

under Commission service contracts with a dollar value of \$100,000 or more.<sup>8</sup> These subcontractors may already be subject to similar recordkeeping requirements as principal contractors. Consequently, the Commission believes that any additional requirements imposed on subcontractors would not significantly add to the burden estimates discussed above.

With respect to the reporting burden, the Commission estimates that it would take all contractors on average approximately one hour to retrieve and submit to the OMWI Director the documentation specified in the Contract Standard. The Commission expects to request documentation from up to 100 contractors each year and therefore the Commission estimates the total annual reporting burden would be 100 hours.

The estimated annualized cost to contractors for the recordkeeping and reporting burden hours resulting from the information collection requirement under the Contract Standard is based on Bureau of Labor Statistics data in the publication "Employer Costs for Employee Compensation" (2014), which lists total compensation for management, professional, and related occupations as \$55 per hour and administrative support as \$25.<sup>9</sup> With respect to the recordkeeping burden for developing, updating, and maintaining the workforce inclusion plan, the Commission estimates that 75 percent of the burden hours would be management, professional, and related occupations and 25 percent would be administrative support. The Commission estimates that the annualized cost related to the burden hours for the initial development of a workforce inclusion plan is \$19,000, and that the annualized cost for the recurring recordkeeping burden is \$16,625. Thus, the Commission estimates that the annualized recordkeeping cost related to compliance with the Contract Standard is \$35,625 (50 contractors x \$712.50 per contractor).

As for the reporting burden, the Commission estimates that 75 percent of the burden hours for retrieving and submitting documentation to the OMWI Director would be administrative support and 25 percent would be

professional, management, and related occupations. The Commission estimates that the annual reporting cost related to compliance with the Contract Standard is \$3250 (100 responses each year x \$32.50 per response).<sup>10</sup>

On February 13, 2015, the Commission published for public comment a notice of the proposed Contract Standard, which also included the notice required under the Paperwork Reduction Act and allowed the public 60 days to submit comments.<sup>11</sup> The Commission received no comments on the proposed information collection.

Written comments continue to be invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Background documentation for this information collection may be viewed at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Please direct general comments to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to Shagufta Ahmed at [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted within 30 days of this notice.

<sup>10</sup> The estimates of average burden hours and associated costs are made solely for the purposes of the Paperwork Reduction Act and are not derived from a survey or study of the paperwork burdens and costs associated with the proposed information collection.

<sup>11</sup> See Contract Standard for Contractor Workforce Inclusion and Request for Public Comment Release No. 34-74239 (February 10, 2015), 80 FR 8119 (February 13, 2015).

Dated: April 29, 2015.

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74833; File No. SR-Phlx-2015-36]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Phlx Permit Fee, Order Entry Port Fee, Clearing Trade Interface Port Fee, and Active Specialized Quote Feed Port Fee

April 29, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 20, 2015, NASDAQ OMX 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 amend the Phlx Pricing Schedule ("Pricing Schedule") at Section VI pertaining to the Phlx Permit Fee and at Section VII pertaining to the Order Entry Port Fee, the Clearing Trade Interface ("CTI") Port Fee, and the Active Specialized Quote Feed ("SQF") Port Fee.<sup>3</sup> The Exchange also proposes technical changes to the language of the Pricing Schedule.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on May 1, 2015.

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

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

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

<sup>3</sup> References in the proposal are to the Exchange's Pricing Schedule, unless otherwise noted.

<sup>8</sup> A search of subcontract awards on the [usaspending.gov](http://usaspending.gov) Web site showed that four subcontractors in FY 2012 and three subcontractors in FY 2013 had subcontracts of \$100K or more. See data on subcontract awards available at <http://usaspending.gov>.

<sup>9</sup> For purposes of these calculations, the average salaries of \$54.95 and \$24.76 have been rounded up.

## 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 Exchange proposes to amend the Exchange's Pricing Schedule at Section VI pertaining to the Phlx Permit Fee and at Section VII pertaining to the Order Entry Port Fee, the CTI Port Fee, and the Active SQF Port Fee. The Exchange also proposes technical changes to the language of the Pricing Schedule. The proposed changes are discussed below.

