

and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>2</sup> The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-19900 Filed 8-19-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78593; File No. SR-Phlx-2016-82]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change To Adopt a New Exception in Exchange Rule 1000(f) for Sub-MPV Split-Priced Orders

August 16, 2016.

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 August 3, 2016, 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 the Substance of the Proposed Rule Change

The Exchange proposes to adopt a new exception in Rule 1000(f) permitting Floor Brokers to execute certain split price orders in the trading crowd rather than electronically through the Options Floor Broker Management System, as described in detail below.

The text of the proposed rule change is set forth below. Proposed new language is underlined.

\* \* \* \* \*

#### NASDAQ PHLX Rules

\* \* \* \* \*

#### Options Rules

\* \* \* \* \*

#### Rule 1000. Applicability, Definitions and References

(a)–(e) No change.

(f) All Exchange options transactions shall be executed in one of the following ways[, once the Exchange's new Options Floor Broker Management System functionality has been operating for a certain period to be established by the Exchange]:

(i) Automatically by the Exchange Trading System pursuant to Rule 1080 and other applicable options rules;

(ii) by and among members in the Exchange's options trading crowd none of whom is a Floor Broker; or

(iii) through the Options Floor Broker Management System for trades involving at least one Floor Broker. Although Floor Brokers may represent orders in the trading crowd, Floor Brokers are not permitted to execute orders in the Exchange's options trading crowd, except as follows:

(A) The Exchange may determine to permit executions otherwise than in accordance with subparagraphs (i)–(iii) above respecting an option or all options in the event of a problem with Exchange systems.

(B) In addition, Floor Brokers can execute orders in the options trading crowd pursuant to Rule 1059, Accommodation Transactions (cabinet trades), and Rule 1079, FLEX Equity, Index and Currency Options.

(C) Multi-leg orders with more than 15 legs can be executed in the trading crowd.

(D) The following split price orders that, due to FBMS system limitations, require manual calculation:

(I) simple orders not expressed in the applicable minimum increment (“sub-MPV”) and that cannot be evenly split into two whole numbers to create a price at the midpoint of the minimum increment; and

(II) complex and multi-leg orders with at least one option leg with an odd-numbered volume that must trade at a sub-MPV price or one leg that qualifies under (I) above.

Surveillance staff must approve all executions submitted under this Rule 1000(f)(iii) to validate that each abides by applicable priority and trade through rules, and that rounding of prices is used only where necessary to execute the trade at the MPV, and only to the benefit of a customer order or, where multiple customers' orders are involved, for the customer order that is earliest in time.

(g) No change.

\* \* \* \* \*

#### 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.

<sup>2</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

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

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

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

1. Purpose

The purpose of the proposal is to provide an exception to the mandatory use of the Floor Broker Management System ("FBMS") pursuant to Rule 1000(f) to permit Floor Brokers to execute certain split price orders in the trading crowd rather than electronically and to facilitate these transactions. Through the use of a surveillance process to verify that the conditions of the exception are met, the Exchange will ensure that the proposed exception is used only rarely.

Development of FBMS System

Until April 1, 2016, the Exchange operated two Options Floor Broker Management Systems concurrently on the options trading floor: the original Floor Broker Management System operating since 2005 ("FBMS 1");<sup>3</sup> and the enhanced Floor Broker Management System ("FBMS 2"). After March 31, 2016, FBMS 1 was retired and Floor Brokers were required to use FBMS 2.

FBMS 2 was launched in March 2014 in order to prevent certain types of violations and enhance order handling protections. Currently, with FBMS 2, all options transactions on the Exchange involving at least one Floor Broker are required to be executed by FBMS 2 as opposed to being executed by the Floor Broker in the trading crowd.<sup>4</sup> All orders must continue to be represented in the trading crowd, but the negotiation and agreement that occurs in the trading crowd does not result in a final trade, but rather a "meeting of the minds" that is then submitted through FBMS 2 for execution in the matching engine.

