SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76446; File No. SR–Phlx–2015–89]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to a Market Access and Routing Subsidy or ''MARS''

November 16, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 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 Exchange's Pricing Schedule at Section IV, entitled ''Other Transaction Fees'' to create a subsidy program, the Market Access and Routing Subsidy or ''MARS,'' for Phlx members that provide certain order routing functionalities [3] to other Phlx members and/or use such functionalities themselves.

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.

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

Phlx proposes a new subsidy program, MARS, which would pay a subsidy to Phlx members that provide certain order routing functionalities to other Phlx members and/or use such functionalities themselves. Generally, under MARS, Phlx proposes to make payments to participating Phlx members to subsidize their costs of providing routing services to route orders to Phlx. The Exchange believes that MARS will attract higher volumes of electronic equity and ETF options volume to the Exchange from non-Phlx market participants as well as Phlx members.

MARS System Eligibility

To qualify for MARS, a Phlx member's order routing functionality would be required to meet certain criteria. Specifically the member's routing system (hereinafter ''System'') would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx's API to access current Phlx match engine functionality. The member's System would also need to cause Phlx to be one of the top three default destination exchanges for individually executed marketable orders if Phlx is at the national best bid or offer (''NBBO''), regardless of size or time, but allow any user to manually override Phlx as the default destination on an order-by-order basis. Specifically, with respect to Complex Orders,[4] the Exchange would not require Complex Orders to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. The Exchange notes that these requirements would not make sense for Complex Orders as some options exchanges do not offer Complex Order execution systems.

The Exchange would require Phlx members desiring to participate in MARS [5] to complete a form, in a manner prescribed by the Exchange, and reaffirm their information on a quarterly basis to the Exchange. Any Phlx member would be permitted to apply for MARS, provided the above-referenced requirements are met, including a robust and reliable System. The member would be solely responsible for implementing and operating its System.

MARS Eligible Contracts

A MARS Payment would be made to Phlx members that have System Eligibility and have routed at least 30,000 Eligible Contracts daily in a month, which were executed on Phlx. For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm,[6] Broker-Dealer,[7] Joint

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The order routing functionalities permit a Phlx member to provide access and connectivity to other members as well utilize such access for themselves. The Exchange notes that under this arrangement it will be possible for one Phlx member to be eligible for payments under MARS, while another Phlx member might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a Phlx member's connection to the Exchange and that member qualified for the MARS Payment. Consider the following example: both members A and B are Phlx members but A does not utilize its own connections to route orders to the Exchange, and instead utilizes B's connections. Under this program, B will be eligible for the MARS Payment while A is liable for any transaction charges resulting from the execution of orders that originate from A, arrive at the Exchange via B's connectivity, and subsequently execute and clear at The Options Clearing Corporation or ''OCC,'' where A is the valid executing clearing member or give-up on the transaction. Similarly, where B utilizes its own connections to execute transactions, B will be eligible for the MARS Payment, but would also be liable for any transaction resulting from the execution of orders that originate from B, arrive at the Exchange via B's connectivity, and subsequently execute and clear at OCC, where B is the valid executing clearing member or give-up on the transaction.

[4] 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 .08(a)(i).

[5] For example, a Phlx member that desires to qualify for MARS in November must complete the form and submit it to the Exchange no later than the last business day of November. Such form will require the Phlx member to identify the Phlx member seeking the MARS Payment and must list, among other things, the connections utilized by the Phlx member to provide Exchange access to other Phlx members and/or itself. MARS Payments would be made one month in arrears (i.e., a MARS Payment earned for activity in November would be paid to the qualifying Phlx member in December), as is the case with all other transactional payments and assessments made by the Exchange.

[6] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[7] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

Back Office or ''JBO'' [8] or Professional [9] equity option orders that are electronically delivered and executed. Eligible Contracts do not include floor-based orders, qualified contingent cross or ''QCC'' orders,[10] price improvement or ''PIXL'' orders,[11] Mini-Option orders [12] or Singly-Listed Options [13] orders.