#### Phlx Permit Fee—Section VI A. of the Pricing Schedule

The Exchange currently has a Permit Fee for Phlx members, which is \$2,150 for Specialists<sup>4</sup> and Market Makers<sup>5</sup> and \$2,150 for Floor Brokers<sup>6</sup> per month. The Exchange proposes to increase the Permit Fee for Specialist and Market Makers, as well as for Floor Brokers, to \$2,300.<sup>7</sup>

Phlx Permit Fees for all other member and member organizations are currently \$4,000 in a given month, unless the member or member organization or member organizations under Common Ownership<sup>8</sup> executes at least 100

options in a Phlx house account that is assigned to one of the member organizations in a given month, in which case the Permit Fee will be \$2,150 for that month. Commensurate with the increased Permit Fees for Specialists, Market Makers, and Floor Brokers, the Exchange proposes to increase to \$2,300 the Permit Fee for all other Common Ownership members or member organizations that execute a large number of options on the Exchange.<sup>9</sup>

The Exchange is seeking to recoup costs incurred from the membership administration function while continuing to encourage bringing options liquidity to the Exchange.

#### Order Entry Port Fee—Section VII B. of the Pricing Schedule

The Exchange currently has an Order Entry Port Fee that is \$600 per month per mnemonic.<sup>10</sup> The Exchange proposes to modestly increase the Order Entry Port Fee to \$650 per month per mnemonic.

The Order Entry Port Fee is a connectivity fee related to routing orders to the Exchange via an external order entry port. Phlx members access the Exchange's network through order entry ports. A Phlx member may have more than one order entry port. Today, the Exchange assesses members an Order Entry Port Fee of \$600 per month per mnemonic. The Exchange proposes to increase the Order Entry Port Fee to \$650 per month per mnemonic. The current practice will continue whereby the Order Entry Port Fee will be waived for mnemonics that are used exclusively for Complex Orders<sup>11</sup> where one of the components of the Complex Order is the

<sup>9</sup> No change is proposed to Permit Fees for PSX only members and member organizations. These fees would continue to be \$4,000 unless the member or member organization averages at least 1,000 shares executed per day in a given month, in which case the Permit Fee will be \$0.00 in a given month. This volume will be calculated by averaging the shares over a one month period. The Exchange believes 1,000 shares per day in a given month is a reasonable level given the lower volume of business transacted on PSX as compared to other mature equities markets such as The NASDAQ Stock Market LLC.

<sup>10</sup> Mnemonics are codes that identify member organization order entry ports.

<sup>11</sup> A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund ("ETF") coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .07(a)(i).

underlying security.<sup>12</sup> In addition, the current practice will continue whereby member organizations are not being assessed an Order Entry Port Fee for additional ports acquired for only ten business days for the purpose of transitioning technology.<sup>13</sup>

#### CTI Port Fees—Section VII B. of the Pricing Schedule

The Exchange currently has a CTI Port Fee that is \$600 per port per month for each of the first 5 CTI ports, and \$100 per port for each port thereafter. The Exchange proposes to modestly increase the CTI Port Fee from \$600 to \$650 and to continue to charge a smaller amount for the subsequent ports in order to encourage use of CTI ports on the Exchange.

CTI offers real-time clearing trade updates. A real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation ("OCC"). The trade messages are routed to a member's connection containing certain information. The administrative and market event messages include, but are not limited to: System event messages to communicate operational-related events; options directory messages to relay basic option symbol and contract information for options traded on the Exchange; complex strategy messages to relay information for those strategies traded on the Exchange; trading action messages to inform market participants when a specific option or strategy is halted or released for trading on the Exchange; and an indicator which distinguishes electronic and non-electronically delivered orders. This information will be available to members on a real-time basis.<sup>14</sup>

The Exchange assesses port fees for similar ports, namely the Order Entry Ports, CTI Ports and Active SQF Ports,

<sup>12</sup> See note 25 to section VII B. of the Pricing Schedule.

<sup>13</sup> Similarly, member organizations will continue to be required to provide the Exchange with written notification of the transition and all additional ports which were provided at no cost will be removed at the end of the ten business days. See Order Entry Port Fee in section VII B. of the Pricing Schedule.

<sup>14</sup> Other data that is available includes: (1) Options Auction Notifications (e.g., opening imbalance, market exhaust, PIXL or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (e.g., start of messages, start of system hours, start of quoting, start of opening); (4) Complex Order Strategy Auction Notifications ("COLA"); (5) Complex Order Strategy messages; (6) Option Trading Action Messages (e.g., trading halts, resumption of trading); and (7) Complex Strategy Trading Action Message (e.g., trading halts, resumption of trading).

<sup>4</sup> A "Specialist" is an Exchange member who is registered as an options specialist pursuant to Exchange Rule 1020(a).

<sup>5</sup> A "Market Maker" includes Registered Options Traders (Exchange Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (Exchange Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (Exchange Rule 1014(b)(ii)(B)).

<sup>6</sup> A "Floor Broker" is defined in Exchange Rule 1060 as an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders received from members and member organizations.

<sup>7</sup> In addition, a member or member organization will pay an additional Permit Fee for each sponsored options participant, which fee will be the Permit Fee that is assessed to the member or member organization sponsoring the options participant. See note 16 to section VI A. of the Pricing Schedule.