The Exchange received approval to implement FBMS 2 as of June 1, 2013,<sup>5</sup> and delayed its implementation until July 2013,<sup>6</sup> until September 2013,<sup>7</sup> until

December 2013,<sup>8</sup> and until March 2014.<sup>9</sup> Implementation began on March 7, 2014, with FBMS 2 operating concurrently with FBMS 1. FBMS 2 has been made available to all Floor Brokers in all options and, on March 31, 2016, FBMS 1 was retired.<sup>10</sup> As a result, FBMS 2 is the only system currently in use.

The Exchange has contracted with a third-party to build an alternative system ("FBMS 3") to replace FBMS 2. The Exchange had intended to implement FBMS 3 by November 3, 2015, and then by March 2016, but, based on recent estimates from the third-party entity, it will be ready by November 30, 2016.<sup>11</sup> Despite the delays in launching FBMS 3, the new system is still needed to reduce the occurrence of latencies and abnormalities that have occurred with FBMS 2 that has affected multiple firms multiple times per week. The Exchange is committed to distributing a next-generation product in the form of FBMS 3.

Beginning last year, the Exchange explained the state of FBMS 3 to Commission staff in the spirit of sharing the context around the delay and the Exchange's then-current thoughts about deployment going forward. The Commission's notice of filing and immediate effectiveness of the proposed rule change extending the operation of FBMS 1 until March 31, 2016 stated that until FBMS 3 becomes available, the Exchange would continue to operate FBMS 1 and FBMS 2 concurrently and

that all Floor Brokers may use either FBMS. Although that was the Exchange's intent at the time, the Exchange did not intend to tie the retirement of FBMS 1 to the deployment of FBMS 3; the availability of FBMS 1 until FBMS 3 became available was a likely assumption, but not the only possible outcome.

Despite the possibility that FBMS 2 may experience some latency or potential glitches, the Exchange determined in its regulatory discretion to retire FBMS 1 and not seek an extension of the rule permitting the concurrent operation of FBMS 1 and FBMS 2, a determination the Exchange announced on March 14, 2016.<sup>12</sup> Specifically, the Exchange believed that the regulatory and other benefits of exclusively using FBMS 2 across the trading floor should no longer be delayed. The electronic protections associated with the Commission's Market Access Rule<sup>13</sup> requirements are available on FBMS 2 (but not FBMS 1) such that the Exchange concluded this was a key reason to require the use of FBMS 2. The Floor Brokers themselves benefit from using FBMS 2 because they avoid certain violations, process complicated multi-leg orders more quickly and manage their orders, overall, better. The FBMS 3 delay and the importance of the Exchange's compliance record changed the situation such that the Exchange determined to let the permission to operate FBMS 1 expire.<sup>14</sup> FBMS 1 has not operated since March 31, 2016.

Proposal

The Exchange proposes to adopt a new exception to the mandatory use of FBMS to execute trades for the processing of split-price orders. Currently, Rule 1000(f) provides that all Exchange options transactions shall be executed in one of the following ways:

(i) Automatically by the Exchange Trading System pursuant to Rule 1080 and other applicable options rules;

(ii) by and among members in the Exchange's options trading crowd none of whom is a Floor Broker; or

(iii) through the Options Floor Broker Management System for trades involving at least one Floor Broker. Although Floor Brokers may represent orders in the trading crowd, Floor Brokers are not permitted to execute orders in the Exchange's options trading crowd.

<sup>12</sup> <http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2016-8>.

<sup>13</sup> 17 CFR 240.15c3-5.

<sup>14</sup> See note 10 above.

<sup>8</sup> Securities Exchange Act Release No. 70629 (October 8, 2013), 78 FR 62852 (October 22, 2013) (SR-Phlx-2013-100).

<sup>9</sup> Securities Exchange Act Release No. 71212 (December 31, 2013), 79 FR 888 (January 7, 2014) (SR-Phlx-2013-129).

