, Section 33(a).

- <sup>5</sup> A Requesting Member is a member of the Exchange qualified to trade FLEX Options pursuant to Options 3, Section 34(d) who initiates an RFQ for a FLEX option. See Options 3, Section 34(b)(10).
- <sup>6</sup> The contract terms include: (1) underlying index, security or foreign currency; (2) type, size, and crossing intention; (3) in the case of FLEX index options and FLEX equity options, exercise style and settlement type; (4) expiration date; (5) exercise price; and (6) respecting index options, the settlement value. See Options 8, Section 34(c)(1).
- <sup>7</sup> The Request Response Time is the minimum period of time established by the Exchange, during which Exchange members participating in FLEX Options may provide FLEX Quotes in response to a Request for Quotes. See Options 8, Section 34 (b)(12).

Maker or the Requesting Member shall cause the terms of the RFQ to be disseminated as an administrative message through the Options Price Reporting Authority (“OPRA”).<sup>8</sup>

If the Requesting Member has not indicated an intention to cross or act as principal with respect to any part of the FLEX trade, the member shall promptly accept or reject the displayed BBO; provided, however, that if such a Requesting Member either rejects the BBO or is given a BBO for less than the entire size requested, all FLEX participating members other than the Requesting Member will have an opportunity during the BBO Improvement Interval in which to match, or improve, (as applicable), the BBO pursuant to Options 8, Section 34(c)(3). At the expiration of any such BBO Improvement Interval,<sup>9</sup> which is currently set to 15 seconds, the Requesting Member must promptly accept or reject the BBO(s). If the Requesting Member has indicated an intention to cross or act as principal with respect to any part of the FLEX trade, acceptance of the displayed BBO shall be automatically delayed until the expiration of the BBO Improvement Interval pursuant to Options 8, Section 34(c)(3). Prior to the BBO Improvement Interval, the Requesting Member must indicate at the post the price at which the member expects to trade. In these circumstances, the Requesting Member may participate with all other FLEX-participating members in attempting to improve or match the BBO during the BBO Improvement Interval pursuant to Options 8, Section 34(c)(3).

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<sup>8</sup> FLEX Quotes must be entered during the Request Response Time within Options 8, Section 34(b)(12) of 15 seconds. All FLEX Quotes may be entered, modified or withdrawn at any point during the request response time. See Options 8, Section 34(c)(2).

<sup>9</sup> The BBO Improvement Interval means the minimum period of time, to be established by the Exchange, during which members may submit FLEX Quotes to meet or improve the BBO established during the Request Response Time. See Options 8, Section 34(b)(15).

At expiration of the BBO Improvement Interval, the Requesting Member must promptly accept or reject the BBO(s) pursuant to Options 8, Section 34(c)(3). The Requesting Member has no obligation to accept any FLEX bid or offer pursuant to Options 8, Section 34(c)(3). Whenever, following the completion of FLEX bidding and offering responsive to a given RFQs, the Requesting Member rejects the BBO or the BBO size exceeds the FLEX transaction size indicated in the RFQs, members may accept the entire order or the unfilled balance of the BBO pursuant to Options 8, Section 34(c)(3). Once the FLEX Order is executed in open outcry, the FLEX trade is disseminated to OPRA by the Exchange pursuant to Options 8, Section 34(c)(6).

In contrast, as proposed, in order to transact a FLEX Order, a member would enter open outcry trading and announce one of each of the following terms<sup>10</sup> within subparagraph (f)(1).<sup>11</sup> Additionally, all other terms of a FLEX Option series, which are the same as those that apply to non-FLEX Options, must be included except that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option). Floor participants would have a reasonable amount of time (which amount of time must be between three seconds and

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<sup>10</sup> See proposed Options 8, Section 34(f)(1) which states, “Characteristics of Underlying Interest: (A) any index upon which options currently trade on the Exchange. The applicable index multiplier shall be the same multiplier, in the case of U.S. dollar-denominated FLEX index options, that applies to non-FLEX index options on the same underlying index; (B) any security which is options-eligible pursuant to Options 4, Section 3; or (C) any foreign currency which is options-eligible pursuant to Options 4, Section 3 and which underlies non-FLEX U.S. dollar-settled foreign currency options that are trading on the Exchange.”

<sup>11</sup> See proposed Options 8, Section 34(h).

five minutes) from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order (including announcing a crossing transaction pursuant to Options 8, Section 30(a)) to respond with bids or offers. This timeframe would be analogous to the RFQ Process which includes the BBO Improvement Interval. Today, an Options Exchange Official<sup>12</sup> would intervene if they believed that an appropriate amount of time was not allotted for the FLEX Order to trade. The Options Exchange Official would enforce the requirement that the amount of time must be at least three seconds and no more than five minutes based on the complexity of the trade and the responses in the trading crowd when determining if the time was reasonable. For example, based on the number of participants who indicate an interest to participate in the trade and the complexity of the trade, the Options Exchange Official would determine if there was an appropriate amount of time and require more time if necessary. Unlike the current process, an RFQ ticket would not be submitted to the Market Operations post and the RFQ would not be disseminated to OPRA. By contrast, quotes are not disseminated with respect to other trades in open outcry today. While a market participant could seek to participate in the trade by calling a floor broker after viewing the FLEX RFQ on OPRA, this is an uncommon scenario.<sup>13</sup> FLEX Orders, unlike standard orders, are less common

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<sup>12</sup> The term “Option Exchange Official” means an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. A list of individual Options Exchange Officials shall be displayed on the Exchange website. The Chief Regulatory Officer shall maintain the list of Options Exchange Officials and update the website each time a name is added to, or deleted from, the list of Options Exchange Officials. In the event no Options Exchange Official is available to rule on a particular matter, the Chief Regulatory Officer or his/her designee shall rule on such matter. See Options 1, Section 1(b)(38).

<sup>13</sup> See Options 3, Section 34(c)(1) and (2) which explains the RFQ Process to request a quotation and respond.



and the Exchange does not have a similar RFQ process for standard orders that are analogous to those FLEX Orders. This proposed process would align with Cboe, Inc.’s (“Cboe”) process and not require Phlx to disseminate quotes to OPRA while other options floor exchanges have no similar obligations.<sup>14</sup> The Exchange believes that the proposed process is analogous to the current process and provides market participants ample time to respond to requests for a market in a FLEX Order. As the foregoing process demonstrates, Phlx seeks to maintain a competitive trading floor through the administration of its rules which contain processes to ensure that options transactions are exposed in such a way as to permit other floor members an opportunity to participate in price discovery by requiring floor members to seek liquidity in open outcry.

The Exchange proposes several amendments to Options 8, Section 34. First, the Exchange proposes to require FLEX Orders to be reported into Phlx’s Options Floor Based Management System or “FBMS.” FBMS will create an electronic audit trail for FLEX Orders, thereby further automating the execution and reporting of FLEX Options. With this change, members and member organizations will be required to record all FLEX Orders represented in the trading crowd into FBMS.<sup>15</sup> Orders entered into FBMS will be executed based on market conditions at the time of execution and in accordance with Exchange rules. All executed contracts will be reported to OPRA and sent to The Options Clearing Corporation (“OCC”) for clearing, similar to all other equity, equity index and U.S. dollar-settled foreign currency options orders executed on the Exchange’s

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<sup>14</sup> Cboe does not disseminate via OPRA information respecting open outcry RFQs. See Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 at 308 (January 4, 2012) (SR-Cboe-2011-123).

<sup>15</sup> A FLEX Option series is only eligible for trading if the FLEX Order is represented in open outcry. See proposed Options 8, Section 34(h).

trading floor. Second, the Exchange proposes to remove its RFQ process including the BBO Improvement Interval Process, as explained above, with this rule change. Third, the Exchange proposes to reorganize Options 8, Section 34 to restructure its rule to include additional information which describes current FLEX trading on Phlx. The proposed amendments seek to reorganize Options 8, Section 34 so as to provide a greater amount of information concerning FLEX trading.

The Exchange proposes to add a new Options 8, Section 34(b) titled “Order Types” to address FLEX Order types. This proposed rule text memorializes the Exchange’s current practice as it relates to order types for FLEX trading. Specifically, the Exchange proposes to state that it may determine to make the order types and Time-in-Force, respectively, within Options 8, Section 32 submitted in FLEX Orders (“FLEX Orders”) available on a class or System basis. Options 8, Section 32 describes the order types available on the trading floor. Specifically, with respect to complex orders transacted on the trading floor, complex FLEX Orders may have up to the maximum number of legs permitted pursuant to Exchange rules for standard trading. Further, each leg of a complex FLEX Order: (1) must be for a FLEX Option series authorized for FLEX trading with the same underlying equity security or index; (2) must have the same exercise style (American or European); and (3) for a FLEX Index Option, may have a different settlement type (a.m.-settled or p.m.-settled), except each leg must have the same settlement type. Today, Options 8, Section 32 provides that the Exchange may determine to make certain order types and time-in-force, respectively, available on a class or System basis. The Exchange is proposing to add this same rule text within new Options 8, Section 34(b) with respect to FLEX Orders. Today, the Exchange may

determine which orders may apply to FLEX trading. The language concerning complex orders is intended to memorialize the manner in which complex orders may trade as FLEX. The proposed rule text explains the manner in which these orders trade today on Phlx. This proposed change is not intended to amend the Exchange's current practice, which is not currently described within the FLEX rules.

The Exchange proposes to relocate Options 8, Section 34(c)(8), concerning Trading Hours, to new Options 8, Section 34(c) without change. The Exchange proposes to add a new header re-titled "Trading Hours."

The Exchange proposes to relocate Options 8, Section 34(c)(7), concerning Trading Rotations, to new Options 8, Section 34(d) without change.

The Exchange proposes to adopt rule text similar to Cboe Rule 4.21(a),<sup>16</sup> which describes current permissible series for FLEX Options at new Options 8, Section 34(e). The proposed rule text would state that the Exchange may authorize for trading a FLEX Option class on any equity security or index it may authorize for trading a non-FLEX Option class on that equity security or index pursuant to Options 4, Section 3 and Options 4A, Section 3, respectively, even if the Exchange does not list that non-FLEX Option class for trading. FLEX Option series are not pre-established. A FLEX Option series is eligible for trading on the Exchange upon submission to the System of a FLEX Order for that series pursuant to Options 8, Section 34.

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<sup>16</sup> Unlike Cboe Rule 4.21(a), Phlx's subparagraph (e) does not address trading halts for FLEX Options. All options traded on Phlx are subject to Phlx's trading halt rule within Options 3, Section 9. Further, Cboe's rule does not describe intra-day halts.

FLEX Options would be subject to certain trading conditions, which exist today and are specified within current Options 8, Section 34(b)(6)(B).<sup>17</sup> The Exchange proposes to remove the rule text within Options 8, Section 34(b)(6)(B) related to the RFQ process, as explained below. As provided in current Options 8, Section 34(b)(6)(B), the Exchange only permits trading in a put or call FLEX Option series that does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX Option series on the same underlying security or index that is already available for trading. As provided in current Options 8, Section 34(b)(6)(B), this includes permitting trading in a FLEX Option series before a series with identical terms is listed for trading as a non-FLEX Option series. As provided in current Options 8, Section 34(b)(6)(B), if the Exchange lists for trading a non-FLEX Option series with identical terms as a FLEX Option series, the FLEX Option series will become fungible with the non-FLEX Option

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<sup>17</sup> Current Options 8, Section 34(b)(6)(B) states that provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options shall be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as non-FLEX Options that are already available for trading on the same underlying security or index. FLEX Options shall also be permitted before the options are listed for trading as non-FLEX Options. Once and if the option series are listed for trading as non-FLEX Options, then (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective non-FLEX option series, and (ii) any further trading in the series would be as non-FLEX Options subject to the non-FLEX trading procedures and Rules. However, in the event the Non-FLEX series is added intra-day, a position established under the FLEX trading procedures would be permitted to be closed using the FLEX trading procedures for the balance of the trading day on which the Non-FLEX series is added against another closing only FLEX position. For such FLEX series, the Exchange will make an announcement that the FLEX series is now restricted to closing transactions; a FLEX Request for Quotes (“RFQ”) may not be disseminated for any order representing a FLEX series having the same terms as a Non-FLEX series, unless such FLEX option order is a closing order (and it is the day the Non-FLEX series has been added); and only responses that close out an existing FLEX position are permitted. Any transactions in a restricted series that occur that do not conform to these requirements will be nullified by the Exchange.

series. As provided in current Options 8, Section 34(b)(6)(B), the System does not accept a FLEX Order for a put or call FLEX Option series if a non-FLEX Option series on the same underlying security or index with the same expiration date, exercise price, and exercise style is already listed for trading. Further, a FLEX Order for a FLEX Option series may be submitted on any trading day prior to the expiration date. The Exchange abides by these conditions today and proposes to enumerate them within its rules similar to Cboe. The proposed rule text explains the manner in which these orders trade today on Phlx. This proposed change is not intended to amend the Exchange's current practice.

Next, the Exchange proposes to add new rule text to proposed Options 8, Section 34(f) which provides that when submitting a FLEX Order for a FLEX Option series to FBMS, one of each of the terms within current Options 8, Section 34(b) must be included.<sup>18</sup> Options 8, Section 34(b) is being relocated to Options 8, Section 34(f)(1), therefore subparagraph (f)(1) is being referenced in the proposed rule text at Options 8, Section 34(f). The Characteristics of Underlying Interest include: (A) any index upon which options currently trade on the Exchange;<sup>19</sup> (B) any security which is options-eligible pursuant to Options 4, Section 3; or (C) any foreign currency which is options-eligible pursuant to Options 4, Section 3 and which underlies non-FLEX U.S. dollar-settled foreign currency options that are trading on the Exchange.<sup>20</sup> Further, the Exchange proposes to state within Options 8, Section 34(f) that all other terms of a FLEX

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<sup>18</sup> Such terms are described in proposed new Options 8, Section 34(f)(1), "Characteristics of Underlying Interest."

<sup>19</sup> The applicable index multiplier shall be the same multiplier, in the case of U.S. dollar-denominated FLEX index options, that applies to non-FLEX index options on the same underlying index.

<sup>20</sup> See current Options 8, Section 34(b).

Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series. This rule text represents the Exchange's current practice. The Exchange states that, to the extent the Exchange lists a micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.

As noted above, current Options 8, Section 34(b)(1) is being relocated to proposed Options 8, Section 34(f)(1) without substantive change. The Exchange proposes to amend the header to "Characteristics of Underlying Interest."

Current Options 8, Section 34(b)(2), concerning Type, is relocated to proposed Options 8, Section 34(f)(2)(A) without substantive change. An "A" is being added to the sentence.

Current Options 8, Section 34(b)(3), concerning Exercise Price, is relocated to proposed Options 8, Section 34(f)(3). The Exchange proposes to reword the current rule text which provides,

(A) with respect to FLEX index options, may be specified in terms of a specific index value number, a percentage of the index value calculated as of the open or close of trading on the Exchange on the trade date, or a method for fixing such number;

(B) with respect to FLEX equity options, may be specified in terms of a specific dollar amount rounded to the nearest \$.10 or a percentage of the underlying security rounded to the nearest minimum increment; or

(C) with respect to FLEX currency options, may be specified in terms of a specific dollar amount rounded to the nearest hundredth of a dollar.

The Exchange proposes to more succinctly state that the Exchange may determine the smallest increment for exercise prices of FLEX Options not to exceed two decimal places. Today, the Exchange has the ability to require that FLEX index options be specified by an index value, number, percentage of index value calculated as of the open or close of trading on the Exchange on the trade date, a method for fixing such number, in terms of a specific dollar amount rounded to the nearest \$.10 or a percentage of the underlying security rounded to the nearest minimum increment, or in terms of a specific dollar amount rounded to the nearest hundredth of a dollar. At this time, the Exchange proposes to narrow its discretion to provide that it may determine the smallest increment for exercise prices of FLEX Options, not to exceed two decimal places. The Exchange has this authority today, it is electing to narrow its authority to provide the increment in the form of a dollar value.

The Exchange proposes to remove the rule text within Options 8, Section 34(b)(4), related to the RFQ process, as explained below.

Current Options 8, Section 34(b)(5), concerning Exercise style, is relocated to proposed Options 8, Section 34(f)(4) without change.

Current Options 8, Section 34(b)(6)(A), concerning Expiration date style, is relocated to proposed Options 8, Section 34(f)(5) without change. The Exchange added rule text within proposed Options 8, Section 34(e)(1) similar to current Options 8, Section 34(b)(6)(B). The Exchange proposes to remove the rule text within Options 8, Section 34(b)(6)(B) related to the RFQ process, as explained below.

