

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 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-C2-2017-002 and should be submitted on or before February 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79805; File No. SR-Phlx-2016-82]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a New Exception in Phlx Rule 1000(f) for Sub-MPV Split-Price Orders

January 17, 2017.

#### I. Introduction

On August 3, 2016, NASDAQ PHLX LLC (the "Exchange" or "Phlx") 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 provide an additional exception to the mandatory use of the Exchange's Floor Broker Management System ("FBMS") pursuant to Rule 1000(f)(iii) to permit Floor Brokers to execute certain sub-minimum price variation ("sub-MPV") split-price orders in the trading crowd. The proposed rule

change was published for comment in the **Federal Register** on August 22, 2016.<sup>3</sup> On October 3, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 20, 2016.<sup>4</sup> On November 17, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On December 9, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>6</sup> The Commission received no comments on the proposed rule change. This order provides notice of filing of Amendment No. 1 and approves the proposal, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of the Proposal<sup>7</sup>

##### A. Background

Currently, Phlx Rule 1000(f) requires that all Exchange options transactions be executed in one of the following three ways: "(i) [a]utomatically 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 [FBMS] for trades involving at least one Floor Broker."<sup>8</sup> Although a Floor Broker may represent orders in the trading crowd, a Floor

Broker is not permitted to execute an order in the trading crowd unless one of three exceptions applies.<sup>9</sup> The exceptions to the mandatory use of the FBMS<sup>10</sup> are set forth in Phlx Rule 1000(f)(iii). These exceptions allow a Floor Broker to execute a transaction in the trading crowd (rather than through the FBMS) if: (i) There is a problem with Exchange's systems; (ii) the Floor Broker is executing the trade pursuant to Phlx Rule 1059 ("Accommodation Transactions") or Phlx Rule 1079 ("Flex Index, Equity and Currency Options"); or (iii) the transaction involves a multi-leg order with more than 15 legs.<sup>11</sup>

##### B. Split-Price Order Exception Proposal

Phlx Rule 1014(g)(i)(B) provides a priority rule regarding open outcry split-price transactions in equity options and options overlying ETFs to permit a member who is responding to an order for at least 100 contracts who buys (sells) at least 50 contracts at a particular price to have priority over all others in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price without being required to yield to existing customer interest in the limit order book.<sup>12</sup> Absent Phlx Rule 1014(g)(i)(B), such orders would be required to yield priority. The Exchange states that "[t]he 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

<sup>9</sup> See Phlx Rule 1000(f)(iii).

<sup>10</sup> The original FBMS ("FBMS 1") began operating in 2005. The Exchange retired FBMS 1 on March 31, 2016 after operating it concurrently with the Exchange's enhanced FBMS ("FBMS 2"), which was made available on March 7, 2014. As of April 1, 2016, the Exchange only operated FBMS 2. See Notice, *supra* note 3, at 56725. On November 3, 2016, the Exchange implemented FBMS 3 and retired FBMS 2. According to the Exchange, FBMS 3 is currently the sole operating version of FBMS on the Exchange. See Amendment No. 1, *supra* note 6, at 3 and 8-10. References throughout this Order to "FBMS" refer to FBMS 3.

<sup>11</sup> See Notice, *supra* note 3, at 56726. See also Phlx Rule 1000(f)(iii)(A)-(C). According to the Exchange, each time a Floor Broker uses one of the current exceptions to Phlx Rule 1000(f)(iii), the Floor Broker is required by Phlx Rule 1063(e)(ii), to record the information required by Phlx Rule 1063(e)(i) on paper trade tickets. The Exchange further represents that a Floor Broker may only represent an order for execution that has been timestamped with the time of entry on the trading floor. In addition, according to the Exchange, once an execution occurs, the trade ticket must be stamped with the time of execution of such order. See Notice, *supra* note 3, at 56726 and Amendment No. 1, *supra* note 6, at 11.

<sup>12</sup> See Notice, *supra* note 3, at 56726 (citing Securities Exchange Act Release No. 51820 (June 10, 2005), 70 FR 35759 (June 21, 2005) (SR-Phlx-2005-28)) (approving pilot). See also Securities Exchange Act Release No. 55993 (June 29, 2007), 72 FR 37301 (July 9, 2007) (SR-Phlx-2007-44) (permanent approval).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<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. 78593 (August 16, 2016), 81 FR 56724 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 79023 (October 3, 2016), 81 FR 69877 (October 7, 2016).