<sup>10</sup> See Securities Exchange Act Release Nos. 72135 (May 9, 2014), 79 FR 27966 (May 15, 2014) (SR-Phlx-2014-33). Accordingly, the Exchange proposes to delete language from the first sentence of Rule 1000(f) that refers to the continued operation of FBMS 1. Nevertheless, the Exchange delayed the retirement of FBMS 1 until September 1, 2014, November 3, 2014, November 3, 2015, and, most recently, until April 1, 2016. See also Securities Exchange Act Release Nos. 72135 (May 9, 2014), 79 FR 27966 (May 15, 2014) (SR-Phlx-2014-33); 73246 (September 29, 2014), 79 FR 59874 (October 3, 2014) (SR-Phlx-2014-59); 73586 (November 13, 2014), 79 FR 68931 (November 19, 2014) (SR-Phlx-2014-71); and 67187 (October 19, 2015), 80 FR 64462 (October 23, 2015) (SR-Phlx-2015-80).

<sup>11</sup> Before FBMS 3 becomes available, the Exchange will provide notice in the form of an options circular to the Floor Broker community establishing a schedule for training and a reasonable implementation period. The Exchange does not expect that this will be a long or difficult transition from FBMS 2 to FBMS 3 because the functionality is the same and the interface to the Floor Broker is as well; the principal differences lie in the background, involving the architecture that is the backbone of the system.

<sup>3</sup> Under FBMS 1, orders were executed in the trading crowd by the Floor Broker and that execution was recorded in FBMS 1, which enabled the Exchange to electronically process the order in terms of trade reporting and clearing. If a trade that occurred in the trading crowd fails to give priority to an order on the book, for example, such violation is addressed by the Exchange's surveillance and enforcement programs after the fact.

<sup>4</sup> Securities Exchange Act Release No. 69471 (April 29, 2013), 78 FR 26096 (May 3, 2013) (SR-Phlx-2013-09).

<sup>5</sup> *Id.*

<sup>6</sup> Securities Exchange Act Release No. 69811 (June 20, 2013), 78 FR 38422 (June 26, 2013) (SR-Phlx-2013-67).

<sup>7</sup> Securities Exchange Act Release No. 70141 (August 8, 2013), 78 FR 49565 (August 14, 2013) (SR-Phlx-2013-83).

There are currently three exceptions to Rule 1000(f)(iii) that permit executions otherwise than in accordance with subparagraphs (i)–(iii) above. The first, under subparagraph (A), applies to executions respecting an option or all options in the event of a problem with Exchange systems. In addition, under subparagraph (B), Floor Brokers can execute orders in the options trading crowd pursuant to Rule 1059, Accommodation Transactions (cabinet trades), and Rule 1079, FLEX Equity, Index and Currency Options. Finally, under subparagraph (C), Multi-leg orders with more than 15 legs can be executed in the trading crowd. These three exceptions in (A)–(C) have been narrowly crafted to address specific situations, such as the complexity of a trade involving more than 15 legs. Each time a Floor Broker invokes an exception to Rule 1000(f), the Floor Broker is required by Rule 1063(e)(ii) to record the information required by Rule 1063(e)(i) on paper trade tickets, and may not represent an order for execution that has not been time stamped with the time of entry on the trading floor; such trade tickets must be time stamped upon the execution of such an order.

*Creation of Split-Price Orders.* The Exchange first recognized the complexity of the split-price order in 2005 when it filed to create an exception from existing priority rules for split-price orders under Rule 1014(g)(i)(B).<sup>15</sup> The purpose behind the split-price priority exception was “to bring about the execution of large orders, which by virtue of their size and the need to execute them at multiple prices may be difficult to execute without a limited exception to the priority rules.” The proposed exception allows a member effecting a trade that betters the market to have priority on the balance of that trade at the next pricing increment, even if there are orders in the book at the same price. Floor Brokers that avail themselves of the split-price priority rule are obligated to ensure compliance with Section 11(a) of the Act.<sup>16</sup>

Today, split-price orders are processed via either FBMS 2 or paper ticket. If the split-price order is evenly split and requires simple calculations to determine the number of contracts at two price points, the order is handled through FBMS 2. If the split-price order

computation is more complicated, involving non-even integers and sub MPV price points, the surveillance staff declare an FBMS 2 system malfunction—in accordance with PHLX Rules 1000(f)(iii)(A) and 1063(e)(ii)—and allow the floor broker to utilize a paper ticket and oral execution of the split-price order in the trading crowd. The Exchange believes that the treatment of split-price orders under Rule 1000(f) should be made clearer.