The Exchange proposes to remove the RFQ feature, including the BBO Improvement Interval, from its FLEX Options which process was described above in detail. With the automation of FLEX Options to enable FLEX to be entered into FBMS, similar to all other options transactions executed on the Exchange's trading floor including cabinet as explained below, the Exchange is disabling the RFQ feature, including the BBO Improvement Interval. The Exchange notes that Cboe removed its RFQ feature for FLEX Orders.<sup>21</sup> Similarly, Phlx proposes to remove its RFQ feature, including the BBO Improvement Interval.<sup>22</sup>

The Exchange believes the current open outcry RFQ process, including the BBO Improvement Interval, for FLEX Orders is substantially similar to the current open outcry process for non-FLEX Orders described within Options 8, Sections 22, 23, and 24 at Supplementary Material .01, and therefore believes completely aligning the two processes is appropriate.<sup>23</sup>

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<sup>21</sup> See Securities Exchange Act 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR-Cboe-2019-084) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Rules Regarding the Trading of Flexible Exchange Options, and Move Those Rules From the Currently Effective Rulebook to the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges).

<sup>22</sup> The Exchange notes that the minimum size requirements for an RFQ is also being removed within Options 8, Section 34(b)(8) as the Exchange would no longer have the RFQ process. The Exchange notes that one contract is the minimum size for options trading on Phlx and will remain the minimum size for FLEX Options trading on FLEX. See Options 3, Section 2.

<sup>23</sup> A Floor Broker may also initially represent an order to the trading crowd, and then receives bids or offers, as appropriate, and trade. However, this is an uncommon scenario. See Options 8, Section 28.



As noted herein, today, FLEX Quotes must be entered during the Request Response Time, which is currently set to two minutes. Phlx FLEX Options transactions are exposed in open outcry on the trading floor similar to other options that trade on Phlx's trading floor. Thereafter, during the BBO Improvement Interval, which is set to 15 seconds, floor members may submit FLEX Quotes to meet or improve the BBO established during the Request Response Time. The Exchange proposes within Options 3, Section 34(h) to provide floor participants with a reasonable amount of time to respond with bids and offers, which would be between three seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order. This time would include announcing a crossing transaction pursuant to Options 3, Section 30(a). The Exchange believes that the proposed rule text permits FLEX Options to trade substantially similar to the current RFQ process, including the BBO Improvement Interval, in which a Floor Broker requests a market and provides Market Makers in the crowd with time to respond with a market. The Exchange believes that eliminating the RFQ process, which is not contemplated in non-FLEX Option open outcry trading, would have minimal (if any) impact on how a Floor Broker may request a market on the Exchange's trading floor with respect to FLEX Options. The initial process permits members the ability to enter, modify or withdraw FLEX Quotes at the Market Operations post during the Request Response Time, which is currently set to two minutes, after a quote was requested in open outcry. The proposed new process would continue to permit members the opportunity to enter, modify or withdraw FLEX Quotes in open outcry, without the need to submit FLEX Quotes at the Market Operations Post. Further, with respect to the BBO Improvement Interval, members continue to have an

opportunity to match, or improve, (as applicable), the BBO. Today, the BBO Improvement Interval is 15 seconds. Members will also have the ability to cross any part of the FLEX trade pursuant to Options 8, Section 30(a)(2), as is the case today. The proposed timeframe of between three seconds and five minutes is appropriate to ensure there is at least a minimum amount of time for Market Makers to conduct the same activities that take place today with the RFQ process and the BBO Improvement Interval, given the unique terms of FLEX Options. Cboe Rule 5.72(d)(1) provides its floor participants the same timeframe to respond with bids and quotes as the Exchange's proposal.

Once a Floor Broker has received a market from the crowd, the Floor Broker may then represent its order on the trading floor in open outcry (after systematizing it, which it must do prior to representing an order on the trading floor) and elect to trade against the best prices or not, or announce an intention to cross at a specific price.<sup>24</sup> As discussed above, this is substantially similar to the current RFQ process, including the BBO Improvement Interval. Currently, the Exchange has set a crossing entitlement for facilitations and solicitations of FLEX Orders in all classes to be 40%.<sup>25</sup> The 40% crossing entitlement would apply to FLEX Orders as it applies today for all other

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<sup>24</sup> See current Options 8, Section 30 which describes procedures for crossing orders on the Exchange's trading floor.

<sup>25</sup> Current Supplementary Material .02(iii) to Options 8, Section 30 prescribes the percentage of the order which a Floor Broker is entitled to cross in equity, index and U.S dollar settled foreign currency options, after all Public Customer orders that were (1) on the limit order book and then (2) represented in the trading crowd at the time the market was established have been satisfied, is 40% of the remaining contracts in the order if the order is traded at or between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market.

crossing orders executed on the Exchange's trading floor. As provided for in proposed Options 8, Section 34(h), trading of FLEX Options is subject to all other Options 8 Rules applicable to the trading of options on the Exchange, unless otherwise provided in this Rule.

Current Options 8, Section 30(a) specifies that an Options Floor Broker who holds orders to buy and sell the same option series may cross such orders, must request bids and offers for such options series, and make all persons in the trading crowd aware of the request. Further, Options 8, Section 30(a) states that after providing an opportunity for such bids and offers to be made, the Floor Broker must bid and offer at prices differing by the minimum increment and must improve the market by bidding above the highest bid or offering below the lowest offer. If such higher bid or lower offer is not taken, the Floor Broker may cross the orders at such higher bid or lower offer by announcing in public outcry that he is crossing and giving the quantity and price. All such orders are not deemed executed until entered into and executed through the FBMS.<sup>26</sup> The Exchange believes the proposed rule change will have a minimal (if any) impact on the crossing of FLEX Orders in open outcry.

The proposed allocation is substantially similar to the allocation for non-FLEX trading in open outcry, excluding the provisions that are inapplicable to FLEX trading, and to the current allocation for FLEX trading in open outcry. With respect to allocation for a FLEX Order as well as non-FLEX Orders, best-priced responses will continue to have first priority, however if a Customer order were at the same price, the Customer

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<sup>26</sup> There is an exception where there is a provisional execution using the Snapshot feature of FBMS (as described in Options 8, Section 28(i)); bids and offers can be withdrawn pursuant to Options 8, Section 22(c) or (d).

would have priority over a non-Customer.<sup>27</sup> With respect to responses at the same price, because there is no electronic trading of FLEX Options on Phlx, there can be no priority Customer orders resting in the order book that would receive first priority at the same price. Therefore, the Customer priority rules of Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. Additionally, no Market Makers are appointed in FLEX Options, so there will be no participation entitlement applicable to FLEX trading. Therefore, the Market Maker entitlements described in Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. The crossing participation would continue to the next priority level in each of those respective rules. Therefore, members of the trading crowd who established the market will have priority over all other orders that were not represented in the trading crowd at the time that the market was established and will maintain priority over such orders except for orders that improve upon the market.<sup>28</sup> With respect to the order book, Defined Participation<sup>29</sup> shall be equal where size is the same, otherwise participants are allocated based on size.<sup>30</sup> Therefore, the proposed rule change will have minimal (if any) impact on the allocation of responses in open outcry trades of FLEX Orders.

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<sup>27</sup> See current Options 8, Section 25(a)(1) and Supplementary Material .02 of Options 8, Section 30.

<sup>28</sup> See Supplementary Material .02(vii) of Options 8, Section 30.

<sup>29</sup> “Defined Participation” is the portion of the Remainder of the Order to which a crowd participant is entitled. “Remainder of the Order” means the portion of an Initiating Order that remains following the allocation of contracts to customers that are on parity in accordance with Options 8, Section 25.

<sup>30</sup> See Options 8, Section 25(c)(3)(B).

This proposal simplifies the process pursuant to which FLEX Orders would execute on the Exchange in open outcry. As demonstrated above, the general open outcry trading rules are substantially similar to the current open outcry RFQ procedure, including the BBO Improvement Interval, for FLEX Options. However, the proposed rule change eliminates the terminology that applies only to FLEX trading. Floor participants are familiar with the general open outcry trading procedures, and therefore, by aligning the open outcry trading process for FLEX Options with that of non-FLEX Options, and permitting FLEX trading in the same manner as non-FLEX trading on the Exchange's trading floor, the Exchange believes the proposed rule change may encourage members to submit FLEX Orders for execution on Phlx.

In line with the Exchange's proposal to remove the RFQ process, including the BBO Improvement Interval, the Exchange proposes to delete Options 8, Section 34(b)(4), (b)(6)(B), (b)(7), (b)(8), (b)(10)-(15) and (c) which describe the RFQ process. Further, the Exchange proposes to systematize the FLEX Options trading process so that it mirrors the trading process of all other orders entered on the Exchange's trading floor whereby trades are reported to FBMS. To that end, the proposal will require a Floor Broker to systematize a FLEX Order in the same manner as Floor Brokers systematize non-FLEX Orders. The Exchange believes the proposed rule change will result in a more efficient open outcry trading process for FLEX Orders, as a Floor Broker can request a market as soon as it gets that request from a customer. This may ultimately result in more timely executions for customers. This new process would eliminate the requirement to submit an RFQ ticket to the Market Operations post and the requirement to respond to such order

at the Market Operations post.<sup>31</sup> The Exchange desires to remove these manual processes and, instead, permit all responses to take place in open outcry verbally, thereby obviating the need to submit paper responses at the trading post. The Exchange believes the proposed rule change may reduce confusion regarding how FLEX Orders may trade in open outcry, given that any minor differences between the two processes that exist today are being eliminated with the proposed automation.

The Exchange proposes to relocate Options 8, Section 34(b)(5), concerning Exercise Style, to Options 8, Section 34(f)(4) without change.

The Exchange proposes to relocate Options 8, Section 34(b)(6)(A), concerning Expiration Date, to Options 8, Section 34(f)(5) without change. The Exchange proposes to capitalize “Date” in the title. As noted above, the Exchange created a new Options 8, Section 34(e)(1) which incorporated provisions similar to those within Options 8, Section 34(b)(6)(B), except for rule text related to the RFQ process which is being deleted.

The Exchange proposes to relocate Options 8, Section 34(b)(9), concerning Settlement, to Options 8, Section 34(f)(6) and remove current subsection (iii).<sup>32</sup> The Exchange will only permit the settlement value to be specified as a.m.-settled or p.m.-settled. The Exchange will not permit the settlement value to be specified as the index value reported as an average over a specified time period.

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<sup>31</sup> The Exchange proposes to remove the rule text within Options 8, Section 26(g)(3)(F)(1)(d) which provides, “FLEX Trade tickets must be sent by email to the Phlx Correction Post,” because the process will require trades to be reported to FBMS.

<sup>32</sup> Current Options 8, Section 34(b)(9)(A)(iii) states, “respecting FLEX index options, the settlement value may be specified as the index value reported at the:... (iii) as an average over a specified period of time, within parameters established by the Exchange.”

The Exchange proposes to relocate Options 8, Section 34(d), which describes FLEX simple orders and FLEX Complex Orders, to Options 8, Section 34(g) without substantive change. The Exchange proposes to change references to the terms “ROT” and “Registered Options trader” within this rule text to “Market Maker” within proposed Options 8, Section 29(d) and Section 34(d) and (i). In 2020, the Exchange amended the term “ROT” to “Market Maker”<sup>33</sup> throughout the Phlx Rulebook.

The Exchange proposes to add a new Options 8, Section 34(h), similar to Cboe Rule 5.72(a) and (b), to describe FLEX Options trading. As is the case today, trading of FLEX Options is subject to all other Options 8 Rules applicable to the trading of options on the Exchange, unless otherwise provided in this Rule. Also, as is the case today, a FLEX Option series is only eligible for trading if the FLEX Order is represented in open outcry. With respect to simple FLEX Orders, a FLEX Order for a FLEX option series submitted to the System must include all terms for a FLEX option series set forth in subparagraphs (e) and (f) of Options 8, Section 34 (including that a non-FLEX option series with identical terms is not listed for trading), size, side of the market, and a bid or offer price, subject to the order entry requirements set forth in Options 8, Section 32. This proposed rule text represents the Exchange’s current practice. With respect to complex FLEX Orders, a FLEX Order for a FLEX option complex strategy submitted to the System must satisfy the criteria for a complex FLEX Order set forth in subparagraph (b) of Options 8, Section 34, and include size, side of the market, and a net debit or credit price. Additionally, each leg of the FLEX Option complex strategy must include all

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<sup>33</sup> See Securities Exchange Act 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03)(Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell) (“Rulebook Relocation”).

terms for a FLEX Option series set forth in subparagraphs (e) and (f) of Options 8, Section 34 (including that a non-FLEX Option series with identical terms is not listed for trading), subject to the order entry requirements set forth in subparagraph (a) of Options 8, Section 34. This proposed rule text represents the Exchange's current practice.

The Exchange proposes to relocate Options 8, Section 34(e), concerning Position Limits, to Options 8, Section 34(i). The Exchange proposes to update a rule citation to reflect the changes proposed herein with the reorganization of the rule to reflect the relocated rule text.

The Exchange proposes to relocate rule text within Options 8, Section 34(f), concerning Exercise Limits, to proposed Options 8, Section 34(j) without change.

Finally, the Exchange proposes to relocate rule text from Options 8, Section 34(g) and (h) into new Options 8, Section 26(g)(3)(F)(1)(d), Options 8, Section 34(k)(1) and (2) respectively, without substantive change.<sup>34</sup> The Exchange also proposes to update rule citations within this section to account for the reorganization of the rule to reflect the relocated rule text.

Finally, the Exchange proposes corresponding changes to reflect the proposed change to automate FLEX Options within Options 8, Section 28(f), Section 29(f), Section 32(g), Section 39, A-1, B-7, and C-2.

#### *Cabinet Options*

Cabinet Orders are bids and offers (whether opening or closing) at a price of \$1 per option contract for the account of a Public Customer, firm, Lead Market Maker, Market Maker or Floor Market Maker. Cabinet Orders may only be executed on the

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<sup>34</sup> The Exchange proposes to re-letter the remainder of that section to account for the removed rule text.



Exchange's trading floor in open outcry pursuant to Options 8 Rules.<sup>35</sup> Today, Phlx reports cabinet trades to OCC within 90 seconds.<sup>36</sup> Today, Floor Brokers must submit the designated cabinet transaction form to the Nasdaq Market Operations staff for clearance within ninety seconds of execution. Phlx then immediately reports the cabinet trade to OCC.

At this time, the Exchange proposes to require Cabinet Orders to be reported into FBMS. Similar to the proposal for FLEX Orders, FBMS will create an electronic audit trail for Cabinet Orders, thereby further automating the execution and reporting of Cabinet Orders. With this change, members and member organizations will be required to record all Cabinet Orders represented in the trading crowd into FBMS. All executed contracts will be reported to OPRA and sent to OCC for clearing similar to all other equity, equity index and U.S. dollar-settled foreign currency options orders executed on the Exchange's trading floor.

In line with this proposed change, the Exchange proposes to amend Options 8, Section 33(a)(2) to provide that Floor Brokers shall enter Cabinet Orders into The Options Floor Based Management System pursuant to Options 3, Section 29. The Exchange proposes to remove the verbiage in Options 8, Section 33 which relates to the use of Cabinet forms, which are part of the Exchange's manual process.

The Exchange proposes replacing the word "he" with "the Floor Broker" within Options 8, Section 33(a)(3)(A) to clarify which market participant was being referenced.

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<sup>35</sup> See Options 8, Section 33(a). Only Floor Brokers may represent Cabinet Orders.

<sup>36</sup> See Options 8, Section 33(a)(5).

In line with the proposed change, the Exchange proposes to amend Options 8, Section 33(a)(4) to specify that the Floor Broker must enter the Cabinet Order into FBMS.

The Exchange proposes to remove the rule text within Options 8, Section 33(d)(3) which relates to the use of forms which would no longer be relevant.

The Exchange proposes to update citations within Options 8, Section 33(e), which refer FLEX rules within Options 8, Section 34 which rules are being relocated. The updated citations mirror those changes proposed to new Options 8, Section 34(k)(2).

#### Technical Amendment

The Exchange proposes to amend rule citations within Options 8, Section 30(d) to correct references to subparagraphs, (i) and (ii) to properly cite (1) and (2), respectively.

#### Implementation

The Exchange proposes to implement this rule change on or before March 29, 2024. The Exchange will announce an implementation date by issuing an Options Trader Alert.

#### b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>37</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>38</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>37</sup> 15 U.S.C. 78f(b)

<sup>38</sup> 15 U.S.C. 78f(b)(5).

The Exchange's proposal to automate FLEX Order and Cabinet Orders, so that members and member organizations will be required to record all FLEX Orders and Cabinet Orders represented in the trading crowd into FBMS, is consistent with the Act. The Exchange believes removing the requirement for members and member organizations to manually enter FLEX Orders into the Exchange's electronic audit trail and submit manual Cabinet Order forms and, instead require members and member organizations to enter these orders into FBMS, similar to all other orders executed on the trading floor, will reduce the administrative burden on floor participants and therefore removes impediments to and perfects the mechanisms of a free and open market.