<sup>5</sup> See Securities Exchange Act Release No. 79345 (November 17, 2016), 81 FR 84629 (November 23, 2016).

<sup>6</sup> Amendment No. 1 updated the original filing to: (1) Reflect the implementation of the Exchange's new Floor Broker Management System ("FBMS 3") on November 3, 2016; (2) modify proposed Rule 1000(f)(iii)(D) to provide additional detail regarding how certain split-price orders will be rounded; and (3) offer three examples to illustrate how split-price orders will be handled pursuant to the proposed exception. Amendment No. 1 replaced the original proposed rule change in its entirety. To promote transparency of its proposed amendment, when Phlx filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its Web site and placed in the public comment file for SR-Phlx-2016-82 (available at <https://www.sec.gov/comments/sr-phlx-2016-82/phlx201682-1.pdf> <https://www.sec.gov/comments/sr-phlx-2016-82/cboe2016071/cboe2016071.shtml>). The Exchange also posted a copy of its Amendment No. 1 on its Web site ([http://nasdaqphlx.cchwallstreet.com/NASDAQPHLX/pdf/phlx-filings/2016/SR-Phlx-2016-82\\_Amendment\\_1.pdf](http://nasdaqphlx.cchwallstreet.com/NASDAQPHLX/pdf/phlx-filings/2016/SR-Phlx-2016-82_Amendment_1.pdf)) when it filed Amendment No. 1 with the Commission.

<sup>7</sup> A more detailed description of the proposal appears in the Notice and in Amendment No. 1.

<sup>8</sup> See Phlx Rule 1000(f).

prices may be difficult to execute without a limited exception to the priority rules.”<sup>13</sup>

According to the Exchange, split-price orders are currently processed using either FBMS or paper tickets. The use of FBMS or paper tickets depends on whether the split-price order can be evenly split using simple calculations or whether the split-price order involves non-even integers and sub-MPV price points, which requires a more complicated computation to determine the number of contracts to trade at two different price points.<sup>14</sup> The Exchange represents that FBMS does not have the capability to calculate specific volumes at two different MPV prices for split-price orders placed in a sub-MPV price.<sup>15</sup> To compensate for this system limitation, the Exchange is proposing to amend Phlx Rule 1000(f)(iii) to add a new exception from the mandatory use of the FBMS that would allow Floor Brokers to execute certain split-price orders in the trading crowd that would be validated by Phlx surveillance staff for compliance with applicable priority and trade-through rules.

Accordingly, the Exchange is proposing in Phlx Rule 1000(f)(iii)(D) to allow the following split-price orders to be executed in the trading crowd: (1) Simple orders not expressed in the applicable sub-MPV and that cannot be evenly split into two whole numbers to create a price at the midpoint of the MPV; and (2) 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 (1) above.<sup>16</sup>

The Exchange represents that this exception “is anticipated to be implemented infrequently and in the following [three] ways.”<sup>17</sup> Under the first scenario, a Floor Broker knows that, due to a system limitation, a sub-MPV split-price order cannot be handled by FBMS.<sup>18</sup> In this case, the Floor Broker would comply with Phlx Rule 1063(e), expose the order in the trading crowd, and request the use of the proposed exception from the Options Exchange

Official (“Official”).<sup>19</sup> The Official would confirm his or her understanding of the order and the availability of the exemption, and if the Floor Broker’s request is determined to be valid based on the split-price calculation, announce to application of the exemption to the Floor Broker and the trading crowd.<sup>20</sup> After the Floor Broker negotiates and consummates the trade in the trading crowd, the Floor Broker would timestamp the paper ticket at the time the trade is consummated in the trading crowd, which would become the time of execution for the trade.<sup>21</sup> The consummated trade would then be submitted to the Official to validate for compliance with priority and trade-through rules. If compliant, the Official would permit the Floor Broker to submit the manual split-price trade, via paper ticket, for trade reporting.<sup>22</sup>

