

Therefore, the Commission believes that the proposal is consistent with Rule 17Ad-22(e)(7)(ii).

#### IV. Conclusion

*It is therefore noticed*, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to Advance Notice (SR-OCC-2019-803) and that OCC is *authorized* to implement the proposed change as of the date of this notice.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86191; File No. SR-Phlx-2019-20]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Granting Approval of Proposed Rule Change Relating to the Allocation and Prioritization of Automatically Executed Trades

June 24, 2019.

#### I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 15, 2019, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change relating to the allocation and prioritization of automatically executed trades. The proposed rule change was published for comment in the **Federal Register** on May 22, 2019.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to adopt new Rule 1089 to describe in greater detail the manner in which Phlx will process, prioritize and allocate transactions. The current Phlx rule, Rule 1014(g)(vii) and (viii), describes the allocation process generally and relies on a calculation to describe how different market participants may be allocated. The Exchange now proposes to sequentially describe the manner in which an order would be allocated, including the allocation method, rounding and all

potential allocation scenarios. The proposal generally codifies the Exchange’s current practices while adding more explicit language to the rule text. In addition, the Exchange proposes to codify its round robin allocation of odd lots that is not set forth in its current rules.

The Exchange proposes to retain its existing allocation methodology and priorities in the new rule. For example, Public Customer orders will continue to have priority over non-Public Customer interest at the same price, provided the Public Customer order is an executable order. Generally, the Specialist and/or Directed Registered Option Trader (“DROT”) priority is then applied, before the ROT priority<sup>4</sup> and remaining interest. The proposed rule also codifies the manner in which rounding will be handled and makes conforming changes to the Exchange’s rules.

In its proposal, the Exchange proposes one change to its existing allocation scheme. Specifically, the Exchange proposes to amend the current allocation a Specialist is entitled to receive when a Specialist is also the DROT, and the order is directed to a particular market maker (a “Directed Order”) for 5 contracts or fewer. Today, a Specialist is entitled to the allocation of orders of 5 contracts or fewer only when such order is either not a Directed Order or is a Directed order for 5 contracts or fewer, but the DROT is not quoting at the inside price. If the order for 5 contracts or fewer is a Directed Order and the DROT is also the Specialist, then the Specialist currently is entitled to receive only the DROT allocation of 40% of the order, rather than the full size of the allocation of the order for 5 contracts or fewer.

The Exchange proposes that, assuming there is no Public Customer interest present at the same price, the Specialist would be entitled to the entire allocation of the order of 5 contracts or fewer where the Specialist is also the DROT and the Specialist receives the Directed Order and has a quote at the best price when the Directed Order is received. This specialist entitlement for orders of 5 contracts or fewer would apply only after the Opening Process and would not apply to auctions.

#### III. Discussion and Commission Findings

After careful review of the proposed rule change, the Commission finds that

the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.<sup>5</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</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 to protect investors and the public interest.

The Commission notes that the Exchange proposes to revise its rules governing how it processes, prioritizes, and allocates transactions, including by codifying practices that were not set forth in the Exchange’s rules, by deleting its existing rules and adopting a new rule. The Commission believes that the Exchange’s proposal protects investors and the public interest because it enhances the transparency of its transaction allocation process for market participants using its facilities. Therefore, the Commission finds that this enhanced transparency is consistent with the Act.

With respect to the Exchange’s proposal to modify the specialist allocation to provide the Directed Specialist with the entire allocation of a Directed Order where the order is for 5 contracts or fewer, the Commission notes that the Directed Specialist will not be entitled to this allocation when there is a Public Customer present at the same price or when the Specialist is not quoting at the inside when the order is received. The Commission further notes that the modified specialist entitlement is identical to the existing specialist allocation of orders of 5 contracts or fewer where the order is not a Directed Order, which is provided to specialists in recognition of the specialists’ affirmative market making obligations. The Commission finds that the proposed specialist allocation for Directed Orders of 5 contracts or fewer is consistent with the Act in that the proposal should promote just and equitable principles of trade.

<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. 85876 (May 16, 2019), 84 FR 23595 (“Notice”).

<sup>4</sup> After the DROT Priority is applied, the System excludes the Specialist/DROT from the total number of contracts that is utilized (denominator) in calculating the ROT Priority in proposed Rule 1089(a)(1)(E).