Phlx members using an order routing functionality provided by another member or its own functionality will continue to be required to comply with best execution obligations.[14] Specifically, just as with any Customer [15] order and any other routing functionality, a Phlx member will continue to have an obligation to consider the availability of price improvement at various markets and whether routing a Customer order through a functionality that incorporates the features described above would allow for access to such opportunities if readily available. Moreover, a Phlx member would need to conduct best execution evaluations on a regular basis, at a minimum quarterly, that include its use of any router incorporating the features described above.

MARS Payment

Phlx members that have System Eligibility and have executed the Eligible Contracts in a month may receive the MARS Payment of $0.10 per contract. The MARS Payment will be paid only on executed Firm orders routed to Phlx through a participating member's System. No payment will be made with respect to orders that are routed to Phlx, but not executed. The Exchange believes that the MARS Payment will subsidize the costs of Phlx members in providing the routing services.

Further, a Phlx member would not be entitled to receive any other revenue [16] for the use of its System specifically with respect to orders routed to Phlx, with the exception of Payment for Order Flow.[17]

The Exchange proposes to add the MARS to new Section IV, Part E of the Pricing Schedule, entitled ''Market Access and Routing Subsidy (''MARS'').'' Additionally, the Exchange proposes to amend the Table of Content to include the new section.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [18] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act [19] 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 Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [20] Likewise, in *NetCoalition* v. *NYSE Arca, Inc.*, 615 F.3d 525 (D.C. Cir. 2010), the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[21] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [22]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . ..'' [23] Although the Court and the SEC were discussing the cash equities markets, the Exchange believes that, as discussed above, these views apply with equal force to the options markets.

The Exchange believes that MARS is reasonable because it is designed to attract higher volumes of electronic equity and ETF options volume to the Exchange, which will benefit all Phlx market participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. Moreover, the Exchange believes that the proposed subsidy offered by MARS is both equitable and not unfairly discriminatory because any qualifying Phlx member that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payment for all Eligible Contracts.

MARS System Eligibility

The Exchange believes that requiring Phlx members to maintain their Systems according to the various requirements set forth by the Exchange in order to

[8] The term ''Joint Back Office'' or ''JBO'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (''JBO Broker'') subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Exchange Rule 703.

[9] The term ''professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[10] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the NBBO and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the Exchange's match engine. *See* Rule 1080(o).

[11] PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXL℠). *See* Rule 1080(n).

[12] Mini Options are further specified in Phlx Rule 1012, Commentary .13.

[13] Singly Listed Options are options overlying currencies, equities, ETFs, ETNs treasury securities and indexes not listed on another exchange.

[14] *See* Phlx Rule 764.

[15] The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of a broker or dealer or for the account of a ''Professional'' (as that term is defined in Rule 1000(b)(14)).

[16] This requirement would not prevent the member from charging fees (for example, a flat monthly fee) for the general use of its System. Nor would it prevent the member from charging fees or commissions in accordance with its general practices with respect to transactions effected through its System.

[17] The Payment for Order Flow (''PFOF'') Program assesses fees to Specialists and Market Makers resulting from Customer orders. These PFOF Fees are available to be disbursed by the Exchange according to the instructions of the Specialist or Marker Maker to order flow providers who are members or member organizations who submit, as agent, customer orders to the Exchange through a member or member organization who is acting as agent for those customer orders.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4) and (5).

[20] Exchange Act Release No. 34–51808 (June 9, 2005) (''Regulation NMS Adopting Release'').

[21] *See NetCoalition*, 615 F.3d at 534.

[22] *Id.* at 537.

[23] *NetCoalition I*, 615 F.3d at 539 (quoting ArcaBook Order, 73 FR at 74782–74783).

qualify for MARS is reasonable because the Exchange seeks to encourage market participants to send higher volumes of orders to Phlx, which will contribute to the Exchange's depth of book as well as to the top of book liquidity. The Exchange also believes that the proposed MARS is reasonable because it is designed to enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner.[24] The Exchange believes that requiring members to maintain their Systems according to the various requirements set forth by the Exchange in order to qualify for MARS is equitable and not unfairly discriminatory because these requirements will uniformly apply to all market participants desiring to qualify for MARS.