Also, because FLEX Orders and Cabinet Orders will be reported and processed like all other open outcry trades, market participants will not be impacted nor have to take on any additional reporting or processing burden. In addition, the Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because having an electronic audit trail of all FLEX Orders and Cabinet Orders will provide a complete and accurate record of these transactions and better facilitate regulatory oversight. In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest because the proposal more closely aligns the handling of FLEX Orders and Cabinet Orders with the handling of all other options transacted on Phlx's trading floor.

Specifically, with respect to FLEX Options, the proposed open outcry process is closely aligned with the current open outcry trading process for non-FLEX Options, but is still similar to the FLEX trading processes in place today. The proposed rule change

merely eliminates many of the differences between FLEX and non-FLEX trading to eliminate potential confusion for market participants given the current differences, while implementing trading processes with which market participants are more familiar. As a result, the Exchange believes the proposed rule change will have minimal impact on the trading of FLEX Options, and possibly increase participation in FLEX Options, which could add liquidity to the Exchange's FLEX market, which ultimately benefits investors. By permitting FLEX Options to trade in a manner similar to non-FLEX Options, the Exchange believes this further improves a comparable alternative to the OTC market in customized options. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

The Exchange believes the current open outcry RFQ process, including the BBO Improvement Interval, for FLEX Orders is substantially similar to the current open outcry process for non-FLEX Orders described within Options 8, Section 24 at Supplementary Material .01, and therefore believes completely aligning the two processes is appropriate. Phlx FLEX Options transactions are exposed in open outcry on the trading floor similar to other options that trade on Phlx's trading floor. Today, the initial process permits members the ability to enter, modify or withdraw FLEX Quotes at the Market Operations post during the Request Response Time, which is currently set to two minutes, after a quote was requested in open outcry. Thereafter, during the BBO Improvement Interval, which is set to 15 seconds, members may submit FLEX Quotes to meet or improve the

BBO established during the Request Response Time. The Exchange's proposal within Options 3, Section 34(h) to provide floor participants with a reasonable amount of time to respond with bids and offers is consistent with the Act. The proposed timeframe of between three seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order would allow FLEX Options to trade substantially similar to the current RFQ process, including the BBO Improvement Interval. The proposed new process would continue to permit members the opportunity to enter, modify or withdraw FLEX Quotes in open outcry, without the need to submit FLEX Quotes at the Market Operations Post. Members would continue to have an opportunity to match, or improve, (as applicable), the BBO as is the case today during the BBO Improvement Interval. With the proposal members would have the ability to cross any part of the FLEX trade pursuant to Options 8, Section 30(a)(2), as is the case today. The proposed timeframe of between three seconds and five minutes is appropriate to ensure there is at least a minimum amount of time for Market Makers to conduct the same activities that take place today with the RFQ process and the BBO Improvement Interval, given the unique terms of FLEX Options. The Exchange believes that eliminating the RFQ process, including the BBO Improvement Interval, which is not contemplated in non-FLEX Option open outcry trading, would have minimal (if any) impact on how a Floor Broker may request a market on the Exchange's trading floor with respect to FLEX Options. The Exchange believes it is appropriate to continue to ensure there is at least a minimum amount of time for Market Makers to respond give the unique terms of FLEX Options.

The proposed timeframe, which is analogous to the RFQ Process which includes the BBO Improvement Interval, is consistent with the Act and removes impediments to and perfects the mechanism of a free and open market by creating an appropriate timeframe to seek liquidity. Today, an Options Exchange Official would intervene if they believed that an appropriate amount of time was not allotted for the FLEX Order to trade. The Options Exchange Official would enforce the requirement that the amount of time must be at least three seconds and no more than five minutes based on the complexity of the trade and the responses in the trading crowd when determining if the time was reasonable. For example, based on the number of participants who indicate an interest to participate in the trade and the complexity of the trade, the Options Exchange Official would determine if there was an appropriate amount of time and require more time if necessary. Unlike the current process, an RFQ ticket would not be submitted to the Market Operations post and the RFQ would not be disseminated to OPRA.

Additionally, the Exchange would no longer disseminate RFQ Quotes to OPRA as part of this proposal. The Exchange believes that not disseminating RFQ Quotes is consistent with the Act and removes impediments to and perfects the mechanism of a free and open market by aligning the process to transact FLEX Orders with the current process to transact other orders in open outcry. By contrast, quotes are not disseminated with respect to other trades in open outcry today. While a market participant could seek to participate in the trade by calling a floor broker after viewing the RFQ on OPRA, this is an uncommon scenario. The Exchange notes that the RFQ message has not provided any additional liquidity under the current process for FLEX Orders. Today, the RFQ message for FLEX Orders is the only administrative message disseminated to OPRA on

the Exchange's trading floor. The Exchange does not otherwise disseminate an administrative message for other transactions on the Exchange's trading floor; only executed orders are disseminated to OPRA for non-FLEX Orders on the trading floor and for electronic transactions on Phlx. The Exchange believes that the open outcry process will continue to provide a competitive market for FLEX Orders and that the proposed process will provide an opportunity for the trading crowd to provide liquidity. FLEX Orders, unlike standard orders, are less common and the Exchange does not have a similar RFQ process for standard orders that are analogous to those FLEX Orders. This proposed process would align with Cboe's process and not require Phlx to disseminate quotes to OPRA while other options floor exchanges have no similar obligations.<sup>39</sup>

The proposed allocation is substantially similar to the allocation for non-FLEX trading in open outcry, excluding the provisions that are inapplicable to FLEX trading, and to the current allocation for FLEX trading in open outcry. With respect to allocation for a FLEX Order as well as non-FLEX Orders, best-priced responses will continue to have first priority, however if a Customer order were at the same price, the Customer would have priority over a non-Customer.<sup>40</sup> With respect to responses at the same price, because there is no electronic trading of FLEX Options on Phlx, there can be no priority Customer orders resting in the order book that would receive first priority at the same price. Therefore, the Customer priority rules of Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. Additionally, no Market Makers

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<sup>39</sup> Cboe does not disseminate via OPRA information respecting open outcry RFQs. See Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 at 308 (January 4, 2012) (SR-Cboe-2011-123).

<sup>40</sup> See current Options 8, Section 25(a)(1) and Supplementary Material .02 of Options 8, Section 30.

are appointed in FLEX Options, so there will be no participation entitlement applicable to FLEX trading. Therefore, the Market Maker entitlements described in Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. The crossing participation would continue to the next priority level in each of those respective rules. Therefore, members of the trading crowd who established the market will have priority over all other orders that were not represented in the trading crowd at the time that the market was established and will maintain priority over such orders except for orders that improve upon the market.<sup>41</sup> With respect to the order book, Defined Participation shall be equal where size is the same, otherwise participants are allocated based on size.<sup>42</sup> Therefore, the proposed rule change will have minimal (if any) impact on the allocation of responses in open outcry trades of FLEX Orders.

The Exchange's proposal to reword rule text concerning Exercise Price located within proposed Options 8, Section 34(f)(3) is consistent with the Act and does not expand the Exchange's current discretion. Today, the Exchange has the ability to require that FLEX index options be specified by an index value, number, percentage of index value calculated as of the open or close of trading on the Exchange on the trade date, a method for fixing such number, in terms of a specific dollar amount rounded to the nearest \$.10 or a percentage of the underlying security rounded to the nearest minimum increment, or in terms of a specific dollar amount rounded to the nearest hundredth of a dollar. In fact, the proposal narrows the Exchange's discretion to provide that it may determine the smallest increment for exercise prices of FLEX Options, not to exceed two

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<sup>41</sup> See Supplementary Material .02(vii) of Options 8, Section 30.

<sup>42</sup> See Options 8, Section 25(c)(3)(B).



decimal places. The Exchange has this authority today, it is electing to narrow its authority to provide the increment in the form of a dollar value. The proposal protects investors and the public interest by amending the rule text within proposed Options 8, Section 34(f)(3) to succinctly define the bounds of the Exchange's discretion.

The Exchange's proposal to amend Options 8, Section 34(f) to provide that all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series is consistent with the Act. The Exchange states that, to the extent the Exchange lists a micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.

The proposal eliminates the terminology that applies only to FLEX trading. Floor participants are familiar with the general open outcry trading procedures, and therefore, by aligning the open outcry trading process for FLEX Options with that of non-FLEX Options, and permitting FLEX trading in the same manner as non-FLEX trading on the Exchange's trading floor, the Exchange believes the proposed rule change may encourage members to submit FLEX Orders for execution on Phlx. The Exchange believes the proposed rule change may reduce confusion regarding how FLEX Orders may trade in open outcry, given that any minor differences between the two processes that exist today

are being eliminated. The Exchange believes that, with this proposal, floor participants will have the necessary time to respond in open with markets to FLEX Orders, similar to other Non-FLEX Orders which are transacted in open outcry.

The Exchange believes the proposed rule change will permit executions of FLEX Orders to continue to be completed in a timely fashion, while providing the crowd with sufficient time to price the unique terms of FLEX Options. The proposed amendments will enable floor participants to compete vigorously and potentially provide price improvement for FLEX Orders, as they do for non-FLEX Orders, as they will be encouraged to submit their best-priced bids and offers during the auctions to have the opportunity to execute against the FLEX Order.

Finally, reorganizing the FLEX rules and adding greater specificity to the rule will provide market participants with greater information on FLEX Options which removes impediments to and perfect the mechanism of a free and open market. The organization of the Options 8, Section 34 is intended to provide floor participants with greater information which represents the manner in which FLEX Options are transacted today on Phlx.

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

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

The Exchange's proposal to automate FLEX Orders and Cabinet Orders does not impose an undue burden on intra-market competition because FLEX Orders and Cabinet Orders will be reported and processed similar to all other open outcry trades. Further,

market participants will not be impacted by this proposal. Members will not have additional reporting or processing burdens as a result of the proposal.

The proposed amendments to FLEX Options do not impose an undue burden on inter-market competition as the Exchange seeks to automate its current FLEX and Cabinet processes. The removal of the RFQ Process, including the BBO Improvement Interval, is similar to Cboe.<sup>43</sup>

Furthermore, with respect to the amendments to FLEX Options, the Exchange does not believe that the proposed rule change will impose any burden on competition because the proposed open outcry process is closely aligned with the current open outcry trading process for non-FLEX Options. The proposed process continues to be similar to the FLEX trading processes in place today. The proposed rule change merely eliminates many of the differences between FLEX and non-FLEX trading, which removes potential confusion for market participants given the current differences, while implementing trading processes with which market participants are more familiar. As a result, the Exchange believes the proposed rule change will have minimal impact on the trading of FLEX Options, and possibly increase participation in FLEX Options, which could add liquidity to the Exchange's FLEX market, which ultimately benefits investors. Any member or member organization may transact FLEX Options.

Eliminating the RFQ Process and the BBO Improvement Interval in favor of a reasonable timeframe of between three seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order to respond with bids or offers does not impose an undue burden on competition. The proposed

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<sup>43</sup> See supra note 21.

timeframe, which is analogous to the RFQ Process which includes the BBO Improvement Interval, creates an appropriate timeframe to seek liquidity. Today, an Options Exchange Official would intervene if they believed that an appropriate amount of time was not allotted for the FLEX Order to trade. Based on the number of participants who indicate an interest to participate in the trade and the complexity of the trade, the Options Exchange Official would determine if there was an appropriate amount of time and require more time if necessary. The Exchange believes that eliminating the RFQ process, including the BBO Improvement Interval, which is not contemplated in non-FLEX Option open outcry trading, would have minimal (if any) impact on how a Floor Broker may request a market on the Exchange's trading floor with respect to FLEX Options.

The Exchange's proposal to no longer disseminate RFQ Quotes to OPRA as part of this proposal does not impose an intra-market burden on competition because the proposal aligns the process to transact FLEX Orders with the current process to transact other orders in open outcry. The RFQ message has not provided any additional liquidity under the current process for FLEX Orders. Today, the RFQ message for FLEX Orders is the only administrative message disseminated to OPRA on the Exchange's trading floor. The Exchange does not otherwise disseminate an administrative message for other transactions on the Exchange's trading floor; only executed orders are disseminated to OPRA for non-FLEX Orders on the trading floor and for electronic transactions on Phlx. The Exchange believes that the open outcry process will continue to provide a competitive market for FLEX Orders and that the proposed process will provide an opportunity for the trading crowd to provide liquidity. By contrast, quotes are not disseminated with respect to other trades in open outcry today. While a market

participant could seek to participate in the trade by calling a floor broker after viewing the RFQ on OPRA, this is an uncommon scenario. FLEX Orders, unlike standard orders, are less common and the Exchange does not have a similar RFQ process for standard orders that are analogous to those FLEX Orders. The Exchange's proposal to no longer disseminate RFQ Quotes to OPRA as part of this proposal does not impose an inter-market burden on competition because the proposed process would align Phlx's process with Cboe's process and not require Phlx to disseminate quotes to OPRA while other options floor exchanges have no similar obligations.<sup>44</sup>

The Exchange's proposal to reword rule text concerning Exercise Price located within proposed Options 8, Section 34(f)(3) does not impose an undue burden on competition because it does not expand the Exchange's current discretion. The proposal narrows the Exchange's authority to provide the increment in the form of a dollar value not to exceed two decimal places.

The Exchange's proposal to amend Options 8, Section 34(f) to provide that all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series does not impose an undue burden on competition. In the event that the Exchange were to list a micro FLEX Index

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<sup>44</sup> Cboe does not disseminate via OPRA information respecting open outcry RFQs. See Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 at 308 (January 4, 2012) (SR-Cboe-2011-123).

Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.

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

The Exchange does not consent to an extension of the time period for Commission action.

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>45</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>46</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.

The Exchange believes that the proposal does not significantly affect the protection of investors or the public interest because removing the requirement for members and member organizations to manually enter FLEX Orders into the Exchange's electronic audit trail and submit manual Cabinet Order forms and, instead require members and member organizations to enter these orders into FBMS, similar to all other

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<sup>45</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>46</sup> 17 CFR 240.19b-4(f)(6).

orders executed on the trading floor, will reduce the administrative burden on floor participants. Also, because FLEX Orders and Cabinet Orders will be reported and processed like all other open outcry trades, market participants will not be impacted nor have to take on any additional reporting or processing burden. Also, having an electronic audit trail of all FLEX Orders and Cabinet Orders will provide a complete and accurate record of these transactions and better facilitate regulatory oversight. The proposal more closely aligns the handling of FLEX Orders and Cabinet Orders with the handling of all other options transacted on Phlx's trading floor. With respect to FLEX Options, the proposed open outcry process is closely aligned with the current open outcry trading process for non-FLEX Options, but is still similar to the FLEX trading processes in place today. As a result, the Exchange believes the proposed rule change will have minimal impact on the trading of FLEX Options, and possibly increase participation in FLEX Options, which could add liquidity to the Exchange's FLEX market, which ultimately benefits investors. By permitting FLEX Options to trade in a manner similar to non-FLEX Options, the Exchange believes this further improves a comparable alternative to the OTC market in customized options. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options. Further, the proposal simplifies the process pursuant to which FLEX Orders would execute on the Exchange in open outcry. Eliminating the RFQ process, including the BBO Improvement Interval, in favor of a reasonable timeframe of between three

seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order to respond with bids or offers does not significantly affect the protection of investors or the public interest. The Exchange believes that eliminating the RFQ process, including the BBO Improvement Interval, which is not contemplated in non-FLEX Option open outcry trading, would have minimal (if any) impact on how a Floor Broker may request a market on the Exchange's trading floor with respect to FLEX Options. The Exchange's proposal to reword rule text concerning Exercise Price located within proposed Options 8, Section 34(f)(3) does not significantly affect the protection of investors or the public interest because it does not expand the Exchange's current discretion. Today, the Exchange has discretion to narrow its authority to provide the increment in the form of a dollar value not to exceed two decimal places. The Exchange's proposal to amend Options 8, Section 34(f) to provide that all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series does not significantly affect the protection of investors or the public interest. In the event that the Exchange were to list a micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion. The Exchange believes the proposed rule change will permit executions of FLEX Orders to be



completed in a timely fashion, while providing the crowd with sufficient time to price the unique terms of FLEX Options. The Exchange believes the proposed amendments will enable floor participants to compete vigorously and potentially provide price improvement for FLEX Orders, as they do for non-FLEX Orders. Further, reorganizing the FLEX rules and adding greater specificity to the rule will provide market participants with greater information on FLEX Options.