Therefore, the Exchange proposes to add an additional exception to Rule 1000(f)(iii), also narrowly crafted to reflect the complexities of executing split-price orders. Specifically, pursuant to proposed Rule 1000(f)(iii)(D), the following split price orders that require, due to a system limitation, a manual calculation to determine specific volumes at different prices can be executed in the trading crowd: (I) Simple orders with a price not expressed in the applicable minimum increment (“sub-MPV”) <sup>17</sup> and that cannot be evenly split into two whole numbers to create a price at the midpoint of the minimum increment; and (II) complex and multi-leg orders with at least one option leg with an odd-numbered volume that must trade at a sub-MPV price or one leg that qualifies under (I) above, thereby requiring the Floor Broker to determine the specific volumes to trade at each price. Surveillance staff must approve any such executions in open outcry to validate that such execution abides by applicable priority and trade through rules.

The proposed exception is similar to the existing exceptions in that it permits additional time when there is a system problem or when needed for the entry and completion of complicated trades. Here, the additional time provided by the proposed exception is needed when a split-price trade calculation is complicated or requires contracts be rounded in favor of the customer due to the fact that it requires manual intervention. If, at the end of the manual calculation, the Floor Broker is able to input the determined split prices into FBMS 2 he may do so; otherwise he may use paper tickets. The use of a paper ticket will be necessary where, for example, the NBBO has moved and the trade no longer complies with the applicable trade through restrictions. Even if the Floor Broker is unable to use FBMS 2 to complete the entry of the split-price trade, the Floor Broker must still enter the order information into FBMS 2 for audit trail purposes.

The Surveillance staff will oversee Floor Brokers’ use of the proposed exception as it does today under the current exceptions. Currently, when a Floor Broker states that there is a problem with the FBMS system, the Floor Broker will continue to input the order into FBMS (to the extend order entry functionality is accessible) and continue to announce the order in the trading crowd. Surveillance staff, knowing that the Floor Broker stated that he is experiencing a system problem or limitation will attempt to confirm the system problem with Exchange Operations staff. If Surveillance staff is able to confirm that FBMS has a performance problem, Surveillance staff will approve the use of a paper trade ticket and oral consummation of a transaction in the trading crowd that is contingent on Surveillance staff’s additional confirmation that the trade complies with the time and price priority rules of the Exchange—a “pending trade.”

If the pending trade complies with the time and price priority rules of the Exchange, the trade is approved and determined to have occurred at the time it would have occurred in the trading crowd but for the system problem or limitation. If the pending trade does not comply with the time and price priority rules of the Exchange, the Surveillance staff will inform the applicable trading crowd participants that the pending trade does not comply with Exchange rules and not permit the trade to occur. This manual process performed by the Surveillance staff parallels the electronic process performed within the Exchange matching engine when FBMS is able to process a trade. The delay attributable to this manual surveillance process does not change the time of trade execution, which is set at the time the trade would have occurred in the trading crowd.

With respect to simple orders, if a Floor Broker attempts to execute a customer order to sell 357 contracts in symbol XYZ (with a Minimum Price Variation increment of \$0.05) at a price of \$0.11 by way of split price execution, the floor broker must perform a manual calculation. As a result of FBMS 2 being unable to calculate the number of contracts to split to determine a net price of at least \$0.11, the floor broker will manually enter 285 contracts @ \$0.10 and 72 contracts @ \$0.15 to arrive at an execution price as close as possible to an \$0.11 (\$0.110084 in this case) aggregate price for the 357 contracts ensuring that, when applicable, the customer side of the trade benefits from the difference between the \$0.11 limit and the actual

<sup>15</sup> Securities Exchange Act Release No. 51820 (June 10, 2005), 70 FR 35759 (June 21, 2005) (SR–Phlx–2005–028) (pilot approval). See also Securities Exchange Act Release No. 55993 (June 29, 2007), 72 FR 37301 (July 9, 2007) (SR–Phlx–2007–044) (permanent approval).