<sup>8</sup> The term "Common Ownership" means members or member organizations under 75% common ownership or control. See Preface to Pricing Schedule.

discussed below. The Exchange desires to continue assessing the fees on Phlx in order to recoup costs associated with these ports while encouraging members to participate in the market.

#### Active SQF Port Fee—Section VII B. of the Pricing Schedule

SQF is an interface that enables Specialists, Streaming Quote Traders (“SQTs”)<sup>15</sup> and Remote Streaming Quote Traders (“RSQTs”)<sup>16</sup> to connect and send quotes into Phlx XL.<sup>17</sup> Active SQF ports are ports that receive inbound quotes at any time within that month. Active SQF Ports allow member organizations to access, information such as execution reports, execution report messages, auction notifications, and administrative data through a single feed.

Last year, as discussed below, the Exchange underwent a technology refresh (“refresh” or “technology refresh”), which is completed. During the technology refresh, Exchange members had to use old Active SQF Ports and new Active SQF Ports as these were being developed, tested, and implemented. Where the Exchange had been offering Active SQF Ports in sets of four to accommodate the connections necessary to access the match engine, as a result of the refresh (discussed below) firms could use fewer ports for a connection.

To help Exchange members through the refresh period, the Exchange last year filed an immediately effective proposal regarding Active SQF Port Fees (the “prior SQF filing”).<sup>18</sup> In the prior SQF filing, the Exchange added language into Section VII B. of the Pricing Schedule to help avoid things such as double charging during the refresh transition period (“refresh accommodation language”). First, Section VII B. of the Pricing Schedule currently states that Specialists and

Market Makers that are subject to the Active SQF Port Fee as of December 1, 2014 will be subject to an Active SQF Port Fee that reflects the average of fees assessed to them for the months of August, September and October 2014 (known as the “Fixed Active SQF Port Fee”). This Fixed Active SQF Port Fee will be assessed to these Specialists and Market Makers from December 1, 2014 through March 31, 2015. Second, Section VII B. of the Pricing Schedule currently states that Specialists and Market Makers will not be assessed a fee for their use of the new version of the Active SQF Port through March 31, 2015. And third, a Specialist or Market Maker who was not subject to Fixed Active SQF Port Fees prior to December 1, 2014 will be provided new ports and assessed the above [sic] Active SQF Port Fees as of December 1, 2014. These instances of the refresh accommodation language are no longer needed (*e.g.*, the timing has expired) and are therefore being deleted.

Currently, Section VII B. of the Pricing Schedule states that as of April 1, 2015 all Specialists and Market Makers are subject to the following tiered Active SQF Port Fee (“variable Active SQF Port Fee”):

Number of active SQF port	Monthly fee per port
1 .....	\$2,500
2–6 .....	4,000
7 and over .....	15,000

Instead of continuing implementation of the variable Active SQF Port Fees that were put into place during the refresh, the Exchange proposes to assess Specialists and Market Makers an Active SQF Port Fee of \$1,250 per port per month (“Active SQF Port Fee”). This Active SQF Port Fee replaces the variable Active SQF Port Fee and is applicable to all that would be assessed for the Active SQF Port.<sup>19</sup> Thus, with the proposal, the Active SQF Port Fee would be a set fee of \$1,250 per port per month, capped at \$42,000.<sup>20</sup>

<sup>19</sup> The Exchange notes that the variable Active SQF Fee could, in fact, be more expensive than the proposed Active SQF Fee. For example, where the fixed Active SQF Port Fee for one port per month would be \$1,250, the variable Active SQF Port Fee (as applicable to Specialists and Market Makers) would be \$2,500; and where the fixed Active SQF Port Fee for 3 ports per month would be \$3,750, the variable Active SQF Port Fee would be \$4,000 per port.

<sup>20</sup> Currently, per note 26 to Section VII of the Pricing Schedule, the Active SQF Port Fee is capped at \$42,000, but includes language that the fee is capped at \$41,000 per month through March 31, 2015 (“Active SQF Port Fee Cap”). The Exchange proposes to delete the unnecessary language referring to March 31, 2015.