The Exchange believes that the proposal does not impose any significant burden on competition. The Exchange's proposal to automate FLEX Orders and Cabinet Orders, does not impose any significant burden on competition because FLEX Orders and Cabinet Orders will be reported and processed like all other open outcry trades, market participants will not be impacted nor have to take on any additional reporting or processing burden. Furthermore, with respect to the amendments to FLEX Options, the Exchange does not believe that the proposed rule change will not impose any significant burden on competition because the proposed open outcry process is closely aligned with the current open outcry trading process for non-FLEX Options, but is still similar to the FLEX trading processes in place today. The proposed rule change seeks to eliminate the differences between FLEX and non-FLEX trading to eliminate potential confusion for market participants given the current differences, while implementing trading processes with which market participants are more familiar. As a result, the Exchange believes the proposed rule change will have minimal impact on the trading of FLEX Options, and possibly increase participation in FLEX Options, which could add liquidity to the Exchange's FLEX market, which ultimately benefits investors. Also, any member or member organization may transact FLEX Options. While the Exchange is eliminating

the RFQ process and BBO Improvement Interval, it will offer all floor participants a reasonable timeframe of between three seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order to respond with bids or offers. The Exchange believes that this will not impose any significant burden on competition as the timeframe is the same as today's timeframe. The Exchange's proposal to reword rule text concerning Exercise Price located within proposed Options 8, Section 34(f)(3) does not impose any significant burden on competition because it does not expand the Exchange's current discretion. The proposal narrows the Exchange's authority to provide the increment in the form of a dollar value not to exceed two decimal places. The Exchange's proposal to amend Options 8, Section 34(f) to provide that all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series does not impose any significant burden on competition. In the event that the Exchange were to list a micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.

Furthermore, Rule 19b-4(f)(6)(iii)<sup>47</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that

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<sup>47</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

The Exchange proposes to adopt rule text, similar to Cboe Rule 4.21(a), which describes current permissible series for FLEX Options at new Options 8, Section 34(e). Unlike Cboe Rule 4.21(a), Phlx's subparagraph (e) does not address trading halts for FLEX Options. All options traded on Phlx are subject to Phlx's trading halt rule within Options 3, Section 9. Further, Cboe's rule does not describe intra-day halts.

The Exchange proposes to add a new Options 8, Section 34(h), similar to Cboe Rule 5.72(a) and (b), to describe FLEX Options trading. The Exchange notes that Cboe removed its RFQ feature and BBO improvement interval for FLEX Orders.<sup>48</sup>

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.

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<sup>48</sup> See supra note 21.

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-2023-22)

May 31, 2023

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Various Options 8 Rules

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 May 31, 2023, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend certain rule text within Options 8 related to Phlx’s trading floor. Specifically, the Exchange proposes to amend Options 8, Section 26, Trading Halts, Business Continuity and Disaster Recovery; Options 8, Section 28, Responsibilities of Floor Brokers; Options 8, Section 29, Use of Floor Based Management System by Floor Market Makers and Lead Market Makers; Options 8, Section 30, Crossing, Facilitation and Solicited Orders; Options 8, Section 32, Types of Floor-Based (non-System) Orders; Options 8, Section 33, Accommodation Transactions; Options 8, Section 34, FLEX Index, Equity, and Currency Options; and Options 8, Section 39, Option Minor Rule Violations and Order and Decorum Regulations.

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

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

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

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

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

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

1. Purpose

The Exchange proposes to amend various rules within Options 8 related to Phlx's trading floor. Specifically, the Exchange proposes to amend Options 8, Section 26, Trading Halts, Business Continuity and Disaster Recovery; Options 8, Section 28, Responsibilities of Floor Brokers; Options 8, Section 29, Use of Floor Based Management System by Floor Market Makers and Lead Market Makers; Options 8, Section 30, Crossing, Facilitation and Solicited Orders; Options 8, Section 32, Types of Floor-Based (non-System) Orders; Options 8, Section 33, Accommodation Transactions; Options 8, Section 34, FLEX Index, Equity, and Currency Options; and Options. Each change will be discussed below.

Automation of FLEX and Cabinet Orders

Today, Phlx permits members and member organizations to transact FLEX

Options<sup>3</sup> and Cabinet Orders<sup>4</sup> on its trading floor.

### *FLEX Options*

FLEX Options provide investors with the ability to customize basic option features including expiration date, exercise style, and certain exercise prices. Phlx FLEX Options may be FLEX index, equity, or currency options. Today, Phlx FLEX Options transactions are exposed in open outcry on the trading floor similar to other options that trade on Phlx's trading floor. Today, the Requesting Member<sup>5</sup> initiates a Request-for-Quote ("RFQ") by submitting a ticket to Market Operations staff prior to requesting a quote in open outcry by announcing certain contract terms to the trading crowd of the non-FLEX option.<sup>6</sup> Members may enter, modify, or withdraw FLEX Quotes at any point during the Request Response Time,<sup>7</sup> which is currently set to two minutes, at the Market

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<sup>3</sup> The term "FLEX option" means a FLEX option contract that is traded subject to Options 8, Section 34(a). The Exchange proposes to replace the term "FLEX option" with "FLEX Option" in the rule text.

<sup>4</sup> A "cabinet order" is a closing limit order at a price of \$1 per option contract for the account of a Public Customer, firm, Lead Market Maker or ROT. An opening order is not a "Cabinet Order" but may in certain cases be matched with a Cabinet Order pursuant to subsection (a)(iii) of Options 8, Section 33. Only Floor Brokers may represent Cabinet Orders. See Options 8, Section 33(a).

<sup>5</sup> A Requesting Member is a member of the Exchange qualified to trade FLEX Options pursuant to Options 3, Section 34(d) who initiates an RFQ for a FLEX option. See Options 3, Section 34(b)(10).

<sup>6</sup> The contract terms include: (1) underlying index, security or foreign currency; (2) type, size, and crossing intention; (3) in the case of FLEX index options and FLEX equity options, exercise style and settlement type; (4) expiration date; (5) exercise price; and (6) respecting index options, the settlement value. See Options 8, Section 34(c)(1).

<sup>7</sup> The Request Response Time is the minimum period of time established by the Exchange, during which Exchange members participating in FLEX Options may provide FLEX Quotes in response to a Request for Quotes. See Options 8, Section 34 (b)(12).

Operations post. At the expiration of the Request Response Time, the open outcry BBO is identified in accordance with the price and time priority principles set forth by the Exchange. Thereafter, on receipt of an RFQ in proper form, the assigned Lead Market Maker or the Requesting Member shall cause the terms of the RFQ to be disseminated as an administrative message through the Options Price Reporting Authority (“OPRA”).<sup>8</sup>

If the Requesting Member has not indicated an intention to cross or act as principal with respect to any part of the FLEX trade, the member shall promptly accept or reject the displayed BBO; provided, however, that if such a Requesting Member either rejects the BBO or is given a BBO for less than the entire size requested, all FLEX participating members other than the Requesting Member will have an opportunity during the BBO Improvement Interval in which to match, or improve, (as applicable), the BBO pursuant to Options 8, Section 34(c)(3). At the expiration of any such BBO Improvement Interval,<sup>9</sup> which is currently set to 15 seconds, the Requesting Member must promptly accept or reject the BBO(s). If the Requesting Member has indicated an intention to cross or act as principal with respect to any part of the FLEX trade, acceptance of the displayed BBO shall be automatically delayed until the expiration of the BBO Improvement Interval pursuant to Options 8, Section 34(c)(3). Prior to the BBO Improvement Interval, the Requesting Member must indicate at the post the price at

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<sup>8</sup> FLEX Quotes must be entered during the Request Response Time within Options 8, Section 34(b)(12) of 15 seconds. All FLEX Quotes may be entered, modified or withdrawn at any point during the request response time. See Options 8, Section 34(c)(2).

<sup>9</sup> The BBO Improvement Interval means the minimum period of time, to be established by the Exchange, during which members may submit FLEX Quotes to meet or improve the BBO established during the Request Response Time. See Options 8, Section 34(b)(15).



which the member expects to trade. In these circumstances, the Requesting Member may participate with all other FLEX-participating members in attempting to improve or match the BBO during the BBO Improvement Interval pursuant to Options 8, Section 34(c)(3). At expiration of the BBO Improvement Interval, the Requesting Member must promptly accept or reject the BBO(s) pursuant to Options 8, Section 34(c)(3). The Requesting Member has no obligation to accept any FLEX bid or offer pursuant to Options 8, Section 34(c)(3). Whenever, following the completion of FLEX bidding and offering responsive to a given RFQs, the Requesting Member rejects the BBO or the BBO size exceeds the FLEX transaction size indicated in the RFQs, members may accept the entire order or the unfulfilled balance of the BBO pursuant to Options 8, Section 34(c)(3). Once the FLEX Order is executed in open outcry, the FLEX trade is disseminated to OPRA by the Exchange pursuant to Options 8, Section 34(c)(6).

In contrast, as proposed, in order to transact a FLEX Order, a member would enter open outcry trading and announce one of each of the following terms<sup>10</sup> within subparagraph (f)(1).<sup>11</sup> Additionally, all other terms of a FLEX Option series, which are the same as those that apply to non-FLEX Options, must be included except that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price

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<sup>10</sup> See proposed Options 8, Section 34(f)(1) which states, “Characteristics of Underlying Interest: (A) any index upon which options currently trade on the Exchange. The applicable index multiplier shall be the same multiplier, in the case of U.S. dollar-denominated FLEX index options, that applies to non-FLEX index options on the same underlying index; (B) any security which is options-eligible pursuant to Options 4, Section 3; or (C) any foreign currency which is options-eligible pursuant to Options 4, Section 3 and which underlies non-FLEX U.S. dollar-settled foreign currency options that are trading on the Exchange.”

<sup>11</sup> See proposed Options 8, Section 34(h).

as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option). Floor participants would have a reasonable amount of time (which amount of time must be between three seconds and five minutes) from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order (including announcing a crossing transaction pursuant to Options 8, Section 30(a)) to respond with bids or offers. This timeframe would be analogous to the RFQ Process which includes the BBO Improvement Interval. Today, an Options Exchange Official<sup>12</sup> would intervene if they believed that an appropriate amount of time was not allotted for the FLEX Order to trade. The Options Exchange Official would enforce the requirement that the amount of time must be at least three seconds and no more than five minutes based on the complexity of the trade and the responses in the trading crowd when determining if the time was reasonable. For example, based on the number of participants who indicate an interest to participate in the trade and the complexity of the trade, the Options Exchange Official would determine if there was an appropriate amount of time and require more time if necessary. Unlike the current process, an RFQ ticket would not be submitted to the Market Operations post and the RFQ would not be disseminated to OPRA. By contrast, quotes are not disseminated with respect to other trades in open outcry today. While a market participant could seek to

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<sup>12</sup> The term “Option Exchange Official” means an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. A list of individual Options Exchange Officials shall be displayed on the Exchange website. The Chief Regulatory Officer shall maintain the list of Options Exchange Officials and update the website each time a name is added to, or deleted from, the list of Options Exchange Officials. In the event no Options Exchange Official is available to rule on a particular matter, the Chief Regulatory Officer or his/her designee shall rule on such matter. See Options 1, Section 1(b)(38).

participate in the trade by calling a floor broker after viewing the FLEX RFQ on OPRA, this is an uncommon scenario.<sup>13</sup> FLEX Orders, unlike standard orders, are less common and the Exchange does not have a similar RFQ process for standard orders that are analogous to those FLEX Orders. This proposed process would align with Cboe, Inc.’s (“Cboe”) process and not require Phlx to disseminate quotes to OPRA while other options floor exchanges have no similar obligations.<sup>14</sup> The Exchange believes that the proposed process is analogous to the current process and provides market participants ample time to respond to requests for a market in a FLEX Order. As the foregoing process demonstrates, Phlx seeks to maintain a competitive trading floor through the administration of its rules which contain processes to ensure that options transactions are exposed in such a way as to permit other floor members an opportunity to participate in price discovery by requiring floor members to seek liquidity in open outcry.

The Exchange proposes several amendments to Options 8, Section 34. First, the Exchange proposes to require FLEX Orders to be reported into Phlx’s Options Floor Based Management System or “FBMS.” FBMS will create an electronic audit trail for FLEX Orders, thereby further automating the execution and reporting of FLEX Options. With this change, members and member organizations will be required to record all FLEX Orders represented in the trading crowd into FBMS.<sup>15</sup> Orders entered into FBMS

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<sup>13</sup> See Options 3, Section 34(c)(1) and (2) which explains the RFQ Process to request a quotation and respond.

<sup>14</sup> Cboe does not disseminate via OPRA information respecting open outcry RFQs. See Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 at 308 (January 4, 2012) (SR-Cboe-2011-123).

<sup>15</sup> A FLEX Option series is only eligible for trading if the FLEX Order is represented in open outcry. See proposed Options 8, Section 34(h).

will be executed based on market conditions at the time of execution and in accordance with Exchange rules. All executed contracts will be reported to OPRA and sent to The Options Clearing Corporation (“OCC”) for clearing, similar to all other equity, equity index and U.S. dollar-settled foreign currency options orders executed on the Exchange’s trading floor. Second, the Exchange proposes to remove its RFQ process including the BBO Improvement Interval Process, as explained above, with this rule change. Third, the Exchange proposes to reorganize Options 8, Section 34 to restructure its rule to include additional information which describes current FLEX trading on Phlx. The proposed amendments seek to reorganize Options 8, Section 34 so as to provide a greater amount of information concerning FLEX trading.

The Exchange proposes to add a new Options 8, Section 34(b) titled “Order Types” to address FLEX Order types. This proposed rule text memorializes the Exchange’s current practice as it relates to order types for FLEX trading. Specifically, the Exchange proposes to state that it may determine to make the order types and Time-in-Force, respectively, within Options 8, Section 32 submitted in FLEX Options (“FLEX Orders”) available on a class or System basis. Options 8, Section 32 describes the order types available on the trading floor. Specifically, with respect to complex orders transacted on the trading floor, complex FLEX Orders may have up to the maximum number of legs permitted pursuant to Exchange rules for standard trading. Further, each leg of a complex FLEX Order: (1) must be for a FLEX Option series authorized for FLEX trading with the same underlying equity security or index; (2) must have the same exercise style (American or European); and (3) for a FLEX Index Option, may have a different settlement type (a.m.-settled or p.m.-settled), except each leg must have the

same settlement type. Today, Options 8, Section 32 provides that the Exchange may determine to make certain order types and time-in-force, respectively, available on a class or System basis. The Exchange is proposing to add this same rule text within new Options 8, Section 34(b) with respect to FLEX Orders. Today, the Exchange may determine which orders may apply to FLEX trading. The language concerning complex orders is intended to memorialize the manner in which complex orders may trade as FLEX. The proposed rule text explains the manner in which these orders trade today on Phlx. This proposed change is not intended to amend the Exchange's current practice, which is not currently described within the FLEX rules.

The Exchange proposes to relocate Options 8, Section 34(c)(8), concerning Trading Hours, to new Options 8, Section 34(c) without change. The Exchange proposes to add a new header re-titled "Trading Hours".

The Exchange proposes to relocate Options 8, Section 34(c)(7), concerning Trading Rotations, to new Options 8, Section 34(d) without change.

The Exchange proposes to adopt rule text similar to Cboe Rule 4.21(a),<sup>16</sup> which describes current permissible series for FLEX Options at new Options 8, Section 34(e). The proposed rule text would state that the Exchange may authorize for trading a FLEX Option class on any equity security or index it may authorize for trading a non-FLEX Option class on that equity security or index pursuant to Options 4, Section 3 and Options 4A, Section 3, respectively, even if the Exchange does not list that non-FLEX Option class for trading. FLEX Option series are not pre-established. A FLEX Option series is

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<sup>16</sup> Unlike Cboe Rule 4.21(a), Phlx's subparagraph (e) does not address trading halts for FLEX Options. All options traded on Phlx are subject to Phlx's trading halt rule within Options 3, Section 9. Further, Cboe's rule does not describe intra-day halts.

eligible for trading on the Exchange upon submission to the System of a FLEX Order for that series pursuant to Options 8, Section 34.

FLEX Options would be subject to certain trading conditions, which exist today and are specified within current Options 8, Section 34(b)(6)(B).<sup>17</sup> The Exchange proposes to remove the rule text within Options 8, Section 34(b)(6)(B) related to the RFQ process, as explained below. As provided in current Options 8, Section 34(b)(6)(B), the Exchange only permits trading in a put or call FLEX Option series that does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX Option series on the same underlying security or index that is already available for trading. As provided in current Options 8, Section 34(b)(6)(B), this includes permitting trading in a FLEX Option series before a series with identical terms is listed for trading as a non-FLEX Option series. As provided in current Options 8, Section 34(b)(6)(B), if the

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<sup>17</sup> Current Options 8, Section 34(b)(6)(B) states that provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options shall be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as non-FLEX Options that are already available for trading on the same underlying security or index. FLEX Options shall also be permitted before the options are listed for trading as non-FLEX Options. Once and if the option series are listed for trading as non-FLEX Options, then (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective non-FLEX option series, and (ii) any further trading in the series would be as non-FLEX Options subject to the non-FLEX trading procedures and Rules. However, in the event the Non-FLEX series is added intra-day, a position established under the FLEX trading procedures would be permitted to be closed using the FLEX trading procedures for the balance of the trading day on which the Non-FLEX series is added against another closing only FLEX position. For such FLEX series, the Exchange will make an announcement that the FLEX series is now restricted to closing transactions; a FLEX Request for Quotes (“RFQ”) may not be disseminated for any order representing a FLEX series having the same terms as a Non-FLEX series, unless such FLEX option order is a closing order (and it is the day the Non-FLEX series has been added); and only responses that close out an existing FLEX position are permitted. Any transactions in a restricted series that occur that do not conform to these requirements will be nullified by the Exchange.