<sup>16</sup> *Id.*

<sup>17</sup> See Nasdaq Rule 1034.

average price. This example would qualify for the proposed exception because it is a sub-MPV price (not in \$0.05 increments) and cannot be evenly split to obtain the desired aggregate price.<sup>18</sup>

With respect to complex and multi-leg orders, consider the following example: A Floor Broker receives a two legged call spread in XYZ (with a Minimum Price Variation increment of \$0.05) to sell 456 contracts of leg A @ \$1.23 and buy 229 contracts of leg B @ \$0.50. Because a Floor Broker is restricted to trading in not less than the permitted MPV increments, the Floor Broker will need to manually calculate to trade 274 contracts of leg A @ \$1.25 and 182 contracts of leg A @ \$1.20. This equals a net price on leg A of \$1.23004. This is the closest achievable net price that is at least equal to the limit price of the Floor Broker's client without breaking the limit price. This would qualify because the Floor Broker will need to determine at which of the price points the additional contract will trade, given that the odd number of contracts cannot be split evenly across two price points.

Another example involving a simple order is if a Floor Broker has a customer order to buy 479 GOOG May 440 calls for \$3.67: GOOG has a Minimum Price Variation of \$0.10 in trades over \$3.00 so the Floor Broker will need to determine the calculation that will amount to a price closest to \$3.67; namely, 70% of 479 equals 335.3 but 335.3 is a non-round number and the customer buying the volume entered at the lower price gets a price that is rounded up while the volume at the higher price is rounded down so as to offer an advantage to the customer.<sup>19</sup> The result is 335 at \$3.70 and 144 at \$3.60. Since the customer is buying, the volume at the lower price of 3.60 gets rounded up to offer the advantage of rounding to the customer. This transaction would qualify for the exception because the simple order is for a sub-MPV price and cannot be evenly split.

Under this proposal, Surveillance staff must validate that split-price executions abide by all applicable priority and trade through rules using the time of execution recorded by the Floor Broker (and separately confirmed by Surveillance staff) on the paper order ticket. Referring back to a prior example

involving a simple customer order to execute 357 contracts in symbol XYZ (with a Minimum Price Variation increment of \$0.05) at \$0.11 (285 contracts @ \$0.10/72 contracts @ \$0.15), if FBMS 2 is unable to determine the correct number of contracts to split to derive the net price of \$0.11, the Floor Broker, upon confirmation and approval of the Surveillance staff, can verbally execute the order and Surveillance staff would capture the verbal execution time of the pending transaction and determine if the Floor Broker established priority over the bids and/or offers based on the documented verbal execution time. If the market was \$0.05 bid and \$0.15 offer, Surveillance staff would approve this transaction because the Floor Broker established priority over the \$0.15 offers by trading more contracts at the better price of \$0.10. However, if the market was \$0.10 bid and \$0.20 offer, On-Floor Surveillance staff would not approve this transaction because the Floor Broker did not establish priority over the \$0.10 bids by trading the greater number of contracts at the inferior price. Finally, if the market was \$0.10 bid and \$0.15 offer (with no public customer orders on either side of the market), On-Floor Surveillance staff would approve this transaction because the Floor Broker would have priority over the non-customer book (bids/offers) given that customer orders always have priority pursuant to Rule 1014(g)(i)(A).