The second scenario involves a situation in which a Floor Broker submits a split-price order to FBMS, but the Floor Broker does not realize that FBMS cannot handle the order because the price is outside the MPV.<sup>23</sup> In this case, the Floor Broker would comply with Phlx Rule 1063(e), expose the order in the trading crowd, and, upon consummation of the transaction, submit the order to FBMS for execution. Because FBMS cannot calculate the split-price for the order, FBMS would reject the submission and the Floor Broker would receive a rejection message.<sup>24</sup> Upon the receipt of this message, the Floor Broker would inform the Official that FBMS rejected the split-price order. The Official would then review the terms of the consummated trade and, using the timestamp captured by the Floor Broker or Official,<sup>25</sup>

validate the consummated trade for compliance with priority and trade-through.<sup>26</sup> If the consummated trade is compliant, the Official would permit the Floor Broker to submit the manual split-price trade, via paper ticket reflecting the timestamp captured by the Floor Broker (or Official), for trade reporting.<sup>27</sup>

The third scenario is similar to the second scenario; however, neither the Floor Broker nor the Official captures a reliable time that the consummated trade was submitted to FBMS for execution.<sup>28</sup> In this case, the Official would require the Floor Broker to “re-trade” the order using a paper ticket in the sequence described in the first scenario above.<sup>29</sup>

The Exchange also proposes that, in addition to split-price orders executed pursuant to proposed Phlx Rule 1000(f)(iii)(D), Phlx surveillance staff would approve all executions submitted under Phlx Rule 1000(f)(iii) to validate that such executions abide by applicable priority and trade-through rules.<sup>30</sup> The Exchange also proposes to round prices if necessary to execute the trade at the MPV, but only to the benefit of a customer order, or, where multiple customer orders are involved, for the customer order that is earliest in time.<sup>31</sup> Where no customer order is involved, the rounding of prices will be applied to the non-customer order that is earliest in time.<sup>32</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of Section 6 of the Act<sup>33</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>34</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>35</sup> which requires, among other things, that the rules of a national securities exchange

timestamp recorded by the Floor Broker as the time that the trade was consummated. See Amendment No. 1, *supra* note 6, at 15. See also *supra* note 21.

<sup>26</sup> See *id.* at 15–16.

<sup>27</sup> See *id.* at 16.

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> See proposed Phlx Rule 1000(f)(iii).

<sup>31</sup> See proposed Phlx Rule 1000(f)(iii); see also Notice, *supra* note 3, at 56727.

<sup>32</sup> See Amendment No. 1, *supra* note 6, at 3 and 7.

<sup>33</sup> 15 U.S.C. 78f.

<sup>34</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>35</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> See *id.*

<sup>20</sup> See *id.* at 13–14.

<sup>21</sup> See *id.* at 14. The Exchange notes that, typically, the Official captures a timestamp reflecting the time the Official observed that the trade was consummated in the trading crowd and may, in its discretion, substitute this timestamp for the timestamp recorded by the Floor Broker at the time of consummation. See *id.*

<sup>22</sup> See Amendment No. 1, *supra* note 6, at 14–15. According to the Exchange, the paper ticket will reflect the timestamp captured by the Floor Broker or (as described above) the Official, which will reflect the time the trade was consummated in the trading crowd. See *id.*

<sup>23</sup> See *id.* at 15.

<sup>24</sup> See *id.* According to the Exchange, this might occur if the order is not priced in the minimum price increment and consequently FBMS would reject the trade. See *id.*

<sup>25</sup> According to the Exchange, the Floor Broker captures a timestamp for the time that the Floor Broker submitted the proposed execution in FBMS. The Exchange further represents that, as in scenario 1, the Official also would typically capture a timestamp reflecting the time that the Official observed the Floor Broker’s attempt to execute the transaction in FBMS. Surveillance staff may, in its discretion, substitute this timestamp for the

<sup>13</sup> See Notice, *supra* note 3, at 56726. Floor Brokers that avail themselves of the split-price priority rule are obligated to ensure compliance with Section 11(a) of the Exchange Act. See Amendment No. 1, *supra* note 6, at 12.

<sup>14</sup> See Notice, *supra* note 3, at 56726. Today, when the computation is more complicated, surveillance staff allows a Floor Broker to execute split-price orders involving non-even integers and sub-MPV price points in open outcry using paper tickets pursuant to Phlx Rule 1000(f)(iii)(A). See *id.*

<sup>15</sup> See *id.* at 56727. See Amendment No. 1, *supra* note 6, at 20.