Exchange lists for trading a non-FLEX Option series with identical terms as a FLEX Option series, the FLEX Option series will become fungible with the non-FLEX Option series. As provided in current Options 8, Section 34(b)(6)(B), the System does not accept a FLEX Order for a put or call FLEX Option series if a non-FLEX Option series on the same underlying security or index with the same expiration date, exercise price, and exercise style is already listed for trading. Further, a FLEX Order for a FLEX Option series may be submitted on any trading day prior to the expiration date. The Exchange abides by these conditions today and proposes to enumerate them within its rules similar to Cboe. The proposed rule text explains the manner in which these orders trade today on Phlx. This proposed change is not intended to amend the Exchange's current practice.

Next, the Exchange proposes to add new rule text to proposed Options 8, Section 34(f) which provides that when submitting a FLEX Order for a FLEX Option series to FBMS, one of each of the terms within current Options 8, Section 34(b) must be included.<sup>18</sup> Options 8, Section 34(b) is being relocated to Options 8, Section 34(f)(1), therefore subparagraph (f)(1) is being referenced in the proposed rule text at Options 8, Section 34(f). The Characteristics of Underlying Interest include: (A) any index upon which options currently trade on the Exchange;<sup>19</sup> (B) any security which is options-eligible pursuant to Options 4, Section 3; or (C) any foreign currency which is options-eligible pursuant to Options 4, Section 3 and which underlies non-FLEX U.S. dollar-

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<sup>18</sup> Such terms are described in proposed new Options 8, Section 34(f)(1), "Characteristics of Underlying Interest."

<sup>19</sup> The applicable index multiplier shall be the same multiplier, in the case of U.S. dollar-denominated FLEX index options, that applies to non-FLEX index options on the same underlying index.

settled foreign currency options that are trading on the Exchange.<sup>20</sup> Further, the Exchange proposes to state within Options 8, Section 34(f) that all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series. This rule text represents the Exchange's current practice. The Exchange states that, to the extent the Exchange lists a micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.

As noted above, current Options 8, Section 34(b)(1) is being relocated to proposed Options 8, Section 34(f)(1) without substantive change. The Exchange proposes to amend the header to "Characteristics of Underlying Interest."

Current Options 8, Section 34(b)(2), concerning Type, is relocated to proposed Options 8, Section 34(f)(2)(A) without substantive change. An "A" is being added to the sentence.

Current Options 8, Section 34(b)(3), concerning Exercise Price, is relocated to proposed Options 8, Section 34(f)(3). The Exchange proposes to reword the current rule text which provides,

(A) with respect to FLEX index options, may be specified in terms of a specific index value number, a percentage of the index value calculated as

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<sup>20</sup> See current Options 8, Section 34(b).



of the open or close of trading on the Exchange on the trade date, or a method for fixing such number;

(B) with respect to FLEX equity options, may be specified in terms of a specific dollar amount rounded to the nearest \$.10 or a percentage of the underlying security rounded to the nearest minimum increment; or

(C) with respect to FLEX currency options, may be specified in terms of a specific dollar amount rounded to the nearest hundredth of a dollar.

The Exchange proposes to more succinctly state that the Exchange may determine the smallest increment for exercise prices of FLEX Options not to exceed two decimal places. Today, the Exchange has the ability to require that FLEX index options be specified by an index value, number, percentage of index value calculated as of the open or close of trading on the Exchange on the trade date, a method for fixing such number, in terms of a specific dollar amount rounded to the nearest \$.10 or a percentage of the underlying security rounded to the nearest minimum increment, or in terms of a specific dollar amount rounded to the nearest hundredth of a dollar. At this time, the Exchange proposes to narrow its discretion to provide that it may determine the smallest increment for exercise prices of FLEX Options, not to exceed two decimal places. The Exchange has this authority today, it is electing to narrow its authority to provide the increment in the form of a dollar value.

The Exchange proposes to remove the rule text within Options 8, Section 34(b)(4), related to the RFQ process, as explained below.

Current Options 8, Section 34(b)(5), concerning Exercise style, is relocated to proposed Options 8, Section 34(f)(4) without change.

Current Options 8, Section 34(b)(6)(A), concerning Expiration date style, is relocated to proposed Options 8, Section 34(f)(5) without change. The Exchange added rule text within proposed Options 8, Section 34(e)(1) similar to current Options 8,

Section 34(b)(6)(B). The Exchange proposes to remove the rule text within Options 8, Section 34(b)(6)(B) related to the RFQ process, as explained below.

The Exchange proposes to remove the RFQ feature, including the BBO Improvement Interval, from its FLEX Options which process was described above in detail. With the automation of FLEX Options to enable FLEX to be entered into FBMS, similar to all other options transactions executed on the Exchange's trading floor including cabinet as explained below, the Exchange is disabling the RFQ feature, including the BBO Improvement Interval. The Exchange notes that Cboe removed its RFQ feature for FLEX Orders.<sup>21</sup> Similarly, Phlx proposes to remove its RFQ feature, including the BBO Improvement Interval.<sup>22</sup>

The Exchange believes the current open outcry RFQ process, including the BBO Improvement Interval, for FLEX Orders is substantially similar to the current open outcry process for non-FLEX Orders described within Options 8, Sections 22, 23, and 24 at

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<sup>21</sup> See Securities Exchange Act 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR-Cboe-2019-084) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Rules Regarding the Trading of Flexible Exchange Options, and Move Those Rules From the Currently Effective Rulebook to the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges).

<sup>22</sup> The Exchange notes that the minimum size requirements for an RFQ is also being removed within Options 8, Section 34(b)(8) as the Exchange would no longer have the RFQ process. The Exchange notes that one contract is the minimum size for options trading on Phlx and will remain the minimum size for FLEX Options trading on FLEX. See Options 3, Section 2.

Supplementary Material .01, and therefore believes completely aligning the two processes is appropriate.<sup>23</sup>

As noted herein, today, FLEX Quotes must be entered during the Request Response Time, which is currently set to two minutes. Phlx FLEX Options transactions are exposed in open outcry on the trading floor similar to other options that trade on Phlx's trading floor. Thereafter, during the BBO Improvement Interval, which is set to 15 seconds, floor members may submit FLEX Quotes to meet or improve the BBO established during the Request Response Time. The Exchange proposes within Options 3, Section 34(h) to provide floor participants with a reasonable amount of time to respond with bids and offers, which would be between three seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order. This time would include announcing a crossing transaction pursuant to Options 3, Section 30(a). The Exchange believes that the proposed rule text permits FLEX Options to trade substantially similar to the current RFQ process, including the BBO Improvement Interval, in which a Floor Broker requests a market and provides Market Makers in the crowd with time to respond with a market. The Exchange believes that eliminating the RFQ process, which is not contemplated in non-FLEX Option open outcry trading, would have minimal (if any) impact on how a Floor Broker may request a market on the Exchange's trading floor with respect to FLEX Options. The initial process permits members the ability to enter, modify or withdraw FLEX Quotes at the Market Operations post during the Request Response Time, which is currently set to two

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<sup>23</sup> A Floor Broker may also initially represent an order to the trading crowd, and then receives bids or offers, as appropriate, and trade. However, this is an uncommon scenario. See Options 8, Section 28.

minutes, after a quote was requested in open outcry. The proposed new process would continue to permit members the opportunity to enter, modify or withdraw FLEX Quotes in open outcry, without the need to submit FLEX Quotes at the Market Operations Post. Further, with respect to the BBO Improvement Interval, members continue to have an opportunity to match, or improve, (as applicable), the BBO. Today, the BBO Improvement Interval is 15 seconds. Members will also have the ability to cross any part of the FLEX trade pursuant to Options 8, Section 30(a)(2), as is the case today. The proposed timeframe of between three seconds and five minutes is appropriate to ensure there is at least a minimum amount of time for Market Makers to conduct the same activities that take place today with the RFQ process and the BBO Improvement Interval, given the unique terms of FLEX Options. Cboe Rule 5.72(d)(1) provides its floor participants the same timeframe to respond with bids and quotes as the Exchange's proposal.

Once a Floor Broker has received a market from the crowd, the Floor Broker may then represent its order on the trading floor in open outcry (after systematizing it, which it must do prior to representing an order on the trading floor) and elect to trade against the best prices or not, or announce an intention to cross at a specific price.<sup>24</sup> As discussed above, this is substantially similar to the current RFQ process, including the BBO Improvement Interval. Currently, the Exchange has set a crossing entitlement for facilitations and solicitations of FLEX Orders in all classes to be 40%.<sup>25</sup> The 40%

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<sup>24</sup> See current Options 8, Section 30 which describes procedures for crossing orders on the Exchange's trading floor.

<sup>25</sup> Current Supplementary Material .02(iii) to Options 8, Section 30 prescribes the percentage of the order which a Floor Broker is entitled to cross in equity, index and U.S dollar settled foreign currency options, after all Public Customer orders

crossing entitlement would apply to FLEX Orders as it applies today for all other crossing orders executed on the Exchange's trading floor. As provided for in proposed Options 8, Section 34(h), trading of FLEX Options is subject to all other Options 8 Rules applicable to the trading of options on the Exchange, unless otherwise provided in this Rule.

Current Options 8, Section 30(a) specifies that an Options Floor Broker who holds orders to buy and sell the same option series may cross such orders, must request bids and offers for such options series, and make all persons in the trading crowd aware of the request. Further, Options 8, Section 30(a) states that after providing an opportunity for such bids and offers to be made, the Floor Broker must bid and offer at prices differing by the minimum increment and must improve the market by bidding above the highest bid or offering below the lowest offer. If such higher bid or lower offer is not taken, the Floor Broker may cross the orders at such higher bid or lower offer by announcing in public outcry that he is crossing and giving the quantity and price. All such orders are not deemed executed until entered into and executed through the FBMS.<sup>26</sup> The Exchange believes the proposed rule change will have a minimal (if any) impact on the crossing of FLEX Orders in open outcry.

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that were (1) on the limit order book and then (2) represented in the trading crowd at the time the market was established have been satisfied, is 40% of the remaining contracts in the order if the order is traded at or between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market.

<sup>26</sup> There is an exception where there is a provisional execution using the Snapshot feature of FBMS (as described in Options 8, Section 28(i)); bids and offers can be withdrawn pursuant to Options 8, Section 22(c) or (d).

The proposed allocation is substantially similar to the allocation for non-FLEX trading in open outcry, excluding the provisions that are inapplicable to FLEX trading, and to the current allocation for FLEX trading in open outcry. With respect to allocation for a FLEX Order as well as non-FLEX Orders, best-priced responses will continue to have first priority, however if a Customer order were at the same price, the Customer would have priority over a non-Customer.<sup>27</sup> With respect to responses at the same price, because there is no electronic trading of FLEX Options on Phlx, there can be no priority Customer orders resting in the order book that would receive first priority at the same price. Therefore, the Customer priority rules of Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. Additionally, no Market Makers are appointed in FLEX Options, so there will be no participation entitlement applicable to FLEX trading. Therefore, the Market Maker entitlements described in Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. The crossing participation would continue to the next priority level in each of those respective rules. Therefore, members of the trading crowd who established the market will have priority over all other orders that were not represented in the trading crowd at the time that the market was established and will maintain priority over such orders except for orders that improve upon the market.<sup>28</sup> With respect to the order book, Defined Participation<sup>29</sup> shall be equal where size is the same, otherwise participants are allocated

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<sup>27</sup> See current Options 8, Section 25(a)(1) and Supplementary Material .02 of Options 8, Section 30.

<sup>28</sup> See Supplementary Material .02(vii) of Options 8, Section 30.

<sup>29</sup> “Defined Participation” is the portion of the Remainder of the Order to which a crowd participant is entitled. “Remainder of the Order” means the portion of an

based on size.<sup>30</sup> Therefore, the proposed rule change will have minimal (if any) impact on the allocation of responses in open outcry trades of FLEX Orders.

This proposal simplifies the process pursuant to which FLEX Orders would execute on the Exchange in open outcry. As demonstrated above, the general open outcry trading rules are substantially similar to the current open outcry RFQ procedure, including the BBO Improvement Interval, for FLEX Options. However, the proposed rule change eliminates the terminology that applies only to FLEX trading. Floor participants are familiar with the general open outcry trading procedures, and therefore, by aligning the open outcry trading process for FLEX Options with that of non-FLEX Options, and permitting FLEX trading in the same manner as non-FLEX trading on the Exchange's trading floor, the Exchange believes the proposed rule change may encourage members to submit FLEX Orders for execution on Phlx.

In line with the Exchange's proposal to remove the RFQ process, including the BBO Improvement Interval, the Exchange proposes to delete Options 8, Section 34(b)(4), (b)(6)(B), (b)(7), (b)(8), (b)(10)-(15) and (c) which describe the RFQ process. Further, the Exchange proposes to systematize the FLEX Options trading process so that it mirrors the trading process of all other orders entered on the Exchange's trading floor whereby trades are reported to FBMS. To that end, the proposal will require a Floor Broker to systematize a FLEX Order in the same manner as Floor Brokers systematize non-FLEX Orders. The Exchange believes the proposed rule change will result in a more efficient open outcry trading process for FLEX Orders, as a Floor Broker can request a market as

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Initiating Order that remains following the allocation of contracts to customers that are on parity in accordance with Options 8, Section 25.

<sup>30</sup> See Options 8, Section 25(c)(3)(B).

soon as it gets that request from a customer. This may ultimately result in more timely executions for customers. This new process would eliminate the requirement to submit an RFQ ticket to the Market Operations post and the requirement to respond to such order at the Market Operations post.<sup>31</sup> The Exchange desires to remove these manual processes and, instead, permit all responses to take place in open outcry verbally, thereby obviating the need to submit paper responses at the trading post. The Exchange believes the proposed rule change may reduce confusion regarding how FLEX Orders may trade in open outcry, given that any minor differences between the two processes that exist today are being eliminated with the proposed automation.

The Exchange proposes to relocate Options 8, Section 34(b)(5), concerning Exercise Style, to Options 8, Section 34(f)(4) without change.

The Exchange proposes to relocate Options 8, Section 34(b)(6)(A), concerning Expiration Date, to Options 8, Section 34(f)(5) without change. The Exchange proposes to capitalize “Date” in the title. As noted above, the Exchange created a new Options 8, Section 34(e)(1) which incorporated provisions similar to those within Options 8, Section 34(b)(6)(B), except for rule text related to the RFQ process which is being deleted.

The Exchange proposes to relocate Options 8, Section 34(b)(9), concerning Settlement, to Options 8, Section 34(f)(6) and remove current subsection (iii).<sup>32</sup> The

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<sup>31</sup> The Exchange proposes to remove the rule text within Options 8, Section 26(g)(3)(F)(1)(d) which provides, “FLEX Trade tickets must be sent by email to the Phlx Correction Post,” because the process will require trades to be reported to FBMS.

<sup>32</sup> Current Options 8, Section 34(b)(9)(A)(iii) states, “respecting FLEX index options, the settlement value may be specified as the index value reported at the:... (iii) as an average over a specified period of time, within parameters established by the Exchange.”



Exchange will only permit the settlement value to be specified as a.m.-settled or p.m.-settled. The Exchange will not permit the settlement value to be specified as the index value reported as an average over a specified time period.

The Exchange proposes to relocate Options 8, Section 34(d), which describes FLEX simple orders and FLEX Complex Orders, to Options 8, Section 34(g) without substantive change. The Exchange proposes to change references to the terms “ROT” and “Registered Options trader” within this rule text to “Market Maker” within proposed Options 8, Section 29(d) and Section 34(d) and (i). In 2020, the Exchange amended the term “ROT” to “Market Maker”<sup>33</sup> throughout the Phlx Rulebook.

The Exchange proposes to add a new Options 8, Section 34(h), similar to Cboe Rule 5.72(a) and (b), to describe FLEX Options trading. As is the case today, trading of FLEX Options is subject to all other Options 8 Rules applicable to the trading of options on the Exchange, unless otherwise provided in this Rule. Also, as is the case today, a FLEX Option series is only eligible for trading if the FLEX Order is represented in open outcry. With respect to simple FLEX Orders, a FLEX Order for a FLEX option series submitted to the System must include all terms for a FLEX option series set forth in subparagraphs (e) and (f) of Options 8, Section 34 (including that a non-FLEX option series with identical terms is not listed for trading), size, side of the market, and a bid or offer price, subject to the order entry requirements set forth in Options 8, Section 32.

