

### *B. Clearing Agency's Statement on Burden on Competition*

LCH SA does not believe the Proposed Rule Change would have any impact, or impose any burden, on competition. The Proposed Rule Change does not address any competitive issue or have any impact on the competition among central counterparties. LCH SA operates an open access model, and the Proposed Rule Change will have no effect on this model.

### *C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the Proposed Rule Change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

### **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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (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 Number SR-LCH SA-2018-003 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.

<sup>1</sup> "A CCP shall at all times have access to adequate liquidity to perform its services and activities. . . . A CCP shall measure, on a daily basis, its potential liquidity needs [taking] into account the liquidity risk generated by the default of at least the two clearing members to which it has the largest exposures."

All submissions should refer to File Number SR-LCH SA-2018-003. 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 such filings will also be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at <http://www.lch.com/asset-classes/cdsclear>.

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-LCH SA-2018-003 and should be submitted on or before July 12, 2018.

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. 34-83458; File No. SR-Phlx-2018-47]

### **Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 1101A, Terms of Option Contracts**

June 18, 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 June 11, 2018, Nasdaq PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 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 Exchange Rule 1101A, Terms of Option Contracts.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqphlx.cchwallstreet.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 the Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The purpose of the proposed rule change is to adopt new Commentary .06 to Exchange Rules 1101A, to codify that the Exchange will defer to The Options Clearing Corporation ("OCC") in determining settlement prices for index options when OCC elects to do so in accordance with its own rules and bylaws. Such OCC-determined settlement prices may be determined in a manner that differs from the settlement price procedures under the Exchange's own rules.

Exchange Rule 1101A(d) currently states that the Rules of the Options Clearing Corporation specify that, unless the Rules of the Exchange provide otherwise, the current index

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

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

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

value used to settle the exercise of an index options contract shall be the closing index value for the day on which the index options contract is exercised in accordance with the Rules of the Options Clearing Corporation or, if such day is not a business day, for the most recent business day. Exchange Rule 1101A(e) currently states that the current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under Exchange rules and OCC rules, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, *except* that in the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security.

The Exchange proposes to add new Commentary .06 to Rule 1101A to make clear that the Exchange's settlement price procedures shall not be used if the current index value at expiration is fixed in accordance with OCC rules and by-laws. This language recognizes that OCC is authorized under its rules and by-laws to take certain actions relating to settlement in the event of the unavailability or inaccuracy of the current underlying interest value.<sup>3</sup> An option holder's contract with OCC is governed by OCC rules and by-laws. The proposed language makes clear that Exchange rules concerning settlement value calculation would *not* apply in the event that OCC exercises its authority to determine settlement prices under OCC rules and by-laws. In that case, the Exchange would defer to OCC.

Proposed Rule 1101A Commentary .06 is based in part upon Chapter XIV, Section 10(g) of the Nasdaq rulebook,

Chapter XIV, Section 10(g) of the BX rulebook, and ISE Rule 2008(g).<sup>4</sup>

## 2. Statutory Basis

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

OCC may elect to use various procedures in the event it exercises its authority to set settlement prices.<sup>7</sup> By adopting the proposed rule, the Exchange would acknowledge clearly that OCC may, under its rules and by-laws, establish settlement prices for expiring index options that may differ from the settlement prices that would otherwise be provided for in Exchange rules, thereby protecting investors and the public interest by reducing potential for confusion in that regard.

### 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. On the contrary, the Exchange believes that the proposed amendment will benefit investors, market participants, and the marketplace in general by stating that the Exchange will defer to OCC in the determination of settlement prices when and if OCC exercises its authority under its own settlement price procedures in accordance with its rules and by-laws.

<sup>4</sup> These rules generally provide that the exchanges' settlement price rules will not apply when the settlement price is determined in accordance with OCC rules and bylaws.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> OCC By-Laws Article XVII, Section 4(a)(2) provides in relevant part that if OCC elects to exercise its authority under Section 4(a), it may, among other actions, fix the exercise settlement amount using the reported price or value for the relevant security(ies), at the close of regular trading hours on the last preceding trading day for which such a price or value was reported by the reporting authority. Section 4(a)(2) provides that OCC may elect instead to fix the exercise settlement amount using other prices, such as the reported price or value for the relevant security(ies) at the opening of regular trading hours on the next trading day for which such an opening price or value is reported by the reporting authority.