<sup>16</sup> See Notice, *supra* note 3, at 56724.

<sup>17</sup> See Amendment No. 1, *supra* note 6, at 13.

<sup>18</sup> See *id.*

be designed to prevent fraudulent and manipulative acts and practices, 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the Exchange is proposing a new exception in Phlx Rule 1000(f)(iii)(D) that is designed to enable Floor Brokers to execute two types of split-price orders in the trading crowd that cannot be processed by FBMS because of a system limitation.<sup>36</sup> The Exchange represents that its surveillance staff will oversee Floor Brokers' use of the proposed Phlx Rule 1000(f)(iii)(D) exception, which they do today for current exceptions provided under Phlx Rule 1000(f)(iii).<sup>37</sup> The Exchange further represents that for each execution pursuant to Phlx Rule 1000(f)(iii): (1) Exchange surveillance staff will verify that the conditions of the exception under Phlx Rule 1000(f)(iii) are met and will ensure that the proposed exception for split-price orders will be used only rarely;<sup>38</sup> (2) Exchange surveillance staff will approve

<sup>36</sup> The Commission notes that the exception for split-price orders is similar in purpose to the current exceptions provided in Phlx Rule 1000(f)(iii)(B) and (C). See Securities Exchange Act Release No. 68960 (February 20, 2013), 78 FR 13132 (February 26, 2013) (SR-Phlx-2013-09) (recognizing exceptions for certain executions to occur manually in the trading crowd and not through FBMS. "[ ] FLEX orders will continue to be executable by Floor Brokers in the trading crowd pursuant to Rule 1079 and 1079A, rather than through FBMS. This is because FBMS will not be able to accept FLEX orders, which have varied and complicated terms. Similarly, accommodation transactions (also known as cabinet trades) will continue to be executable by Floor Brokers in the trading crowd pursuant to Rule 1059. Neither FLEX nor accommodation transactions are executed through Exchange systems today. Floor Brokers will also be permitted to execute orders in the trading crowd if they are handling an order with more than 15 legs, because the Exchange determined to limit the complexity of FBMS functionality and does not believe that many orders fall into this category or that Floor Brokers will be adversely affected.").

<sup>37</sup> See Notice, *supra* note 3, at 56726. See also Amendment No. 1, *supra* note 6, at 17. The Exchange notes its belief that it is "necessary and appropriate for the surveillance Staff to exercise independent judgment with respect to the proper timestamp for the consummation of trades on the floor of the Exchange." See Amendment No. 1, *supra* note 6, at 14, n.17. According to the Exchange, "[t]he surveillance Staff is trained to observe objectively the conduct of floor participants, to detect conduct that improperly advantages floor participants, and to enforce Exchange rules." *Id.* Finally, the Exchange notes that it believes that "[t]he absence of engaged and empowered surveillance Staff would undermine the integrity of the trading floor on the Exchange." *Id.*

<sup>38</sup> See Notice, *supra* note 3, at 56728. See also Amendment No. 1, *supra* note 6, at 23.

executions pursuant to Phlx Rule 1000(f)(iii) and validate compliance with applicable priority rules of the Exchange and trade-through rules of the Options Order Protection and Locked/Crossed Market Plan;<sup>39</sup> and (3) all relevant trade data resulting from executions pursuant to Phlx Rule 1000(f)(iii) will be recorded on both paper tickets and in FBMS to ensure a proper audit trail for timely surveillance.<sup>40</sup> The Commission notes that the activities of Phlx Surveillance under Rule 1000(f)(iii), including the substitution of timestamps, should be carried out in an objective manner and with due regard to the Exchange's obligations under the Act.<sup>41</sup>

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act and the rules and regulations thereunder applicable to national securities exchanges.

#### IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 to 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 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

<sup>39</sup> See Notice, *supra* note 3, at 56727. See also Amendment No. 1, *supra* note 6, at 22. The Options Order Protection and Locked/Crossed Market Plan is available at [http://www.optionsclearing.com/components/docs/clearing/services/options\\_order\\_protection\\_plan.pdf](http://www.optionsclearing.com/components/docs/clearing/services/options_order_protection_plan.pdf).