With respect to Complex Orders,[25] the Exchange believes that not requiring Phlx members to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges, provided the transaction was effected as a portion of a Complex Order, is reasonable because this requirement would not make sense for Complex Orders as some options exchanges do not offer Complex Order execution systems. Also, Phlx members will be encouraged to provide Complex Order routing functionalities. The Exchange believes that limiting these requirements for Complex Orders, while still paying a subsidy on these types of orders, is equitable and not unfairly discriminatory because Phlx members transacting Complex Orders have devoted resources to provide the order routing functionalities. All Phlx members that qualify for the subsidy will have the ability to count Complex Orders toward their Eligible Contracts and be subject to similar requirements.

The Exchange also notes that the Chicago Board of Options Exchange, Inc. (''CBOE'') currently offers a similar Order Routing Subsidy (''ORS'') and Complex Order Routing Subsidy (''CORS'') which, similar to the current proposal, allows CBOE members to enter into subsidy arrangements with CBOE Trading Permit Holders (''TPHs'') that provide certain order routing functionalities to other CBOE TPHs and/or use such functionalities themselves.[26] Also, NYSE MKT LLC (''NYSE MKT'') had a Market Access and Connectivity Subsidy (''MAC'') which allowed NYSE MKT members to enter into subsidy arrangements with ATP Holders that provided certain order routing functionalities to other ATP Holders and/or use such functionalities themselves. The NYSE MKT program was discontinued.[27] Finally, in 2007, Phlx offered a Market Access Provider Subsidy or ''MAPs'' as a per contract fee payable by the Exchange to Eligible Market Access Providers for Eligible Contracts submitted by MAPs for execution on the Exchange. The subsidy was applicable to any Exchange member organization that qualified as a MAP and elected to participate for that calendar month.[28]

MARS Eligible Contracts

The Exchange believes that excluding the volumes attributable to QCC Orders, PIXL and Mini Options is reasonable, equitable, and not unfairly discriminatory for the reasons below. QCC Order volume is already counted toward a separate rebate that the Exchange pays on both electronic and floor QCC transactions.[29] If the Exchange were to count QCC Orders volumes towards the volume tiers for MARS, the Exchange may have to raise fees for all other participants. The Exchange does not believe such a result would be reasonable or equitable. PIXL Orders are also subject to separate pricing and certain discounts.[30] Mini Options are also subject to separate pricing.[31] The Exchange does not desire to pay an additional subsidy on top of the already discounted rates for PIXL and Mini Options. Because all Phlx members seeking to qualify for MARS would be treated equally with respect to excluding QCC, PIXL and Mini Options volume, the proposal to exclude these volumes from the MARS Payment is not inequitable or unfairly discriminatory. With respect to excluding Singly Listed options, these orders are not subject to a default destination exchange, and therefore should not be taken into account in calculating Eligible Contracts. The exclusion of these types of orders from MARS is equitable and not unfairly discriminatory because the Exchange will uniformly exclude these orders from the Eligible Contracts for all qualifying Phlx members.

With respect to floor orders, the Exchange's exclusion of such orders from Eligible Contracts is reasonable because the floor model does not lend itself to this type of incentive which requires the maintenance of a front-end system to route orders. The Exchange has two different methods of handling orders. The non-electronic model is one that is represented on the trading floor by a floor broker. An electronic order is an entirely different model. Those orders are entered by members who are connected to the Phlx's match engine. These members are assessed different rates because the Exchange operates two different models, a floor-based model and an electronic model, which both utilize different processes. The Exchange believes that it is appropriate to assess fees and incentivize through rebates and subsidies differently for each model. With respect to floor orders, the Exchange's exclusion of such order from MARS is equitable and not unfairly discriminatory because the Exchange will not permit any floor orders to count toward Eligible Contracts for any market participant for MARS.

The Exchange further notes that while MARS is only being offered to qualifying Phlx members for electronically-executed Firm, Broker-Dealer, JBO or Professional equity option orders and not, for example, on the electronic volumes of Phlx Customer, Specialist[32] or Market Maker[33] the Exchange believes this is reasonable, equitable and not unfairly

[24] *See, e.g., supra* note 10; Securities Exchange Act Release No. 34–54121 (July 10, 2006), 71 FR 40566 (July 17, 2006) (SR–ISE–2006–31) (describing PrecISE, which is a front-end, order entry application for trading options utilized by International Securities Exchange LLC).