At the time that the variable Active SQF Port Fees were put into current Section VII B. of the Pricing Schedule during the technology refresh, four ports were needed to connect to the matching engine; after the refresh, only one port is needed. As noted in the prior SQF filing, the technology refresh was instituted last year in order that the Exchange may provide an equal opportunity to Specialists and Market Makers to access SQF data at a lower cost. The goal was to deploy state-of-the-art hardware and software architecture for a more efficient and robust infrastructure that would support the growing needs of market participants. The refresh changed the previously-needed multi-port connection to the matching engine to only one port. The functionality did not change as a result of the concluded refresh. As the Exchange had anticipated,<sup>21</sup> Specialists and Market Makers certainly benefitted from the efficiency of the service that would be available to them as a result of the refresh. While Specialists and Market Makers were required to make network and other technical changes in order to connect to the Phlx system via SQF, the Exchange believes that member costs declined overall as a result of the more efficient connectivity offered by the refresh.<sup>22</sup> During the technology refresh, the Exchange provided Specialists and Market Makers with new SQF ports for connectivity and functionality testing so that Specialists and Market Makers could migrate from the old Active SQF Ports to the new Active SQF Ports over a reasonable period of time.<sup>23</sup> As discussed, during the refresh period the Exchange implemented refresh accommodation language and a variable Active SQF Port Fee. The refresh is successfully completed and the Exchange is therefore deleting the refresh accommodation language and the variable Active SQF Port Fee, and proposing the above-described Active SQF Port Fee changes. The Exchange believes, as discussed in more detail below, that the Active SQF Port Fee changes, like the Order Entry Port Fee

<sup>21</sup> See prior SQF filing.

<sup>22</sup> As discussed, the increased efficiency in connectivity did not require the same infrastructure on the part of members to connect to the Exchange; members have not need to have the same level of connectivity after the conversion to the new ports per the refresh, and this has provided an overall cost reduction.

<sup>23</sup> The Exchange migrated on a symbol by symbol basis thereby requiring the use of both new and old Active SQF Ports for a period of time. Post refresh only new ports are utilized.

<sup>15</sup> An SQT is defined in Exchange Rule 1014(b)(ii)(A) as a Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

<sup>16</sup> An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

<sup>17</sup> See Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR-Phlx-2010-124).

<sup>18</sup> See Securities Exchange Act Release No. 73687 (November 25, 2014), 79 FR 71485 (December 2, 2014) (SR-Phlx-2014-73) (notice of filing and immediate effectiveness regarding Active SQF Port Fee).

and CTI Port Fee changes, are reasonable.<sup>24</sup>

In addition, the Exchange proposes some technical housekeeping changes. First, the Exchange proposes to delete a bullet point in note 26 to Section VII B. of the Pricing Schedule, which is applicable to the Active SQF Port Fee section; the bullet point is not necessary. Second, the Exchange proposes to fix a typographical error by adding an "l" in the word "wil" in note 26.

The Exchange proposes to amend the Phlx Permit Fee, Order Entry Port Fee and CTI Port Fee. This proposal reflects a modest price increase to members and member organizations while allowing the Exchange to recoup a certain portion of costs associated with permits and ports, namely the Order Entry Port and the CTI Port. The Exchange proposes to also delete the variable Active SQF Port Fee that is applicable to Specialists and Market Makers as of April 1, 2015, and the refresh accommodation language that is no longer necessary. The Exchange believes that the proposed changes are in conformity with the Act.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>25</sup> in general, and with Section 6(b)(4) and 6(b)(5) of the Act,<sup>26</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal regarding Phlx Permit Fees allows the Exchange to recoup costs incurred from the membership administration function. The proposals regarding the Order Entry Port Fee and CTI Port Fee allow the Exchange to recoup costs associated with these ports while encouraging members to participate in the market. The proposals regarding deleting the variable Active SQF Port Fee and using the proposed new Active SQF Port Fee instead,<sup>27</sup> and

<sup>24</sup> For example, just as the Exchange believes that it was reasonable to allow Specialists and Market Makers to utilize new ports at no cost for a period of time to transition their current SQF ports to the new ports that were offered as a result of the technology refresh, so the Exchange believes that it is reasonable to delete such provisions when no longer needed.

<sup>25</sup> 15 U.S.C. 78f.

<sup>26</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>27</sup> The concept of a fixed fee for the Active SQF Port is not novel. A fixed monthly fee was previously adopted, for example, in connection with a specialist unit fee on Phlx. See Securities

deleting the refresh accommodation language that is no longer necessary, are made while continuing to encourage members to bring options liquidity to the Exchange.

## Phlx Permit Fee

The Exchange's proposal to amend Phlx Permit Fees is reasonable because the Exchange is seeking to recoup costs that are incurred by the Exchange.