<sup>40</sup> See Notice, *supra* note 3, at 56727. See also Amendment No. 1, *supra* note 6, at 22.

<sup>41</sup> The Commission notes that Phlx surveillance staff might substitute the timestamp it captures for the timestamp captured by a Floor Broker if necessary to prevent conduct that would improperly advantage floor participants or to enforce compliance with the Exchange's rules. It is the Commission's understanding that such a substitution would happen only rarely and only if consistent with the authority conferred upon surveillance staff by the Exchange's rules. See Amendment No. 1, *supra* note 6, at 14, n.17.

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 will also 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 February 14, 2017.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register**. As described above, in Amendment No. 1, Phlx updated its proposal to reflect the implementation of FBMS 3 and the retirement of FBMS 2; clarified how prices may be rounded for non-customer split-price orders; and provided three examples that explain how split-price orders will be handled by the Exchange under the proposed exception.<sup>42</sup> The Commission believes that Amendment No. 1 provided additional specificity regarding the operation of the new proposed exception in Phlx Rule 1000(f)(iii)(D). Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>43</sup> to approve the proposed rule change, as

<sup>42</sup> See Amendment No. 1, *supra* note 6, at 3-4.

<sup>43</sup> 15 U.S.C. 78s(b)(2)

modified by Amendment No. 1, on an accelerated basis.

## VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>44</sup> that the proposed rule change (SR-Phlx-2016-82), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-01460 Filed 1-23-17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79810; File No. SR-NASDAQ-2016-161]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Adopt a New Extended Life Priority Order Attribute Under Rule 4703, and To Make Related Changes to Rules 4702, 4752, 4753, 4754, and 4757

January 17, 2017.

On November 17, 2016, The Nasdaq Stock Market LLC (“Nasdaq” or “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 adopt a new Extended Life Priority Order Attribute. The proposed rule change was published for comment in the **Federal Register** on December 5, 2016.<sup>3</sup> The Commission has received six comment letters on the proposal.<sup>4</sup>

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 for this filing is January 19, 2017.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. 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 Exchange’s proposal, the comments received, and any response to the comments by the Exchange.

Accordingly, pursuant to Section 19(b)(2) of the Act<sup>6</sup> and for the reasons stated above, the Commission designates March 5, 2017, 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 No. SR-NASDAQ-2016-161).

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-01465 Filed 1-23-17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79811; File No. SR-ISE-2017-01]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

January 17, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 3, 2017, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“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 the Schedule of Fees as described in more detail below.

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.ise.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

###### 1. Purpose

The purpose of the proposed rule change is to amend the Exchange’s Schedule of Fees to eliminate, for all symbols other than FX symbols, the \$0.20 per contract fee applicable to Professional Customers<sup>3</sup> for the initiating or contra side of Qualified Contingent Cross (“QCC”) orders or orders executed in the Solicitation Mechanism (“Solicitation” orders). The proposed rule change will lower the rebates that the Exchange provides to members acting as agent when Professional Customers trade with other Professional Customers and when they trade with Priority Customers for QCC and other solicited crossing orders<sup>4</sup> to the same per contract rates and volume tiers that the Exchange presently provides to members acting as agent

<sup>3</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See ISE Rule 100(37C).

<sup>4</sup> As used herein, the phrase “other solicited crossing orders” refers to solicited crossing orders executed in the Solicitation, Facilitation, and Price Improvement Mechanisms.

<sup>44</sup> See *id.*

<sup>45</sup> 17 CFR 200.30-3(a)(12).

<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. 79428 (November 30, 2016), 81 FR 87628.

<sup>4</sup> See Letters to Brent J. Fields, Secretary, Commission, from Joseph Saluzzi and Sal Arnuik, Partners, Themis Trading LLC, dated December 19, 2016; Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated December 22, 2016; Adam Nunes, Head of Business Development, Hudson River Trading LLC, dated December 22, 2016; Joanna Mallers, Secretary, FIA Principal Traders Group, dated December 23, 2016; Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, dated December 27, 2016; and Andrew Stevens, General Counsel, IMC Financial Markets, dated December 28, 2016.

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

<sup>6</sup> 15 U.S.C. 78s(b)(2).

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

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

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