[25] 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 .08(a)(i).

[26] *See* note 43. CBOE's programs permit both CBOE members and CBOE non-members to be eligible for a rebate. CBOE members are eligible to receive exchange transaction fees on transactions that earn a non-CBOE member a subsidy payment.

[27] *See* note 44. *See also* Securities Exchange Act Release No. 75609 (August 11, 2015), 80 FR 48132 (August 5, 2015) (SR–NYSEMKT–2015–059).

[28] *See* Securities Exchange Act Release No. 56274 (August 16, 2007), 72 FR 48720 (August 24, 2007) (SR–Phlx–2007–54). This program is no longer being offered.

[29] *See* notes 10 and 39.

[30] *See* Phlx's Pricing Schedule at Section IV, Part A. The Exchange offers discounted fees provided certain criteria are met.

[31] *See* Section A of the Phlx Pricing Schedule.

[32] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

[33] A ''market maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

discriminatory for the reasons below. With respect to Customer orders, the Exchange notes that Customer orders have the ability to earn rebates today.[34] Additionally, Customers are not assessed transaction fees.[35] The Exchange believes that the availability of these rebates for Customer volumes as well as no transaction fees does not warrant paying an additional subsidy on Customer volumes in MARS. With respect to Specialists and Market Makers, the Exchange offers Specialists and Market Makers certain rebates in SPY,[36] assesses them lower transaction fees as compared to other market participants [37] and offers them the ability cap their transaction fees.[38] The Exchange believes that the SPY rebates, coupled with the lower transaction fees and Monthly Market Maker Cap, already provide ample incentive for attracting Specialist and Market Maker volumes to the Exchange and that no further subsidy is warranted at this time.

The proposed MAC Subsidy is designed to attract higher margin business to the Exchange, business which at present has no opportunity to transact at rates anywhere close to the rate assessed to Customers, Specialists or Market Makers. To offer the proposed subsidy on Customer, Specialist or Market Maker electronic volume would require funding from some other source, such as raising fees for other participants. As a result, the Exchange believes it is appropriate to offer MARS to only Firms, Broker-Dealers and JBO participants that are charged higher per contract transaction fees than other market participants. The Exchange notes that it is commonplace within the options industry for exchanges to charge different rates and/or offer different rebates depending upon the capacity in which a participant is trading. For these reasons, the Exchange believes that the proposed change to offer MARS Payment to qualifying Phlx members on certain electronic volumes is reasonable, equitable and not unfairly discriminatory for the reasons mentioned herein.

Finally, the Exchange believes that 30,000 Eligible Contracts is a reasonable level of contracts, because the Exchange is only counting volume from Firms, Broker-Dealers, JBOs and Professionals which are electronically delivered and executed. The Exchange believes that this number reflects an appropriate level of commitment from Phlx members to earn the MARS Payment. The Exchange believes that 30,000 Eligible Contracts is equitable and not unfairly discriminatory because this level will be uniformly applied to all qualifying Phlx members.

MARS Payment

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to pay the proposed MARS Payment to Phlx members that have System Eligibility and have executed the Eligible Contracts, even when a different Phlx member may be liable for transaction charges resulting from the execution of the orders upon which the subsidy might be paid. The Exchange notes that this sort of arrangement already exists on the Exchange with respect to QCC rebates for floor QCC transactions. Today, this arrangement results in a situation where the floor broker is earning a rebate and one or more different Phlx members are potentially liable for the Exchange transaction charges applicable to QCC Orders. With the QCC rebates applicable to transactions executed on the trading floor, the Exchange does not offer a front-end for order entry; unlike some of the competing exchanges, the Exchange believes it is necessary from a competitive standpoint to offer this rebate to the executing floor broker on a QCC Order. Also, all qualifying Phlx members would be uniformly paid the subsidy on all qualifying volume that was routed by them to the Exchange and executed.

The Exchange believes the $0.10 per contract rate that is being offered to be paid as a subsidy is reasonable and will allow Phlx members to price their services at a level that will enable them to attract order flow from participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver orders directly to the Exchange's trading systems.[39] The Exchange believes that offering a flat rate is reasonable because all qualifying Phlx members would receive the same $0.10 per contract subsidy, provided they met the qualifications for MARS.