The Exchange believes it is reasonable to assess different market participants different Permit Fees because each market participant has a different business model and, as a result, pays various other fees to the Exchange to maintain his or her business. Certain market participants such as Floor Brokers, Specialists and Market Makers pay other types of fees. For example, a Floor Broker requires space on the Exchange's trading floor, and infrastructure to support floor trading.<sup>28</sup> A Specialist and Market Maker will similarly incur costs for certain data feeds, remote specialist fees, RSQT Fees and SQF Port Fees, amongst other charges.<sup>29</sup> Taking into account the overall costs incurred by Floor Brokers, Specialists and Market Makers to simply access and conduct their business on the Exchange, it is reasonable to assess these market participants a proposed Permit Fee of \$2,300 (rather than \$2,150) per month as compared to market participants other than Floor Brokers, Specialists and Market Makers ("Other Market Participants"). The Exchange believes that it is reasonable to assess Other Market Participants a higher Permit Fee of \$4,000 in a given month unless they transact a certain volume on the Exchange because these market participants do not incur the higher costs to conduct their business as do Floor Brokers, Specialists and Market Makers. The Exchange also believes that it is reasonable to provide Other Market Participants an opportunity to lower Permit Fees from \$4,000 to the same proposed effective rate of \$2,300 (rather than \$2,150) if they transact a certain volume on Phlx in a given month. The Exchange believes this volume brings revenue to the Exchange, which in turn benefits other market participants because they are able to interact with that volume. The Exchange believes that the continued 100 options threshold in a given month is an achievable hurdle for a majority of options participants on

Exchange Act Release No. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003) (SR-Phlx-2003-61) (notice of filing and immediate effectiveness).

<sup>28</sup> Floor Brokers are subject to a Floor Facility Fee in Section VII of the Pricing Schedule.

<sup>29</sup> See Section VI and VII of the Pricing Schedule.

Phlx today, who are capable of meeting this threshold. Finally, assessing different Permit Fee rates to different types of market participants is not novel among options markets.<sup>30</sup>

The Exchange's proposal to amend Phlx Permit Fees is equitable and not unfairly discriminatory for the reasons which follow. The Exchange believes that continuing to assess Floor Brokers, Specialists and Market Participants effectively the same proposed rate of \$2,300 (rather than \$2,150) for a Permit Fee recognizes the overall total fee structure of these market participants on Phlx. As mentioned herein, Floor Brokers, Specialists and Market Makers incur fees which are not borne by other market participants.<sup>31</sup> The Exchange believes that the proposed fee structure recognizes the costs that are incurred by these market participants in determining the Permit Fee for Floor Brokers, Specialists and Market Makers. The Exchange believes that Floor Brokers, Specialists and Market Makers serve an important function on the Exchange and already pay a significant portion of the non-transaction fees assessed by the Exchange today. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. Floor Brokers are registered with the Exchange for the purpose, while on the options floor, of accepting and executing options orders received from members and member organizations.<sup>32</sup> These market participants incur greater costs as compared to Professionals, Firms and Broker-Dealers because the type of business they conduct requires them to incur more cost to access the Exchange as compared to others. Other Market Participants (Professionals, Firms and Broker-Dealers) do not incur the same fees as Floor Brokers, Specialists and Market Makers and therefore, in order to allocate fees, the Exchange continues to assess these Other Market Participants an increased fee of \$4,000, unless they are able to transact at least 100 options in a given month. The Exchange believes that

<sup>30</sup> The Chicago Board Options Exchange, Incorporated ("CBOE"), the International Securities Exchange, LLC ("ISE") and Miami International Securities Exchange LLC ("MIAX") assess different Trading Permit Fees to different market participants. See CBOE's Fees Schedule, ISE's Fee Schedule and MIAX's Fee Schedule.

<sup>31</sup> Floor Brokers require space on the Exchange's trading floor, and infrastructure to support floor trading. Floor Brokers are subject to a Floor Facility Fee in Section VII of the Pricing Schedule. Specialists and Market Makers similarly incur costs for certain data feeds, remote specialist fees, RSQT Fees and SQF Port Fees amongst other charges. See, e.g., Sections VI and VII of the Pricing Schedule.

<sup>32</sup> See Exchange Rule 1060.

assessing Other Market Participants the higher fee of \$4,000 and offering the opportunity to lower the Permit Fee by executing a certain amount of volume is equitable and not unfairly discriminatory because transacting volume on Phlx brings liquidity to the Exchange, which in turn benefits other market participants. The Exchange believes that Other Market Participant members, member organizations and those under Common Ownership that add liquidity to the market place also bring revenue to the Exchange by incurring transaction fees.

The Exchange believes it is equitable and not unfairly discriminatory to assess effectively the same proposed Permit Fee of \$2,300 (rather than \$2,150) to Other Market Participants, equivalent to the fee assessed on Floor Brokers, Specialists and Market Makers, in any given month in which the Other Market Participants achieve the requisite volume because of the liquidity and revenue they bring to Phlx. The opportunity to lower Permit Fees affords Other Market Participants the opportunity to lower their fees by offering a means to benefit the Exchange by bringing liquidity to the marketplace.<sup>33</sup>

#### CTI Port Fee and Order Entry Port Fee

The Exchange's proposal to amend CTI Port Fees and Order Entry Port Fees is reasonable because the Exchange is seeking to recoup costs that are incurred by the Exchange.