### 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</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 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) of the Act and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing to immediately eliminate any perceived conflict between the Exchange's settlement price rules and OCC's rules and by-laws regarding the establishment of settlement prices. The Exchange noted that the proliferation of expiration dates resulting from new index option weekly listings has increased the possibility that unforeseen events may occur on an expiration date, thereby necessitating that OCC determine settlement prices. As such, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change operative upon filing.<sup>13</sup>

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> In addition, Rule 19b-4(f)(6)(iii) 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.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed

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) of the Act<sup>14</sup> 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-Phlx-2018-47 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-2018-47. 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 such

rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

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-Phlx-2018-47, and should be submitted on or before July 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83457; File No. SR-FICC-2018-004]

#### **Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Introduce a Floor to the Calculation of the Fails Charges and Make Other Changes**

June 18, 2018.

On May 8, 2018, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2018-004, 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> The proposed rule change was published for comment in the **Federal Register** on May 17, 2018.<sup>3</sup> The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission approves the proposed rule change.

#### **I. Description of the Proposed Rule Change**

The proposed rule change would update FICC's Government Securities Division ("GSD") Rulebook ("GSD Rules") and FICC's Mortgage-Backed Securities Division ("MBSD") Clearing Rules ("MBSD Rules")<sup>4</sup> to (i) introduce

a floor of one percent to the calculation of the existing fails charge rules, (ii) clarify the target rate that may be used in the fails charge calculations under certain circumstances, and (iii) make certain technical changes to the fails charge provisions to ensure consistent use of defined terms.<sup>5</sup> The proposed rule change would also update the MBSD Rules to clarify that a cap applies to the MBSD fails charge.<sup>6</sup> Each of these proposed changes are described below.

##### *A. Proposed One Percent Floor*

In a securities transaction, a settlement fail occurs when the seller does not deliver the securities to the buyer on the agreed upon settlement date. FICC states that although settlement fails are generally not treated as contractual default events, provided that the failing seller delivers the securities soon after the settlement date, persistent elevated levels of settlement fails create market inefficiencies and increase credit risk for market participants.<sup>7</sup>

To help mitigate settlement fails, FICC maintains a fails charge in both the GSD Rules and the MBSD Rules.<sup>8</sup> However, FICC states that under the current GSD Rules and MBSD Rules, the respective fails charge calculations could result in a zero charge.<sup>9</sup> Specifically, under the GSD version of the current fails charge, if the federal funds target rate would rise to three percent, then the calculation of the charge would result in a zero charge.<sup>10</sup> Similarly, under the MBSD version of the current fails charge, if the federal funds target rate would rise to two percent, then the calculation of the charge would result in a zero charge.<sup>11</sup> To address this issue, FICC proposes to amend the GSD Rules and the MBSD Rules to add a one percent floor to the respective GSD and MBSD fails charge calculations.<sup>12</sup>

FICC's proposal comes in response to a recent announcement by the Treasury Market Practices Group ("TMPG"),<sup>13</sup> in

<sup>5</sup> Notice, 83 FR at 23032-34.

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

<sup>7</sup> See Notice, 83 FR at 23033. See also *Frequently Asked Questions: TMPG Fails Charges* (April 23, 2018) at 1, available at <https://www.newyorkfed.org/medialibrary/microsites/tmpg/files/TMPG-Fails-Charge-FAQ-04-23-2018.pdf> ("FAQ").

<sup>8</sup> GSD Rule 11; MBSD Rule 12, *supra* note 4.

<sup>9</sup> *Id.*; Notice, 83 FR at 23034.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> The TMPG was formed in 2007, under the sponsorship of the Federal Reserve Bank of New York, to help address settlement fails and other issues affecting the U.S. Government debt and mortgage-backed securities markets. *The Treasury Market Practices Group: Creation and Early Initiatives* (August 2017) at 3, available at <https://>

<sup>15</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. 83222 (May 11, 2018), 83 FR 23032 (May 17, 2018) (SR-FICC-2018-004) ("Notice").

<sup>4</sup> The GSD Rules and the MBSD Rules are available at <http://www.dtcc.com/legal/rules-and-procedures>.