<sup>5</sup> In approving this rule change, the Commission has considered the rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

#### IV. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> the proposed rule change (SR-Phlx-2019-20) be approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Jill M. Peterson,

Assistant Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86184; File No. SR-ICEEU-2019-009]

#### Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to the ICE Clear Europe Operational Risk Management Policy

June 24, 2019.

#### I. Introduction

On May 1, 2019, ICE Clear Europe Limited (“ICE Clear Europe”) 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 (SR-ICEEU-2019-009) to formalize its Operational Risk Management Policy (“ORMP” or “Policy”), which consolidates, clarifies, and codifies ICE Clear Europe’s current policies and practices with respect to management of operational risk. The proposed rule change was published for comment in the *Federal Register* on May 10th, 2019.<sup>3</sup> The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

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

ICE Clear Europe is proposing to formalize its ORMP by consolidating its practices and procedures with respect to management of operational risk. The ORMP defines operational risk as the risk of an event occurring which negatively impacts the achievement of business objectives resulting from inadequate or failed internal operational

controls, people, systems or external events.<sup>4</sup> The Policy notes several non-exhaustive examples of operational risk such as those from internal and external fraud, employment practices and workplace safety, clients, products and business practices, damage to physical assets and business disruption and system failures.<sup>5</sup>

The proposed ORMP would formalize ICE Clear Europe’s existing process for managing operational risks by clarifying and codifying a policy governing the overall process for managing operational risks, the stakeholders responsible for executing those processes, the frequency of review of the Policy, and the governance and reporting lines for the Policy.<sup>6</sup> As clarified in the ORMP, risk identification and assessment is performed by the business areas exposed to the risk (referred to as “risk owners”) at least once each year and is overseen by the Risk Oversight Department.<sup>7</sup> More frequent ad hoc assessments may be necessary if risks emerge or disappear between annual reviews.<sup>8</sup> Risk owners are also responsible for proposing and implementing remedial actions, which are approved by the ICE Clear Europe Executive Risk Committee.<sup>9</sup>

Under the ORMP, risk owners monitor the identified operational risk daily through the use of key performance and risk indicators.<sup>10</sup> The Risk Oversight Department itself monitors risks daily through risk appetite metrics and management thresholds as well as operational incidents raised by the risk owners.<sup>11</sup>

As formalized in the ORMP, overall oversight of the Policy rests with the Audit Committee and Risk Oversight Department.<sup>12</sup> Control assessments and operational incidents must also be regularly reported to senior management, the Audit Committee, the Board Risk Committee, and the Board.<sup>13</sup> The ORMP itself is subject to review on a biennial basis or in the event of a material change.<sup>14</sup>

#### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory

organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>15</sup> For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,<sup>16</sup> and Rule 17Ad-22(e)(17)(i) thereunder.<sup>17</sup>

#### A. Consistency With Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>18</sup>

As discussed above, the proposed rule change would formalize ICE Clear Europe’s existing policies and process for managing operational risks by clarifying, consolidating, and codifying a policy governing the overall process for managing operational risks, consolidating the existing procedures for operational risk management into a single Policy, and describing the overall process for identifying, monitoring, assessing, responding to, and reporting operational risk through the management chain. By formalizing, consolidating, and clarifying ICE Clear Europe’s existing operational risk management procedures in this way, the Commission believes that ICE Clear Europe will help enhance and more clearly define the specific risk management duties, assessment metrics, and governance oversight that support ICE Clear Europe’s ability to identify and respond to operational risks presented by its clearing activities. This in turn, will enhance ICE Clear Europe’s ability to avoid disruption to clearing operations and address operational risks in a timely fashion, thereby promoting sound operations that facilitate prompt and accurate clearance and settlement as well as the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible. Therefore, the Commission finds that the proposed rule change is consistent with the

<sup>4</sup> Notice, 84 FR 20671.

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

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

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

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

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

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

<sup>13</sup> Notice, at 84 FR 20671–20672.

<sup>14</sup> Notice, at 84 FR 20672.

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

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>17</sup> 17 CFR 240.17Ad-22(e)(17)(i).

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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> Securities Exchange Act Release No. 34-85782 (May 6, 2019), 84 FR 20671 (May 10, 2019) (SR-ICEEU-2019-009) (“Notice”).