The Exchange believes that continuing to assess a CTI Port Fee on the Exchange at a proposed \$650 (rather than \$600) per port per month for each of the first 5 CTI ports, and \$100 per port for each port thereafter, is reasonable because it would allow the Exchange to recoup costs associated with offering the CTI ports. The Exchange notes that until recently it had a Real-Time Risk Management Fee,<sup>34</sup> but this fee was deleted in favor of using Port Fees.<sup>35</sup> The Exchange has found

<sup>33</sup> As discussed, the Exchange continuation to assess PSX only members no Permit Fee provided they transact an average of at least 1,000 shares executed per day in a given month is reasonable because the Exchange seeks to continue to attract market participants to the PSX market by assessing no fee.

<sup>34</sup> The Real-Time Risk Management Fee was adopted well over a decade ago for members receiving option trading information on-line (*i.e.*, electronically) from the Exchange. See Securities Exchange Act Release No. 43719 (December 13, 2000), 65 FR 80975 (December 22, 2000) (SR-Phlx-00-97) (notice of filing and immediate effectiveness).

<sup>35</sup> See Securities Exchange Act Release No. 74000 (January 6, 2015), 80 FR 1570 (January 12, 2015) (SR-Phlx-2014-83) (notice of filing and immediate effectiveness).

that the use of Port Fees is an effective way to recoup costs. This proposal reflects a modest price increase to members and member organizations while allowing the Exchange to recoup a certain portion of costs associated with ports, namely the Order Entry Port and CTI Port. Members and member organizations will be able to continue to obtain real-time information via CTI and SQF as discussed.

As with other port fees in subsection Section VII B. of the Pricing Schedule, the CTI Port Fees reflect a portion of the costs that the Exchange bears with respect to offering and maintaining the CTI ports. The CTI Port Fees are reasonable because they enable the Exchange to offset, in part, its connectivity costs associated with making such ports available, including costs based on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. The proposal to modestly increase the fees is reasonable to continue to recoup costs while encouraging members to connect to the Exchange.

The Exchange believes that continuing to assess an Order Entry Port Fee on the Exchange at a proposed \$650 per port per mnemonic is, similarly to the CTI Port Fee, reasonable because it would allow the Exchange to recoup costs associated with offering the Order Entry Ports. As noted, until recently the Exchange had a Real-Time Risk Management Fee that was deleted in favor of using Port Fees, which the Exchange has found is an effective way to recoup costs. This proposal reflects a modest price increase while allowing the Exchange to recoup a certain portion of costs associated with ports, namely the Order Entry Port and CTI Port.<sup>36</sup> Members and member organizations will be able to continue to obtain real-time information via CTI and SQF.

The Exchange believes that the CTI Port Fees for the CTI ports at a proposed \$650 per port per month for each of the first 5 CTI ports, and \$100 per port for each port thereafter, is equitable and not unfairly discriminatory because the Exchange will assess the same fees for all CTI ports to all members.

The Exchange believes that the Order Entry Fees for the Order Entry Ports at

<sup>36</sup> As noted, the current practice will continue whereby the Order Entry Port Fee will be waived for mnemonics that are used exclusively for Complex Orders where one of the components of the Complex Order is the underlying security. Similarly, member organizations will continue to be required to provide the Exchange with written notification of the transition and all additional ports which were provided at no cost will be removed at the end of the ten business days. See note 25 to section VII B. of the Pricing Schedule.

a proposed \$650 per month per mnemonic is similarly equitable and not unfairly discriminatory because the Exchange will assess the same fees for all Order Entry Ports to all members.

As with other port fees in Section VII B. of the Pricing Schedule, the CTI Port Fee and the Order Entry Port Fee reflect a portion of the costs that the Exchange bears with respect to offering and maintaining the ports; such fees allow the Exchange to keep pace with increasing technology costs. These fees enable the Exchange to offset, in part, its connectivity costs associated with making such ports available, including costs based on gateway software and hardware enhancements.