In conclusion, the Exchange believes that certain split-price orders warrant an exception from the requirement that the order be executed by FBMS. First, the exception is needed because FBMS is not currently programmed to perform the calculations associated with split prices not at the minimum price variation. Accordingly, the Floor Broker must do so manually, which can be time consuming; by the time the calculation is made, the market may have changed such that FBMS would return the order to the Floor Broker unexecuted. Second, heightened surveillance will be imposed. Under the proposal, the execution would occur on the trading floor in open outcry as a pending transaction. The transaction is completed only upon validation from Surveillance staff, based on the market prices at the time of execution. The proposal clarifies the need for a manual handling of the execution for these complicated split price trades, rather than leaving ambiguous the question of whether a split-price trade amounts to an FBMS system problem. This proposal does not change what is considered by the Exchange as a FBMS system

problem, but rather clearly sets forth a defined system limitation for a split-price order with specific characteristics.

## 2. Statutory Basis

The Exchange believes that the proposed exception is consistent with Section 6(b) of the Act,<sup>20</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>21</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by permitting split-price trades, which are complicated, to be executed in the trading crowd, which should, in turn, result in a greater likelihood that such orders are properly executed. FBMS 2 cannot calculate these particular prices, as described in the examples above.

The Exchange believes that the proposed exception is consistent with the Act because it is narrowly tailored to permit a small number of beneficial trades. As stated earlier, the Commission has recognized the importance of split-price trades because they permit the execution of large blocks, even permitting a limited exception to priority rules. Although FBMS was designed to enhance compliance to the greatest extent possible, FBMS does not have the capability to calculate and process certain split-price trades. If an exception was denied, Floor Brokers' ability to execute these large, split-price trades that benefit the market would be substantially impaired.

Additionally, Exchange surveillance is well-designed to protect customer when the exception is used. As set forth above, every split-price trade that invokes the proposed exception will require approval by Exchange surveillance staff in order to validate compliance with applicable priority and trade through rules. Additionally, all relevant trade data will be recorded on both paper tickets and in the FBMS system in order to ensure a proper audit trail for T+1 surveillance. Finally, to the extent the exception permits rounding of prices, rounding is required to occur in the customer's favor, a result that is itself consistent with the Act.

The proposal is not unfairly discriminatory because it applies to all Floor Brokers the same way. Nor is it unfairly discriminatory with respect to market participants other than Floor Brokers because only Floor Brokers use FBMS 2.

<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> The exemption would not apply where an order for 500 contracts could be traded at a split price of .125 by splitting it into two lots of 250 contracts at .10 and 250 contracts at .15.

<sup>19</sup> Under Proposed Rule 1000(f)(iii)(D), Exchange surveillance staff would be required to validate the use of price rounding to ensure that it is necessary and to the benefit of the customer.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposal should allow it to compete with other floor-based exchanges and help the Exchange's Floor Brokers compete with floor brokers on other options exchanges by accommodating another type of complicated order. Through the use of a surveillance process to verify that the conditions of the exception are met, the Exchange will ensure that the exception is used only rarely.

### *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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2016-82 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File No. SR-Phlx-2016-82. This file number should be included on the subject line if email is used. To help the

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 Web site 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 such 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 No. SR-Phlx-2016-82, and should be submitted on or before September 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016-19899 Filed 8-19-16; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-78587; File No. SR-NYSEArca-2016-87]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the First Trust Horizon Managed Volatility Domestic ETF and the First Trust Horizon Managed Volatility Developed International ETF Under NYSE Arca Equities Rule 8.600**

August 16, 2016.

On June 16, 2016, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade shares of the First Trust Horizon Managed Volatility Domestic ETF and the First Trust Horizon Managed Volatility Developed International ETF. The proposed rule change was published for comment in the **Federal Register** on July 6, 2016.<sup>3</sup> On July 18, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act<sup>5</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is August 20, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> designates October 4, 2016, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-NYSEArca-2016-87), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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

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

<sup>3</sup> See Securities Exchange Act Release No. 78191 (June 29, 2016), 81 FR 44056.

<sup>4</sup> Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nysearca-2016-87/nysearca201687-1.pdf>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 200.30-3(a)(31).

<sup>22</sup> 17 CFR 200.30-3(a)(12).