This proposed rule text represents the Exchange’s current practice. With respect to complex FLEX Orders, a FLEX Order for a FLEX option complex strategy submitted to

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<sup>33</sup> See Securities Exchange Act 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03)(Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell) (“Rulebook Relocation”).

the System must satisfy the criteria for a complex FLEX Order set forth in subparagraph (b) of Options 8, Section 34, and include size, side of the market, and a net debit or credit price. Additionally, each leg of the FLEX Option complex strategy must include all terms for a FLEX Option series set forth in subparagraphs (e) and (f) of Options 8, Section 34 (including that a non-FLEX Option series with identical terms is not listed for trading), subject to the order entry requirements set forth in subparagraph (a) of Options 8, Section 34. This proposed rule text represents the Exchange's current practice.

The Exchange proposes to relocate Options 8, Section 34(e), concerning Position Limits, to Options 8, Section 34(i). The Exchange proposes to update a rule citation to reflect the changes proposed herein with the reorganization of the rule to reflect the relocated rule text.

The Exchange proposes to relocate rule text within Options 8, Section 34(f), concerning Exercise Limits, to proposed Options 8, Section 34(j) without change.

Finally, the Exchange proposes to relocate rule text from Options 8, Section 34(g) and (h) into new Options 8, Section 26(g)(3)(F)(1)(d), Options 8, Section 34(k)(1) and (2) respectively, without substantive change.<sup>34</sup> The Exchange also proposes to update rule citations within this section to account for the reorganization of the rule to reflect the relocated rule text.

Finally, the Exchange proposes corresponding changes to reflect the proposed change to automate FLEX Options within Options 8, Section 28(f), Section 29(f), Section 32(g), Section 39, A-1, B-7, and C-2.

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<sup>34</sup> The Exchange proposes to re-letter the remainder of that section to account for the removed rule text.

*Cabinet Options*

Cabinet Orders are bids and offers (whether opening or closing) at a price of \$1 per option contract for the account of a Public Customer, firm, Lead Market Maker, Market Maker or Floor Market Maker. Cabinet Orders may only be executed on the Exchange's trading floor in open outcry pursuant to Options 8 Rules.<sup>35</sup> Today, Phlx reports cabinet trades to OCC within 90 seconds.<sup>36</sup> Today, Floor Brokers must submit the designated cabinet transaction form to the Nasdaq Market Operations staff for clearance within ninety seconds of execution. Phlx then immediately reports the cabinet trade to OCC.

At this time, the Exchange proposes to require Cabinet Orders to be reported into FBMS. Similar to the proposal for FLEX Orders, FBMS will create an electronic audit trail for Cabinet Orders, thereby further automating the execution and reporting of Cabinet Orders. With this change, members and member organizations will be required to record all Cabinet Orders represented in the trading crowd into FBMS. All executed contracts will be reported to OPRA and sent to OCC for clearing similar to all other equity, equity index and U.S. dollar-settled foreign currency options orders executed on the Exchange's trading floor.

In line with this proposed change, the Exchange proposes to amend Options 8, Section 33(a)(2) to provide that Floor Brokers shall enter Cabinet Orders into The Options Floor Based Management System pursuant to Options 3, Section 29. The

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<sup>35</sup> See Options 8, Section 33(a). Only Floor Brokers may represent Cabinet Orders.

<sup>36</sup> See Options 8, Section 33(a)(5).

Exchange proposes to remove the verbiage in Options 8, Section 33 which relates to the use of Cabinet forms, which are part of the Exchange's manual process.

The Exchange proposes replacing the word "he" with "the Floor Broker" within Options 8, Section 33(a)(3)(A) to clarify which market participant was being referenced.

In line with the proposed change, the Exchange proposes to amend Options 8, Section 33(a)(4) to specify that the Floor Broker must enter the Cabinet Order into FBMS.

The Exchange proposes to remove the rule text within Options 8, Section 33(d)(3) which relates to the use of forms which would no longer be relevant.

The Exchange proposes to update citations within Options 8, Section 33(e), which refer FLEX rules within Options 8, Section 34 which rules are being relocated. The updated citations mirror those changes proposed to new Options 8, Section 34(k)(2).

#### Technical Amendment

The Exchange proposes to amend rule citations within Options 8, Section 30(d) to correct references to subparagraphs, (i) and (ii) to properly cite (1) and (2), respectively.

#### Implementation

The Exchange proposes to implement this rule change on or before March 29, 2024. The Exchange will announce an implementation date by issuing an Options Trader Alert.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>37</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>38</sup> in particular,

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<sup>37</sup> 15 U.S.C. 78f(b)

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 automate FLEX Order and Cabinet Orders, so that members and member organizations will be required to record all FLEX Orders and Cabinet Orders represented in the trading crowd into FBMS, is consistent with the Act. The Exchange believes removing the requirement for members and member organizations to manually enter FLEX Orders into the Exchange's electronic audit trail and submit manual Cabinet Order forms and, instead require members and member organizations to enter these orders into FBMS, similar to all other orders executed on the trading floor, will reduce the administrative burden on floor participants and therefore removes impediments to and perfects the mechanisms of a free and open market.

Also, because FLEX Orders and Cabinet Orders will be reported and processed like all other open outcry trades, market participants will not be impacted nor have to take on any additional reporting or processing burden. In addition, the Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because having an electronic audit trail of all FLEX Orders and Cabinet Orders will provide a complete and accurate record of these transactions and better facilitate regulatory oversight. In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest because the proposal more closely aligns the handling of

FLEX Orders and Cabinet Orders with the handling of all other options transacted on Phlx's trading floor.

Specifically, with respect to FLEX Options, the proposed open outcry process is closely aligned with the current open outcry trading process for non-FLEX Options, but is still similar to the FLEX trading processes in place today. The proposed rule change merely eliminates many of the differences between FLEX and non-FLEX trading to eliminate potential confusion for market participants given the current differences, while implementing trading processes with which market participants are more familiar. As a result, the Exchange believes the proposed rule change will have minimal impact on the trading of FLEX Options, and possibly increase participation in FLEX Options, which could add liquidity to the Exchange's FLEX market, which ultimately benefits investors. By permitting FLEX Options to trade in a manner similar to non-FLEX Options, the Exchange believes this further improves a comparable alternative to the OTC market in customized options. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

The Exchange believes the current open outcry RFQ process, including the BBO Improvement Interval, for FLEX Orders is substantially similar to the current open outcry process for non-FLEX Orders described within Options 8, Section 24 at Supplementary Material .01, and therefore believes completely aligning the two processes is appropriate. Phlx FLEX Options transactions are exposed in open outcry on the trading floor similar

to other options that trade on Phlx's trading floor. Today, the initial process permits members the ability to enter, modify or withdraw FLEX Quotes at the Market Operations post during the Request Response Time, which is currently set to two minutes, after a quote was requested in open outcry. Thereafter, during the BBO Improvement Interval, which is set to 15 seconds, members may submit FLEX Quotes to meet or improve the BBO established during the Request Response Time. The Exchange's proposal within Options 3, Section 34(h) to provide floor participants with a reasonable amount of time to respond with bids and offers is consistent with the Act. The proposed timeframe of between three seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order would allow FLEX Options to trade substantially similar to the current RFQ process, including the BBO Improvement Interval. The proposed new process would continue to permit members the opportunity to enter, modify or withdraw FLEX Quotes in open outcry, without the need to submit FLEX Quotes at the Market Operations Post. Members would continue to have an opportunity to match, or improve, (as applicable), the BBO as is the case today during the BBO Improvement Interval. With the proposal members would have the ability to cross any part of the FLEX trade pursuant to Options 8, Section 30(a)(2), as is the case today. The proposed timeframe of between three seconds and five minutes is appropriate to ensure there is at least a minimum amount of time for Market Makers to conduct the same activities that take place today with the RFQ process and the BBO Improvement Interval, given the unique terms of FLEX Options. The Exchange believes that eliminating the RFQ process, including the BBO Improvement Interval, which is not contemplated in non-FLEX Option open outcry trading, would have minimal (if any)

impact on how a Floor Broker may request a market on the Exchange's trading floor with respect to FLEX Options. The Exchange believes it is appropriate to continue to ensure there is at least a minimum amount of time for Market Makers to respond given the unique terms of FLEX Options.

The proposed timeframe, which is analogous to the RFQ Process which includes the BBO Improvement Interval, is consistent with the Act and removes impediments to and perfects the mechanism of a free and open market by creating an appropriate timeframe to seek liquidity. Today, an Options Exchange Official would intervene if they believed that an appropriate amount of time was not allotted for the FLEX Order to trade. The Options Exchange Official would enforce the requirement that the amount of time must be at least three seconds and no more than five minutes based on the complexity of the trade and the responses in the trading crowd when determining if the time was reasonable. For example, based on the number of participants who indicate an interest to participate in the trade and the complexity of the trade, the Options Exchange Official would determine if there was an appropriate amount of time and require more time if necessary. Unlike the current process, an RFQ ticket would not be submitted to the Market Operations post and the RFQ would not be disseminated to OPRA.

Additionally, the Exchange would no longer disseminate RFQ Quotes to OPRA as part of this proposal. The Exchange believes that not disseminating RFQ Quotes is consistent with the Act and removes impediments to and perfects the mechanism of a free and open market by aligning the process to transact FLEX Orders with the current process to transact other orders in open outcry. By contrast, quotes are not disseminated with respect to other trades in open outcry today. While a market participant could seek



to participate in the trade by calling a floor broker after viewing the RFQ on OPRA, this is an uncommon scenario. The Exchange notes that the RFQ message has not provided any additional liquidity under the current process for FLEX Orders. Today, the RFQ message for FLEX Orders is the only administrative message disseminated to OPRA on the Exchange's trading floor. The Exchange does not otherwise disseminate an administrative message for other transactions on the Exchange's trading floor; only executed orders are disseminated to OPRA for non-FLEX Orders on the trading floor and for electronic transactions on Phlx. The Exchange believes that the open outcry process will continue to provide a competitive market for FLEX Orders and that the proposed process will provide an opportunity for the trading crowd to provide liquidity. FLEX Orders, unlike standard orders, are less common and the Exchange does not have a similar RFQ process for standard orders that are analogous to those FLEX Orders. This proposed process would align with Cboe's process and not require Phlx to disseminate quotes to OPRA while other options floor exchanges have no similar obligations.<sup>39</sup>

The proposed allocation is substantially similar to the allocation for non-FLEX trading in open outcry, excluding the provisions that are inapplicable to FLEX trading, and to the current allocation for FLEX trading in open outcry. With respect to allocation for a FLEX Order as well as non-FLEX Orders, best-priced responses will continue to have first priority, however if a Customer order were at the same price, the Customer would have priority over a non-Customer.<sup>40</sup> With respect to responses at the same price,

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<sup>39</sup> Cboe does not disseminate via OPRA information respecting open outcry RFQs. See Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 at 308 (January 4, 2012) (SR-Cboe-2011-123).

<sup>40</sup> See current Options 8, Section 25(a)(1) and Supplementary Material .02 of Options 8, Section 30.

because there is no electronic trading of FLEX Options on Phlx, there can be no priority Customer orders resting in the order book that would receive first priority at the same price. Therefore, the Customer priority rules of Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. Additionally, no Market Makers are appointed in FLEX Options, so there will be no participation entitlement applicable to FLEX trading. Therefore, the Market Maker entitlements described in Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. The crossing participation would continue to the next priority level in each of those respective rules. Therefore, members of the trading crowd who established the market will have priority over all other orders that were not represented in the trading crowd at the time that the market was established and will maintain priority over such orders except for orders that improve upon the market.<sup>41</sup> With respect to the order book, Defined Participation shall be equal where size is the same, otherwise participants are allocated based on size.<sup>42</sup> Therefore, the proposed rule change will have minimal (if any) impact on the allocation of responses in open outcry trades of FLEX Orders.

The Exchange's proposal to reword rule text concerning Exercise Price located within proposed Options 8, Section 34(f)(3) is consistent with the Act and does not expand the Exchange's current discretion. Today, the Exchange has the ability to require that FLEX index options be specified by an index value, number, percentage of index value calculated as of the open or close of trading on the Exchange on the trade date, a method for fixing such number, in terms of a specific dollar amount rounded to the

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<sup>41</sup> See Supplementary Material .02(vii) of Options 8, Section 30.

<sup>42</sup> See Options 8, Section 25(c)(3)(B).

nearest \$.10 or a percentage of the underlying security rounded to the nearest minimum increment, or in terms of a specific dollar amount rounded to the nearest hundredth of a dollar. In fact, the proposal narrows the Exchange's discretion to provide that it may determine the smallest increment for exercise prices of FLEX Options, not to exceed two decimal places. The Exchange has this authority today, it is electing to narrow its authority to provide the increment in the form of a dollar value. The proposal protects investors and the public interest by amending the rule text within proposed Options 8, Section 34(f)(3) to succinctly define the bounds of the Exchange's discretion.

The Exchange's proposal to amend Options 8, Section 34(f) to provide that all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series is consistent with the Act. The Exchange states that, to the extent the Exchange lists a micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.

The proposal eliminates the terminology that applies only to FLEX trading. Floor participants are familiar with the general open outcry trading procedures, and therefore, by aligning the open outcry trading process for FLEX Options with that of non-FLEX Options, and permitting FLEX trading in the same manner as non-FLEX trading on the

Exchange's trading floor, the Exchange believes the proposed rule change may encourage members to submit FLEX Orders for execution on Phlx. The Exchange believes the proposed rule change may reduce confusion regarding how FLEX Orders may trade in open outcry, given that any minor differences between the two processes that exist today are being eliminated. The Exchange believes that, with this proposal, floor participants will have the necessary time to respond in open with markets to FLEX Orders, similar to other Non-FLEX Orders which are transacted in open outcry.

The Exchange believes the proposed rule change will permit executions of FLEX Orders to continue to be completed in a timely fashion, while providing the crowd with sufficient time to price the unique terms of FLEX Options. The proposed amendments will enable floor participants to compete vigorously and potentially provide price improvement for FLEX Orders, as they do for non-FLEX Orders, as they will be encouraged to submit their best-priced bids and offers during the auctions to have the opportunity to execute against the FLEX Order.

Finally, reorganizing the FLEX rules and adding greater specificity to the rule will provide market participants with greater information on FLEX Options which removes impediments to and perfect the mechanism of a free and open market. The organization of the Options 8, Section 34 is intended to provide floor participants with greater information which represents the manner in which FLEX Options are transacted today on Phlx.

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

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

The Exchange's proposal to automate FLEX Orders and Cabinet Orders does not impose an undue burden on intra-market competition because FLEX Orders and Cabinet Orders will be reported and processed similar to all other open outcry trades. Further, market participants will not be impacted by this proposal. Members will not have additional reporting or processing burdens as a result of the proposal.

The proposed amendments to FLEX Options do not impose an undue burden on inter-market competition as the Exchange seeks to automate its current FLEX and Cabinet processes. The removal of the RFQ Process, including the BBO Improvement Interval, is similar to Cboe.<sup>43</sup>

Furthermore, with respect to the amendments to FLEX Options, the Exchange does not believe that the proposed rule change will impose any burden on competition because the proposed open outcry process is closely aligned with the current open outcry trading process for non-FLEX Options. The proposed process continues to be similar to the FLEX trading processes in place today. The proposed rule change merely eliminates many of the differences between FLEX and non-FLEX trading, which removes potential confusion for market participants given the current differences, while implementing trading processes with which market participants are more familiar. As a result, the Exchange believes the proposed rule change will have minimal impact on the trading of FLEX Options, and possibly increase participation in FLEX Options, which could add liquidity to the Exchange's FLEX market, which ultimately benefits investors. Any member or member organization may transact FLEX Options.

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<sup>43</sup>

See supra note 21.

Eliminating the RFQ Process and the BBO Improvement Interval in favor of a reasonable timeframe of between three seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order to respond with bids or offers does not impose an undue burden on competition. The proposed timeframe, which is analogous to the RFQ Process which includes the BBO Improvement Interval, creates an appropriate timeframe to seek liquidity. Today, an Options Exchange Official would intervene if they believed that an appropriate amount of time was not allotted for the FLEX Order to trade. Based on the number of participants who indicate an interest to participate in the trade and the complexity of the trade, the Options Exchange Official would determine if there was an appropriate amount of time and require more time if necessary. The Exchange believes that eliminating the RFQ process, including the BBO Improvement Interval, which is not contemplated in non-FLEX Option open outcry trading, would have minimal (if any) impact on how a Floor Broker may request a market on the Exchange's trading floor with respect to FLEX Options.