#### Active SQF Port Fee

The Exchange believes that it is reasonable to delete the variable Active SQF Port Fees. The variable Active SQF Port Fees were, as discussed, put into current Section VII B. of the Pricing Schedule during the technology refresh of the Phlx trading system, which, among other things, allowed the use of one port to connect to the match engine as compared to a set of four ports. The functionality did not change as a result of the refresh. The Exchange properly anticipated that Specialists and Market Makers would benefit from the efficiency of the service that will be available to them as a result of the refresh.<sup>37</sup> While Specialists and Market Makers were required to make network and other technical changes in order to connect to the Phlx system via SQF, the Exchange believes that members costs declined overall as a result of the more efficient connectivity offered by the refresh.<sup>38</sup>

Currently, as of April 1, 2015, Specialists and Market Makers are subject to a variable Active SQF Port Fee based on the number of active ports per month as follows: \$2,500 for 1 port, \$4,000 for 2-6 ports and \$15,000 for 7 or more ports. The Exchange believes that it is reasonable to delete the variable Active SQF Port Fee applicable to Specialists and Market Makers, and replace it with the proposed \$1,250 per port per month Active SQF Port Fee applicable to all.<sup>39</sup> The Exchange believes that it is reasonable to assess all firms the same Active SQF Port Fee as opposed to a variable fee because, as

<sup>37</sup> See prior SQF filing.

<sup>38</sup> As noted, and as discussed in the prior SQF filing, the increased efficiency in connectivity did not require the same infrastructure on the part of members to connect to the Exchange; members did not need to have the same level of connectivity after the conversion to the new ports and this provided an overall cost reduction.

<sup>39</sup> The Active SQF Port Fee is capped at \$42,000.

discussed, the variable Active SQF Port Fee could, in fact, be more expensive.<sup>40</sup>

The Exchange believes it is equitable and not unfairly discriminatory to delete the variable Active SQF Port Fee, and replace it with the proposed Active SQF Port Fee because all Specialists and Market Makers would be subject to the same Active SQF Port Fee.

Because of the technology refresh, the Exchange added refresh accommodation language into Section VII B. of the Pricing Schedule to avoid double charging and to enable firms to get through the refresh transition period.<sup>41</sup> Because the refresh is now completed and the refresh accommodation language is no longer needed, the Exchange believes that it is reasonable to delete the refresh accommodation language. The Exchange believes that just as it was reasonable to allow Specialists and Market Makers to utilize new ports at no cost for a period of time to transition their current SQF ports to the new ports that were offered as a result of the technology refresh, so it is reasonable to delete such provisions when no longer needed. In order to ease the transition during the refresh from the old SQF ports to new SQF ports, Specialists and Market Makers were given an extended period to test functionality and connectivity and resolve any issues that may arise during the testing phase with the new ports. With the refresh completed, and because of the time periods in the refresh accommodation language as discussed, there is no longer any need for the language and the Exchange believes that it is reasonable to delete it.

The Exchange believes that deletion of the refresh accommodation language is equitable and not unfairly discriminatory because with the deleted refresh accommodation language, the

<sup>40</sup> For example, where the fixed Active SQF Port Fee for one port per month would be \$1,250, the variable Active SQF Port Fee (as applicable to Specialists and Market Makers) would be \$2,500; and where the fixed Active SQF Port Fee for 3 ports per month would be \$3,750, the variable Active SQF Port Fee would be \$4,000 per port.

<sup>41</sup> The refresh accommodation language in Section VII B. of the Pricing Schedule states that Specialists and Market Makers that are subject to the Active SQF Port Fee as of December 1, 2014 will be subject to an Active SQF Port Fee that reflects the average of fees assessed to them for the months of August, September and October 2014. This Fixed Active SQF Port Fee will be assessed to these Specialists and Market Makers from December 1, 2014 through March 31, 2015. Specialists and Market Makers will not be assessed a fee for their use of the new version of the Active SQF Port through March 31, 2015. In addition, a Specialist or Market Maker who was not subject to Fixed Active SQF Port Fees prior to December 1, 2014 will be provided new ports and assessed the above Active SQF Port Fees as of December 1, 2014. See also prior SQF filing.

Exchange will assess all current users of Active SQF Ports a fee based on the same criteria.

Currently, per note 26 to Section VII of the Pricing Schedule, the Active SQF Port Fee is capped at \$42,000, but includes language that the fee is capped at \$41,000 per month through March 31, 2015. The Exchange proposes to delete the unnecessary language referring to March 31, 2015. The Exchange believes that this is reasonable because the \$42,000 Active SQF Port Fee Cap is currently in effect and the Exchange is just taking the unneeded language out of the Active SQF Port Fee Cap provision.

The Exchange believes that deleting the unnecessary language referring to March 31, 2015 is equitable and not unfairly discriminatory because the Exchange is simply cleaning up the language and will apply the Active SQF Port Fee Cap to all Specialists and Market Makers uniformly.

Finally, the Exchange proposes two technical housekeeping changes. First, the Exchange proposes to delete a bullet point in note 26 to Section VII of the Pricing Schedule, which is applicable to the Active SQF Port Fee section; the bullet point is not necessary. Second, the Exchange proposes to fix a typographical error by adding an "l" in the word "wil" in note 26; the word is misspelled. The Exchange believes that the changes are reasonable because they will delete unneeded language and clarify it.

