

designed to ensure that resting orders with an MTS Modifier would not trade through displayed orders or violate intra-market priority.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>17</sup> of the Act to determine whether the proposed rule change 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2017-40 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-NYSEAMER-2017-40. 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 website (<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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2017-40 and should be submitted on or before February 1, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-82445; File No. SR-Phlx-2017-99]

**Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Granting Accelerated Approval of a Proposed Rule Change To Amend Rule 1059 To Make Permanent a Program That Allows Cabinet Trade Transactions To Take Place at a Price Below \$1 Per Option Contract**

January 5, 2018.

**I. Introduction**

On November 29, 2017, 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 amending the Exchange's rules to make permanent a program that allows transactions to take place in open outcry trading at prices of at least \$0 but less than \$1 per option contract ("sub-dollar cabinet trades"). The proposed rule change was published for comment in the **Federal Register** on December 14, 2017.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change on an accelerated basis.

**II. Description of the Proposed Rule Change**

Prior to 2010, Phlx Rule 1059 (Accommodation Transactions) allowed cabinet trade transactions at a price of \$1 per option contract to occur in open outcry trading for certain options classes.<sup>4</sup> In 2010, the Exchange amended Phlx Rule 1059 on a pilot basis to allow sub-dollar cabinet trades to take place at prices of at least \$0 but less than \$1 per option contract.<sup>5</sup> The Exchange now proposes to amend Phlx Rule 1059 to make permanent its sub-dollar cabinet trade pilot program, which currently is scheduled to expire on January 5, 2018.<sup>6</sup>

The Exchange permits sub-dollar cabinet trade transactions to be traded

<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. 82245 (Dec. 8, 2017), 82 FR 58825 (Dec. 14, 2017) (SR-Phlx-2017-99) ("Notice").

<sup>4</sup> See Phlx Rule 1059.

<sup>5</sup> See Securities Exchange Act Release No. 63626 (Dec. 30, 2010), 76 FR 812 (Jan. 6, 2011) (SR-Phlx-2010-185).

<sup>6</sup> See Commentary .02 to Phlx Rule 1059. See also Securities Exchange Act Release No. 79782 (January 12, 2017), 82 FR 6667 (January 19, 2017) (SR-Phlx-2017-01).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

pursuant to the same procedures applicable to \$1 cabinet trades, except that for sub-dollar cabinet trades (i) bids and offers for opening transactions are permitted only to accommodate closing transactions, and (ii) transactions in option classes participating in the Penny Pilot Program are permitted.<sup>7</sup> The Exchange believes that “allowing a price of at least \$0 but less than \$1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly when there has been a significant move in the price of the underlying security, resulting in a large number of series being out-of-the-money.”<sup>8</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act<sup>9</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In the Notice, the Exchange explains that it initially adopted the sub-dollar cabinet trade rule on a pilot basis to “evaluate the efficacy of the change and to address any operational issues that might arise in processing [c]abinet trades.”<sup>12</sup> The Exchange represents that at the time it adopted the pilot, its system permitted reporting cabinet trades at prices as small as \$0.0001, as it does today.<sup>13</sup> Based on its experience with these types of trades, the Exchange

represents that its system “allows [c]abinet trades to be processed in a manner similar to how all other trades are processed by the [E]xchange.”<sup>14</sup>

In support of making the pilot program permanent, the Exchange represents that “there are no operational issues in processing and clearing [c]abinet [t]rades in penny and sub-penny increments.”<sup>15</sup> The Exchange also represents that “members and member organizations have not raised any concerns with the processing of [c]abinet trades.”<sup>16</sup> Finally, the Exchange represents that it is “not aware of the Options Clearing Corporation (“OCC”) having operational issues with processing [c]abinet trades submitted by the Exchange.”<sup>17</sup>

Based on the representations of the Exchange, the Commission believes that permanent approval of the sub-dollar cabinet trade pilot is consistent with the Act. In particular, the Commission notes that the Exchange’s system allows it to process cabinet trades in the normal course. Further, the Exchange has not observed any issues or concerns with sub-dollar cabinet trades at the Exchange level, with and among its members, or in processing the trades through OCC. Accordingly, the Exchange’s rule appears reasonably designed to remove impediments, prevent fraudulent and manipulative acts and practices, and foster cooperation and coordination with persons engaged in facilitating transactions in securities. Further, permanent approval will continue to provide investors with choice when considering a cabinet trade, including the ability to price such trades below \$1 per contract.

### IV. Accelerated Approval of Proposed Rule Changes

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> to approve the proposed rule changes prior to the 30th day after the date of publication of the Notice in the **Federal Register**.<sup>19</sup> The Commission believes that the proposed rule change does not raise novel regulatory issues. The Commission notes that earlier this year it approved similar proposed rule

changes from NYSE Arca, Inc.<sup>20</sup> and NYSE American LLC (formerly known as NYSE MKT LLC)<sup>21</sup> making permanent sub-dollar cabinet trade pilot programs. The Exchange has represented that its system is able to process cabinet trades similar to the processing of its other trades, it has not experienced any issues processing cabinet trades at the Exchange or through OCC, and its members have not expressed concerns. In addition, the Commission did not receive any comments on the proposed changes. Accordingly, the Commission finds that good cause exists to approve the proposed rule changes on an accelerated basis.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change (SR-Phlx-2017-99) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82446; File No. SR-ISE-2017-112]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Non-Transaction Fees in the Exchange’s Schedule of Fees

January 5, 2018.

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 December 22, 2017, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit

<sup>20</sup> See Securities Exchange Act Release No. 80615 (May 5, 2017), 82 FR 22036 (May 11, 2017) (SR-NYSEArca-2017-24).

<sup>21</sup> See Securities Exchange Act Release No. 80616 (May 5, 2017), 82 FR 22033 (May 11, 2017) (SR-NYSEMKT-2017-13).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</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>7</sup> See Commentary .02 to Phlx Rule 1059.

<sup>8</sup> Notice, *supra* note 3, at 58826. The Exchange notes that this is especially true for transactions in options classes in the Penny Pilot Program, for which cabinet trades are not otherwise permitted. See *id.*

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</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>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See Notice, *supra* note 3, at 58826.

<sup>13</sup> See *id.*

<sup>14</sup> *Id.* See also *id.* at 58826 (noting that “in 2016, there were a total of 442 [c]abinet [t]rades” on the Exchange “comprising 244,734 contracts,” and “[e]ach contract was executed at a price of \$0.01.”).

<sup>15</sup> See Notice, *supra* note 3, at 58826.

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

<sup>17</sup> *Id.*

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> As noted above, the Notice was published for comment in the **Federal Register** on December 14, 2017 and the comment period closed on December 29, 2017. Accordingly, the 30th day after publication of the Notice is January 13, 2018.