The Exchange's proposal to no longer disseminate RFQ Quotes to OPRA as part of this proposal does not impose an intra-market burden on competition because the proposal aligns the process to transact FLEX Orders with the current process to transact other orders in open outcry. The RFQ message has not provided any additional liquidity under the current process for FLEX Orders. Today, the RFQ message for FLEX Orders is the only administrative message disseminated to OPRA on the Exchange's trading floor. The Exchange does not otherwise disseminate an administrative message for other transactions on the Exchange's trading floor; only executed orders are disseminated to OPRA for non-FLEX Orders on the trading floor and for electronic transactions on Phlx.

The Exchange believes that the open outcry process will continue to provide a competitive market for FLEX Orders and that the proposed process will provide an opportunity for the trading crowd to provide liquidity. By contrast, quotes are not disseminated with respect to other trades in open outcry today. While a market participant could seek to participate in the trade by calling a floor broker after viewing the RFQ on OPRA, this is an uncommon scenario. FLEX Orders, unlike standard orders, are less common and the Exchange does not have a similar RFQ process for standard orders that are analogous to those FLEX Orders. The Exchange's proposal to no longer disseminate RFQ Quotes to OPRA as part of this proposal does not impose an inter-market burden on competition because the proposed process would align Phlx's process with Cboe's process and not require Phlx to disseminate quotes to OPRA while other options floor exchanges have no similar obligations.<sup>44</sup>

The Exchange's proposal to reword rule text concerning Exercise Price located within proposed Options 8, Section 34(f)(3) does not impose an undue burden on competition because it does not expand the Exchange's current discretion. The proposal narrows the Exchange's authority to provide the increment in the form of a dollar value not to exceed two decimal places.

The Exchange's proposal to amend Options 8, Section 34(f) to provide that all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date,

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<sup>44</sup> Cboe does not disseminate via OPRA information respecting open outcry RFQs. See Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 at 308 (January 4, 2012) (SR-Cboe-2011-123).

settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series does not impose an undue burden on competition. In the event that the Exchange were to list a micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.

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>45</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>46</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

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<sup>45</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>46</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.



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-2023-22 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-2023-22. 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-2023-22 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.<sup>47</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>47</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**Nasdaq PHLX LLC Rules**

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**Options Rules**

\* \* \* \* \*

**Options 8 Floor Trading**

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**Section 26. Trading Halts, Business Continuity and Disaster Recovery**

\* \* \* \* \*

(g) **Business Continuity and Disaster Recovery.** 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. The following provisions shall apply with respect to the Exchange's Trading Floor:

\* \* \* \* \*

(3) Virtual Trading Crowd. The Exchange may elect to permit open outcry trading to take place in a Virtual Trading Crowd if the Trading Floor becomes unavailable, the Back-Up Trading Floor becomes inoperable or the Exchange otherwise determines not to operate its Back-Up Trading Floor.

\* \* \* \* \*

(F) Trading Rules. If a Virtual Trading Crowd is enacted the Options 8 Rules shall apply to the extent not amended by the below rules.

(1) The following open outcry requirements shall apply:

- a. Prior to speaking on remote conferencing, each member must announce themselves each time.
- b. If a member experiences a technical issue accessing the remote conferencing, the Exchange will not be responsible for unexecuted trades.
- c. Floor Market Maker quotes will be considered firm in the event the Floor Market Maker is disconnected from the Virtual Trading Crowd

and the parties have a Meeting of the Minds with respect to the terms of the transaction. A “Meeting of the Minds” means the contra-side(s) verbally confirmed participation in the trade. In the event that a Floor Market Maker is disconnected from the Virtual Trading Crowd, a Floor Market Maker quote would not be considered firm if the quote were provided and the parties did not have a Meeting of the Minds with respect to the terms of the transaction.

[d. FLEX Trade tickets must be sent by email to the Phlx Correction Post.]

[e]d. A break-out room may be utilized to declare a dispute or otherwise notify an Options Floor Official of any required notifications.

[f]e. Disruptive or unnecessary conversations or comments in the remote conferencing or on chat will not be permitted and will be subject to disciplinary action.

[g]f. A member may not permit any other unauthorized person to gain audio or video access to the Virtual Trading Crowd. A member shall not record any trading sessions

\* \* \* \* \*

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

\* \* \* \* \*

(f) Floor Brokers or their employees shall enter the required information (as described in paragraph (e) above) for FLEX options[, or ensure that such information is entered, into the Exchange's electronic audit trail in the same electronic format as the required information for equity and index options and U.S. dollar-settled foreign currency options. Floor Brokers or their employees shall enter the required information for FLEX options into the electronic audit trail on the same business day that a specific event surrounding the lifecycle of an order in FLEX options (including, without limitation, orders, price or size changes, execution or cancellation) occurs].

\* \* \* \* \*

## **Section 29. Use of Floor Based Management System by Floor Market Makers and Lead Market Makers**

\* \* \* \* \*

(d) Execution. FBMS is designed to execute orders entered by Floor Market Makers or Lead Market Makers, including multi-leg orders up to 15 legs, after negotiation in the trading crowd. When a Floor Market Maker or Lead Market Maker submits an order for execution through FBMS, the order will be executed based on market conditions at the

time of execution and in accordance with Exchange rules. FBMS execution functionality will assist the [Registered Options trader]Market Maker or Lead Market Maker in clearing the Exchange book, consistent with Exchange priority rules. If the order cannot be executed, the System will attempt to execute the order a number of times for a period of no more than one second, which period shall be established by the Exchange and announced in an Options Trader Alert, after which it will be returned to the Floor Market Maker or Lead Market Maker on the FBMS. The Floor Market Maker or Lead Market Maker may resubmit the order for execution, as long as the quotes that comprise the order have not been withdrawn. Floor Market Makers and Lead Market Makers are responsible for handling all FBMS orders in accordance with Exchange priority and trade-through rules, including Options 5, Section 2, Options 8, Section 27, and Options 8, Section 33.

\* \* \* \* \*

(f) Floor Market Makers, Lead Market Makers or their employees shall enter the required information (as described in paragraph (a) above) for FLEX options[, or ensure that such information is entered, into the Exchange's electronic audit trail in the same electronic format as the required information for equity and index options and U.S. dollar-settled foreign currency options. Floor Market Makers, Lead Market Makers or their employees shall enter the required information for FLEX options into the electronic audit trail on the same business day that a specific event surrounding the lifecycle of an order in FLEX options (including, without limitation, orders, price or size changes, execution or cancellation) occurs].

\* \* \* \* \*

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

\* \* \* \* \*

(d) *Anticipatory Hedging*. No member organization or person associated with a member or member organization who has knowledge of the material terms and conditions of a solicited order, an order being facilitated, or orders being crossed, the execution of which are imminent, shall enter, based on such knowledge, an order to buy or sell an option for the same underlying security; an order to buy or sell the security underlying such class; or an order to buy or sell any related instrument until ([i]1) or ([ii]2) occur:

\* \* \* \* \*

### **Section 32. Types of Floor-Based (Non-System) Orders**

The Exchange may determine to make certain order types and time-in-force, respectively, available on a class or System basis.

\* \* \* \* \*

(g) *FLEX Option*. A FLEX Option is as described in Options 8, Section 34. [FLEX Options are not eligible for entry by a member for execution through FBMS.]

\* \* \* \* \*

### Section 33. Accommodation Transactions

(a) A "cabinet order" is a closing limit order at a price of \$1 per option contract for the account of a Public Customer, firm, Lead Market Maker or ROT. An opening order is not a "cabinet order" but may in certain cases be matched with a cabinet order pursuant to subsection (a)(iii) below. Only Floor Brokers may represent cabinet orders. Cabinet trading shall be available for each series of options open for trading on the Exchange under the following terms and conditions:

(1) Trading shall be conducted in accordance with other Exchange Rules except as otherwise provided herein or unless the context otherwise requires.

(2) Cabinet orders may be submitted to Floor Brokers and represented by them in the designated trading crowd of the option class. Floor Brokers shall enter cabinet orders into The Options Floor Based Management System pursuant to Options 3, Section 29.[Floor Brokers must use the designated cabinet transaction forms provided by the Exchange to document receipt of a cabinet order and the execution of a cabinet transaction. Options 8, Section 29(e)(i) shall not apply to cabinet orders.]

(3) (A) *Floor Broker Holds the Cabinet Order Only*. If a Floor Broker holds a cabinet order but does not hold contra-side interest, [he]the Floor Broker shall follow the procedures set forth in this subsection (3)(A). In the trading crowd, and in the presence of at least one market maker and Nasdaq Market Regulation Floor Surveillance, the Floor Broker shall announce the terms of the cabinet order to the trading crowd to solicit interest to participate on the closing position. All matching cabinet orders shall be assigned priority based upon the sequence in which such orders are received by the Floor Broker. If there is no matching cabinet order, the Floor Broker may match the cabinet order with a matching opening buy or sell limit order priced at \$1 per option contract. If there is no matching cabinet order or opening order, the Floor Broker may seek matching bids or offers for accounts of Lead Market Makers and Floor Market Makers. Lead Market Makers and Floor Market Makers can only participate after all other orders have been matched.

\* \* \* \* \*

(4) Once the cabinet order has been either crossed or matched, the Floor Broker shall submit the cabinet order for execution into The Options Floor Based Management System pursuant to Options 3, Section 29 [submit the designated cabinet form to the Nasdaq Market Operations staff for clearance and reporting at the close of the business day].

\* \* \* \* \*

(d) **Limit Orders Priced Below \$1:** Limit orders with a price of at least \$0 but less than \$1 per option contract may trade under the terms and conditions in Options 8, Section 33 above in each series of option contracts open for trading on the Exchange, except that:

- (1) Bids and offers for opening transactions are only permitted to accommodate closing transactions.
- (2) These procedures are available for trading in all options classes trading on the Exchange, including options classes participating in the Penny Interval.
- [(3) Transactions shall be reported for clearing utilizing forms, formats and procedures established by the Exchange.]

(e) Pursuant to Options 8, Section 34([h]k(2)), open FLEX option positions are eligible to be closed in accordance with this Options 8, Section 33 at the minimum increments specified herein. The FLEX option cabinet order may be executed against contra-side interest which closes a FLEX option position or, to the extent permitted under Options 8, Section 33(a)(iii), against contra-side interest which opens a FLEX option position. Section[s (b) and (c)](f) of Options 8, Section 34 shall not apply to FLEX option transactions executed pursuant to Options 8, Section 34([h]k(2)), and Options 8, Section 33. However, Sections [(d) - (h)](g), (i) and (j) of Options 8, Section 34 shall apply to any FLEX option position opened pursuant to [Options 8, Section 33]this rule.

#### **Section 34. FLEX [Index, Equity, and Currency Options]Trading**

(a) A Requesting Member shall obtain quotes and execute trades in certain non-listed FLEX options at the post of the non-FLEX option on the Exchange. The term “FLEX option” means a FLEX option contract that is traded subject to this Rule. Although FLEX options are generally subject to the Rules in this section, to the extent that the provisions of this Rule are inconsistent with other applicable Exchange Rules, this Rule takes precedence with respect to FLEX options.

(b) Order Types. The Exchange may determine to make the order types and Time-in-Force, respectively, within Options 8, Section 32 submitted in FLEX Options (“FLEX Orders”) available on a class or System basis. With respect to complex orders, complex FLEX Orders may have up to the maximum number of legs permitted pursuant to Exchange rules for standard trading. Each leg of a complex FLEX Order:

- (1) must be for a FLEX Option series authorized for FLEX trading with the same underlying equity security or index;
- (2) must have the same exercise style (American or European); and
- (3) for a FLEX Index Option, may have a different settlement type (a.m.-settled or p.m.- settled), except each leg must have the same settlement type.

**(c) Trading Hours.** FLEX options trading must be effected during the hours established by the Exchange. Such hours shall be within regular Exchange trading hours (for the non-FLEX option) on each business day, except that the Exchange in its discretion may determine at any time to narrow or expand FLEX trading hours to encompass, but not exceed, the trading hours of the non-FLEX option.

**(d) Trading Rotations.** There will be no trading rotations in FLEX options, either at the opening or at the close of trading.

**(e) Permissible Series.** The Exchange may authorize for trading a FLEX Option class on any equity security or index it may authorize for trading a non-FLEX Option class on that equity security or index pursuant to Options 4, Section 3 and Options 4A, Section 3, respectively, even if the Exchange does not list that non-FLEX Option class for trading. FLEX Option series are not pre-established. A FLEX Option series is eligible for trading on the Exchange upon submission to the System of a FLEX Order for that series pursuant to this Rule, subject to the following:

(1) The Exchange only permits trading in a put or call FLEX Option series that does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX Option series on the same underlying security or index that is already available for trading. This includes permitting trading in a FLEX Option series before a series with identical terms is listed for trading as a non-FLEX Option series. If the Exchange lists for trading a non-FLEX Option series with identical terms as a FLEX Option series, the FLEX Option series will become fungible with the non-FLEX Option series. The System does not accept a FLEX Order for a put or call FLEX Option series if a non-FLEX Option series on the same underlying security or index with the same expiration date, exercise price, and exercise style is already listed for trading.

(2) A FLEX Order for a FLEX Option series may be submitted on any trading day prior to the expiration date. In the event the Non-FLEX series is added intra-day, a position established under the FLEX trading procedures would be permitted to be closed using the FLEX trading procedures for the balance of the trading day on which the Non-FLEX series is added against another closing only FLEX position.

**(f) Terms.** When submitting a FLEX Order for a FLEX Option series to the Options Floor Based Management System, one of each of the following terms within subparagraph (f)(1) must be included. All other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, except that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option).

(1)[(b)] Characteristics[: (1)]of Underlying [i]Interest:



(A) any index upon which options currently trade on the Exchange. The applicable index multiplier shall be the same multiplier, in the case of U.S. dollar-denominated FLEX index options, that applies to non-FLEX index options on the same underlying index;

(B) any security which is options-eligible pursuant to Options 4, Section 3; or

(C) any foreign currency which is options-eligible pursuant to Options 4, Section 3 and which underlies non-FLEX U.S. dollar-settled foreign currency options that are trading on the Exchange.

**(2) Type: [-]**

(A) A put, call or hedge order (as defined in Options 8, Section 32).

**(3) Exercise Price: [-]** The Exchange may determine the smallest increment for exercise prices of FLEX Options not to exceed two decimal places.

[(A) with respect to FLEX index options, may be specified in terms of a specific index value number, a percentage of the index value calculated as of the open or close of trading on the Exchange on the trade date, or a method for fixing such number;

(B) with respect to FLEX equity options, may be specified in terms of a specific dollar amount rounded to the nearest \$.10 or a percentage of the underlying security rounded to the nearest minimum increment; or

(C) with respect to FLEX currency options, may be specified in terms of a specific dollar amount rounded to the nearest hundredth of a dollar.

**(4) Quote format—**

(A) in the case of FLEX index options and equity options, a bid and/or offer in the form of a decimal price (*e.g.* .10 or .25), pursuant to Options 3, Section 3, a specific dollar amount, or a percentage of the underlying equivalent value, in the case of FLEX index options, or security, in the case of FLEX equity options, rounded to the nearest minimum increment; or

(B) in the case of FLEX currency options, in the form of dollars per unit of underlying foreign currency in the minimum increments set forth for U.S. dollar settled foreign currency options in Options 3, Section 3(a).]

**(4) [(5)] Exercise [s] Style: [-]**

(A) American or European in the case of FLEX index options and FLEX equity options, and European only in the case of FLEX U. S. dollar-settled foreign currency options[;].

(5)[(6)] **Expiration [d]Date: [-]**

(A) any month, business day and year no more than 15 years from the date on which an executed FLEX equity and index option is submitted to the System and no more than 3 years from the date on which an executed FLEX currency option is submitted to the System, except that (i) a FLEX index option that expires on or within two business days prior or subsequent to a third Friday-of-the-month expiration day for a non-FLEX option (except quarterly expiring index options) or underlying currency may only have an exercise settlement value on the expiration date determined by reference to the reported level of the index as derived from the opening prices of the component securities ("a.m. settlement") and (ii) all FLEX currency options will expire at 11:59 p.m. eastern time on their designated expiration date.

[(B) Provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX options shall be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as non-FLEX options that are already available for trading on the same underlying security or index. FLEX options shall also be permitted before the options are listed for trading as non-FLEX options. Once and if the option series are listed for trading as non-FLEX options, then (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective non-FLEX option series, and (ii) any further trading in the series would be as non-FLEX options subject to the non-FLEX trading procedures and Rules. However, in the event the Non-FLEX series is added intra-day, a position established under the FLEX trading procedures would be permitted to be closed using the FLEX trading procedures for the balance of the trading day on which the Non-FLEX series is added against another closing only FLEX position. For such FLEX series, the Exchange will make an announcement that the FLEX series is now restricted to closing transactions; a FLEX Request for Quotes ("RFQ") may not be disseminated for any order representing a FLEX series having the same terms as a Non-FLEX series, unless such FLEX option order is a closing order (and it is the day the Non-FLEX series has been added); and only responses that close out an existing FLEX position are permitted. Any transactions in a restricted series that occur that do not conform to these requirements will be nullified by the Exchange.