The Exchange believes that the technical housekeeping changes are equitable and not unfairly discriminatory because the Exchange will apply them equally per the Pricing Schedule.

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

The Exchange does not believe that the proposed rule change will impose an undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that offering Specialists and Market Makers the opportunity to utilize certain Active SQF ports, during this transition with XL, at no cost ensured that the transition was done smoothly. Specialists and Market Makers continued to be assessed the Active SQF Port Fees for current ports at a rate that is representative of their typical usage. The Exchange allowed these market participants to utilize new ports at no cost without limit. As discussed, the Exchange used certain refresh accommodation language to help the refresh go forward. The Exchange believes that deletion of these unneeded

provisions will not impose an undue burden on competition. Similarly, the modest proposed increases in fees and establishing that all are liable for the proposed Active SQF Port Fee will not impose an undue burden on competition. Moreover, deleting the unnecessary language that the Active SQF Port Fee is capped at \$41,000 per month through March 31, 2015 will not impose an undue burden on competition because the Active SQF Port Fee is already capped at \$42,000 per month and the Exchange is merely taking out the unneeded language; moreover, the Active SQF Port Fee Cap would be applied uniformly to all market participants. Finally, the CTI Port Fee and the Order Entry Port Fee reflect a portion of the costs that the Exchange bears with respect to offering and maintaining the Order Entry Ports. Such fees allow the Exchange to keep pace with increasing technology costs, and will not impose an undue burden on competition because the fees would be applied uniformly to all market participants.

The Exchange operates in a highly competitive market, comprised of twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the above-described fees that are assessed by the Exchange (as also the rebates paid by the Exchange) are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

#### *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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>42</sup> At any time within 60 days of the filing of the 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

<sup>42</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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 to determine whether the proposed rule 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-2015-36 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-2015-36. 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 Number SR-Phlx-2015-36, and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-10403 Filed 5-4-15; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74840; File No. SR-NYSEMKT-2015-31]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying Its Rules To Provide for the Use of Ports That Provide Connectivity to the Exchange's Trading Systems Solely for the Cancellation or "Takedown" of Quotes and Changes to the NYSE Amex Options Fee Schedule Related to This Quote Takedown Service

April 29, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on April 17, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which have been prepared by the self-regulatory organization. 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 modify its rules to provide for the use of ports that provide connectivity to the Exchange's trading systems solely for the cancellation or "takedown" of quotes. In addition, the proposed rule change reflects changes to the NYSE Amex Options Fee Schedule ("Fee Schedule") related to this quote takedown service. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>43</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

#### 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 self-regulatory organization 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 those 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 parts of such statements.

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

###### 1. Purpose

The Exchange proposes to modify its rules to provide for the use of ports that provide connectivity to the Exchange's trading systems solely for the cancellation or "takedown" of quotes. In addition, the proposed rule change reflects changes to the Fee Schedule related to this quote takedown service.

###### Order/Quote Entry Ports

The Exchange currently makes available to ATP Holders order/quote entry ports for connectivity to Exchange trading systems (each an "order/quote entry port"). ATP Holders may be authorized to utilize order/quote entry ports for option activity on NYSE Amex Options and incur monthly Port Fees. Currently, the Exchange charges \$450 per month, per order/quote entry port for the first 40 ports and \$150 per month, per order/quote entry port for any additional ports in excess of 40 (*i.e.*, ports 41 and greater).<sup>4</sup>

While order/quote entry ports may be used by ATP Holders registered as Market Makers to both enter and cancel or remove quotes, Market Makers may dedicate certain ports solely to the removal of quotes, *i.e.*, a "quote takedown port,"<sup>5</sup> and, until now, the

<sup>4</sup> See Fee Schedule, available at, [https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE\\_Amex\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf). Unutilized order/quote entry ports that connect to the Exchange via its backup datacenter are considered established for backup purposes and are not subject to Port Fees. In addition, for purpose of calculating the number of order/quote entry ports, the Exchange shall aggregate the ports of Affiliates. See *id.*

<sup>5</sup> See Trader Update regarding Options Pre-Trade and Post-Trade Risk Controls, available at, [https://www.nyse.com/publicdocs/nyse/markets/amex-options/US\\_Options\\_Risk\\_Controls\\_Client\\_Document.pdf](https://www.nyse.com/publicdocs/nyse/markets/amex-options/US_Options_Risk_Controls_Client_Document.pdf) (announcing availability of ports dedicated to quote takedown to minimize latency for quote takedowns).