(7) Requesting quotes—to request a quote in FLEX options, an RFQ shall be submitted pursuant to paragraph (c) of this Rule;

(8) Minimum size—

- (A) **Opening**—If there is no open interest in the particular series when an RFQ is submitted, the minimum size of an RFQ is:
- (i) One contract in the case of FLEX market index options, and one contract in the case of FLEX industry index options;
  - (ii) One contract in the case of FLEX equity options; and
  - (iii) 50 contracts in the case of FLEX currency options.
- (B) **Opened**—If there is open interest, the minimum size of an RFQ is:
- (i) respecting FLEX index options, \$1 million underlying equivalent value, or the remaining size on a closing transaction, whichever is less;
  - (ii) respecting FLEX equity options, the lesser of 100 contracts or the number of contracts overlying \$1 million of the underlying securities in the case of an opening transaction, or 25 contracts or the remaining size in the case of a closing transaction, whichever is less; or
  - (iii) respecting FLEX currency options, 25 contracts, or the remaining size on a closing transaction, whichever is less.
- (C) **Responsive**—The minimum value size for a responsive quote, other than an assigned ROT or assigned Lead Market Maker, is (includes non-assigned Floor Market Makers and a non-assigned Lead Market Maker):
- (i) respecting FLEX index options, \$1 million underlying equivalent value respecting index options, or the remaining size on a closing transaction, whichever is less. However, an assigned ROT and assigned Lead Market Maker are required to respond with at least \$10 million underlying equivalent value respecting FLEX market index options, and \$5 million underlying equivalent value respecting FLEX industry index options or Alpha Index options, or the size amount requested in the RFQ, whichever is less;
  - (ii) respecting FLEX equity options, 25 contracts, or the remaining size on a closing transaction, whichever is less. However, an assigned ROT and assigned Lead Market Maker are required to respond with at least 250 contracts, or the size amount requested in the RFQ, whichever is less; or
  - (iii) respecting FLEX currency options, 50 contracts, or the remaining size on a closing transaction, whichever is less. However, an assigned ROT and assigned Lead Market Maker are required to respond with at least 250 contracts, or the size amount requested in the RFQ, whichever is less.

(D) "Underlying equivalent value" means the aggregate value of a FLEX index option (index multiplier times the current index value) multiplied by the number of FLEX index options.]

**(6) [(9)] Settlement:**

(A) respecting FLEX index options, the settlement value may be specified as the index value reported at the: (i) close (P.M.-settled); and (ii) opening (A.M.-settled) of trading on the Exchange[, or (iii) as an average over a specified period of time, within parameters established by the Exchange]. American style index options exercised prior to the expiration date can only settle based on the closing value on the exercise date. FLEX index options are settled in U.S. dollars; or

(B) The settlement value for FLEX options on the Australian dollar, the Euro, the British pound, the Canadian dollar, the Swiss franc, the Japanese yen, the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, and the Swedish krona shall be the Exchange Spot Price at 12:00:00 Eastern Time (noon) on expiration day, unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances. FLEX currency options are settled in U.S. dollars. FLEX currency options will cease trading at 10:15 a.m. eastern time on their designated expiration date.

[(10) Requesting Member—a member of the Exchange qualified to trade FLEX options pursuant to paragraph (d) of this Rule who initiates an RFQ for a FLEX option.

(11) Request for Quotes—the term "Request for Quotes" means the initial request supplied by a Requesting Member to initiate FLEX bidding and offering.

(12) Request Response Time—the term "Request Response Time" means the minimum period of time established by the Exchange, during which Exchange members participating in FLEX options may provide FLEX Quotes in response to a Request for Quotes.

(13) FLEX Quote - the term "FLEX Quote" means (i) FLEX bids and offers entered by Lead Market Makers and Floor Market Makers and (ii) orders to purchase and orders to sell FLEX Options entered by Floor Brokers, in each case in response to a Request for Quotes.

(14) BBO—the term "BBO" means the best bid or offer, or both, as applicable, entered in response to a Request for Quotes.

(15) BBO Improvement Interval—the term "BBO Improvement Interval" means the minimum period of time, to be established by the Exchange, during which members

may submit FLEX Quotes to meet or improve the BBO established during the Request Response Time.

**(c) Procedure for Quoting and Trading FLEX Options.** FLEX options will not be continuously quoted and series are not pre-established. The Exchange's electronic quoting and trading system will not be available for FLEX options. The variable terms of FLEX options shall be established through the process described in this Rule. All transactions must be in compliance with Section 11(a) of the Securities Exchange Act of 1934 and the rules promulgated thereunder, which may include yielding priority to Public Customer orders.

- (1) Requesting Quotations.** The Requesting Member may initiate a Request-for-Quote ("RFQ") by first announcing all of the following contract terms to the trading crowd of the non-FLEX option and then submitting an RFQ ticket to the post: (1) underlying index, security or foreign currency; (2) type, size, and crossing intention; (3) in the case of FLEX index options and FLEX equity options, exercise style; (4) expiration date; (5) exercise price; and (6) respecting index options, the settlement value. Thereafter, on receipt of an RFQ in proper form, the assigned Lead Market Maker or the Requesting Member shall cause the terms of the RFQ to be disseminated as an administrative message through the Options Price Reporting Authority ("OPRA").
- (2) Responses.** Members may enter at the Market Operations post FLEX Quotes responsive to each Request for Quotes. FLEX Quotes must be entered during the Request Response Time. Each FLEX Quote shall refer to a reference indicator as the Exchange determines appropriate from time to time. All FLEX Quotes may be entered, modified or withdrawn at any point during the request response time. At the expiration of the Request Response Time, the BBO shall be identified in accordance with the price and time priority principles set forth by the Exchange.
- (3) Formation of Contracts Following the Process of Initial Quotes.** At the expiration of the Request Response Time, the assigned Lead Market Maker, or if none, the Requesting Member shall determine the BBO and the BBO shall be displayed on such market data systems as are available. If the Requesting Member has not indicated an intention to cross or act as principal with respect to any part of the FLEX trade, the member shall promptly accept or reject the displayed BBO: provided, however, that if such a Requesting Member either rejects the BBO or is given a BBO for less than the entire size requested, all FLEX participating members other than the Requesting Member will have an opportunity during the BBO Improvement Interval in which to match, or improve, (as applicable), the BBO. At the expiration of any such BBO Improvement Interval, the Requesting Member must promptly accept or reject the BBO(s). If the Requesting Member has indicated an intention to cross or act as principal with respect to any part of the FLEX trade, acceptance of the displayed BBO shall be automatically delayed until the expiration of the BBO Improvement Interval. Prior to the BBO Improvement Interval, the Requesting Member must indicate at the post the price at which the member expects

to trade. In these circumstances, the Requesting Member may participate with all other FLEX-participating members in attempting to improve or match the BBO during the BBO Improvement Interval. At expiration of the BBO Improvement Interval, the Requesting Member must promptly accept or reject the BBO(s). The Requesting Member has no obligation to accept any FLEX bid or offer. Whenever, following the completion of FLEX bidding and offering responsive to a given RFQs, the Requesting Member rejects the BBO or the BBO size exceeds the FLEX transaction size indicated in the RFQs, members may accept the entire order or the unfilled balance of the BBO.

- (4) **Priority.** The highest bid shall have priority, but where the two or more best bids are submitted at the same price, the bid(s) submitted first in time will have priority. The lowest offer shall have priority, but where the two or more best offers are submitted at the same price, the offer(s) submitted first in time will have priority.
- (5) **BBO Improvement Interval.** In the case of FLEX equity options only and notwithstanding paragraph (c)(4), whenever the Requesting Member has indicated an intention to cross or act as principal on the trade and has matched or improved the BBO during the BBO Improvement Interval, the Requesting Member will be permitted to execute the contra side of the trade that is the subject of the RFQs, to the extent of at least 40% of the trade, provided the order is a Public Customer order or an order respecting the Requesting Member's firm proprietary account. Notwithstanding the foregoing, all market participants may effect crossing transactions.
- (6) **Reporting Requirements.** RFQs, responsive quotes and completed trades will be promptly reported to OPRA and disseminated as an administrative message.
- (7) **Trading Rotations.** There will be no trading rotations in FLEX options, either at the opening or at the close of trading.
- (8) **Hours of Trading.** FLEX options trading must be effected during the hours established by the Exchange. Such hours shall be within regular Exchange trading hours (for the non-FLEX option) on each business day, except that the Exchange in its discretion may determine at any time to narrow or expand FLEX trading hours to encompass, but not exceed, the trading hours of the non-FLEX option.]

(g)[(d)] **Who May Trade FLEX Options.**

(1) **Assigned Floor Market Makers and Assigned Lead Market Maker.** A[n ROT]Market Maker or Lead Market Maker may apply on a form prescribed by the Exchange to be assigned in FLEX options. At least two members shall be assigned to each FLEX option. Only the Lead Market Maker in the non-FLEX option may be the assigned Specialist in that FLEX option ("FLEX Lead Market Maker"). The provisions of Options 8, Section 27(c) regarding market making obligations shall be applicable to assigned Floor Market Makers and assigned Lead Market Makers, such

that a market must be provided in any FLEX option when requested by an Options Exchange Official.

(2) **Financial Requirements.** An assigned [ROT]Market Maker in FLEX index options shall be required to maintain a minimum of \$100,000 in net liquid assets. An assigned Lead Market Maker in FLEX index options shall be required to maintain a minimum of \$1,000,000 in net capital. Floor Brokers shall be required to maintain a minimum of \$50,000 in net capital to qualify to trade FLEX options. Each such assigned [ROT]Market Maker, assigned Lead Market Maker or Floor Broker shall immediately inform the Exchange upon failure to be in compliance with such requirements. The Exchange may waive the financial requirements of this Rule in unusual circumstances.

(3) **Letters of Guarantee.** No Market Maker[ROT] or Lead Market Maker shall effect any FLEX option unless a Letter of Guarantee has been issued by a clearing member organization and filed with the Exchange pursuant to Options 6D, Section 1 specifically accepting financial responsibility for all FLEX option transactions made by such person and such letter has not been revoked.

(h) FLEX Trading. Trading of FLEX Options is subject to all other Options 8 Rules applicable to the trading of options on the Exchange, unless otherwise provided in this Rule. A FLEX Option series is only eligible for trading if the FLEX Order is represented in open outcry. With respect to FLEX Options, floor participants have a reasonable amount of time (which amount of time must be between three seconds and five minutes) from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order (including announcing a crossing transaction pursuant to Options 8, Section 30(a)) to respond with bids or offers.

(1) Simple FLEX Order. A FLEX Order for a FLEX Option series submitted to the System must include all terms for a FLEX Option series set forth in subparagraphs (e) and (f) (including that a non-FLEX Option series with identical terms is not listed for trading), size, side of the market, and a bid or offer price, subject to the order entry requirements set forth in Options 8, Section 32.

(2) Complex FLEX Order. A FLEX Order for a FLEX Option complex strategy submitted to the System must satisfy the criteria for a complex FLEX Order set forth in subparagraph (b) and include size, side of the market, and a net debit or credit price. Additionally, each leg of the FLEX Option complex strategy must include all terms for a FLEX Option series set forth in subparagraphs (e) and (f) (including that a non-FLEX Option series with identical terms is not listed for trading), subject to the order entry requirements set forth in subparagraph (a).

(i)[(e)] Position Limits.

(1) FLEX index options shall be subject to a separate position limit of 200,000 contracts on the same side of the market respecting market index options; 36,000,

48,000, or 60,000 contracts respecting industry index options, depending on the position limit tier determined pursuant to Options 4A, Section 6(b)(i). FLEX index options shall otherwise be subject to the same position limits governing index options as provided for within Options 4A, Section 6.

(2) FLEX equity options shall not be subject to a separate FLEX position limit. Except as provided in subsection (4) of this section (d), positions in FLEX equity options shall not be taken into account when calculating position limits for non-FLEX equity options, or FLEX or non-FLEX index options.

However, each member or member organization (other than a Lead Market Maker or [ROT]Market Maker) that maintains a position on the same side of the market in excess of the standard limit under Options 9, Section 13 for non-FLEX equity options of the same class on behalf of its own account or for the account of a customer shall report information on the FLEX equity option position, positions in any related instrument, the purpose or strategy for the position and the collateral used by the account. This report shall be in the form and manner prescribed by the Exchange. In addition, whenever the Exchange determines that a higher margin requirement is necessary in light of the risks associated with a FLEX equity option position in excess of the standard limit for non-FLEX equity options of the same class, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position. Additionally, it should be noted that the clearing firm carrying the account will be subject to capital charges under SEC rule 15c3-1 to the extent of any margin deficiency resulting from the higher margin requirement.

(3) Positions in FLEX currency options will be aggregated with positions in non-FLEX U.S. dollar-settled foreign currency option contracts for purposes of determining compliance with the position limits established by Options 9, Section 13.

(4) As long as the options positions remain open, positions in FLEX index options that expire on a third Friday-of-the-month shall be aggregated with positions in non-FLEX index options on the same underlying security (“comparable non-FLEX index options”), positions in FLEX equity options that expire on a third Friday-of-the-month shall be aggregated with positions in non-FLEX equity options on the same underlying security (“comparable non-FLEX equity options”), and shall be subject to the position and exercise limits set forth in this rule, and Options 9, Section 13, 15 and Options 4A, Sections 6 and 19, as applicable.

**(i) [(f)] Exercise Limits.**

(1) In determining compliance with Options 9, Section 15 and Options 4A[m], Section 19, exercise limits for FLEX options shall be equivalent to position limits established in this Rule. Positions in FLEX options shall not be taken into account when calculating exercise limits for non-FLEX options, except as provided in



paragraph (d) above. The minimum exercise size shall be the lesser of \$1 million underlying equivalent value for FLEX index options, and 25 contracts for FLEX equity and currency options, or the remaining size of the position.

**(k) Miscellaneous.**

(1)[(g)] FLEX equity and currency options shall be subject to the exercise-by-exception procedure of Rule 805 of The Options Clearing Corporation.

(2)[(h)] Notwithstanding Rule (c)(4) of this rule regarding FLEX Index, Equity and Currency Options minimum increments, open FLEX option positions are eligible to be closed in accordance with Options 8, Section 33, Accommodation Transactions, at the minimum increments specified therein. The FLEX option cabinet order may be executed against contra-side interest to close a FLEX option position or, to the extent permitted under Options 8, Section 33(a)(3)(B), against contra-side interest which opens a FLEX option position. Sections (a) and [(b)](f) of this rule shall not apply to FLEX option transactions executed pursuant to this paragraph and Options 8, Section 33. Sections [(d) - (h)](g), (i) and (j) of this rule shall apply to any FLEX option position opened pursuant to Options 8, Section 33.

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

**A. Lead Market Makers**

**A-1 Options Floor Based Management System**

\* \* \* \* \*

Lead Market Makers or their employees shall enter the required information (as described above) for FLEX options[, or ensure that such information is entered, into the Exchange's electronic audit trail in the same electronic format as the required information for equity, equity index and U.S. dollar-settled foreign currency options. Lead Market Makers or their employees shall enter the required information for FLEX options into the electronic audit trail on the same business day that a specific event surrounding the lifecycle of an order in FLEX options (including, without limitation, orders, price or size changes, execution or cancellation) occurs.]

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**B. [REGISTERED OPTIONS TRADERS]Market Makers**

\* \* \* \* \*

**B-7 Options Floor Based Management System**

\* \* \* \* \*

Floor Market Makers or their employees shall enter the required information (as described above) for FLEX options[, or ensure that such information is entered, into the Exchange's electronic audit trail in the same electronic format as the required information for equity, equity index and U.S. dollar-settled foreign currency options. Floor Market Makers or their employees shall enter the required information for FLEX options into the electronic audit trail on the same business day that a specific event surrounding the lifecycle of an order in FLEX options (including, without limitation, orders, price or size changes, execution or cancellation) occurs.]

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## **C-2 Options Floor Based Management System**

\* \* \* \* \*

Floor Brokers or their employees shall enter the required information (as described above) for FLEX options[, or ensure that such information is entered, into the Exchange's electronic audit trail in the same electronic format as the required information for equity, equity index and U.S. dollar-settled foreign currency options. Floor Brokers or their employees shall enter the required information for FLEX options into the electronic audit trail on the same business day that a specific event surrounding the lifecycle of an order in FLEX options (including, without limitation, orders, price or size changes, execution or cancellation) occurs].

\* \* \* \* \*