The Exchange believes that paying the MARS payments to a Phlx member, solely on executed Firm orders submitted by the qualifying Phlx member, is reasonable because, as noted herein Customers, Specialists and Market Makers are offered other pricing incentives such as rebates, no fees or lower fees and the Monthly Market Maker Cap. With respect to Professionals, JBOs and Broker-Dealers the Exchange believes it is reasonable to differentiate these market participants and Firms for the reasons which follow. Firms already benefit from certain pricing advantages that Professionals, JBOs and Broker-Dealers do not also enjoy, such as the Firm Monthly Fee Cap.[40] The Exchange desires to incentivize Phlx members to transact Firm, JBO, Broker-Dealer and Professional orders on the Exchange to qualify for MARS and receive the subsidy for Firm orders. The Exchange believes that this proposal may incentivize Phlx members that receive reduced rates at other options exchanges to select Phlx as a venue to send Firm, JBO, Broker-Dealer and Professional orders by offering competitive pricing to these market participants in the form of a subsidy, even though the financial benefit will only be made with respect to Firm orders. Such competitive, differentiated pricing exists today on other options exchanges. Further, the Exchange believes there is nothing impermissible about the MARS Payment

[34] *See* Section B of the Phlx Pricing Schedule.

[35] *See* Section II of the Phlx Pricing Schedule.

[36] *See* Section I of SPY Pricing in Phlx Pricing Schedule.

[37] *See* Section II of the Phlx Pricing Schedule.

[38] Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $550,000 for: (i) Electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II) are excluded from the Monthly Market Maker Cap.

[39] A Floor QCC Order must: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the NBBO; and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. See Rule 1064(e). *See also* Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR–Phlx–2011–56).

[40] Firms are subject to a maximum fee of $75,000 (''Monthly Firm Fee Cap''). Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in Section II of the Pricing Schedule) are excluded from the Monthly Firm Fee Cap. Reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap. *See* Section II of the Pricing Schedule.

being made solely on Firm orders. This practice is consistent with longstanding differentials between Firms, other Broker-Dealers and Professionals. The options exchanges have differentiated between: retail customers and professional customers; broker/dealers clearing in the ''Firm'' range at OCC and broker/dealers registered as market makers and away market makers; early-adopting market makers; and many others. The Commission has also permitted price differentiation based on whether an order is processed manually versus electronically. The proposal is consistent with previously established pricing proposals accepted by the Commission.

The Exchange believes that paying the MARS payments to a Phlx member, solely on executed Firm orders submitted by the qualifying Phlx member, is equitable and not unfairly discriminatory for the same reasons that the Firm Monthly Fee Cap which applies to Firms and not to Professionals and Broker-Dealers is equitable and not unfairly discriminatory. The MARS Payment, like the Monthly Firm Fee Cap, provides an incentive for Firms to transact order flow on the Exchange, which order flow brings increased liquidity to the Exchange for the benefit of all Exchange participants. To the extent the purpose of the proposed MARS is achieved, all the Exchange's market participants, including Professionals and Broker-Dealers, should benefit from the improved market liquidity.

The Exchange believes that preventing members from receiving any other revenue for the use of its routing system, specifically with respect to orders routed to Phlx, with the exception of Payment for Order Flow or ''PFOF'' is reasonable because members could still charge fees for the general use of its order routing system as well as charging fees or commissions in accordance with its general practices with respect to transactions effected through its system. PFOF also remains eligible under MARS. The Exchange believes that preventing members from receiving any other revenue for the use of its routing system, specifically with respect to orders routed to Phlx, with the exception of PFOF is equitable and not unfairly discriminatory because the Exchange would uniformly apply its MARS requirements to all qualifying Phlx members.

Finally, the Exchange believes that adding a new Part E to Section IV and amending the Table of Content is reasonable, equitable and not unfairly discriminatory as it will make finding MARS in the Pricing Schedule easier for all participants.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

MARS System Eligibility

The Exchange believes that requiring members to maintain their order routing systems according to the various requirements set forth by the Exchange in order to qualify for MARS does not create an undue burden on intra-market competition because the proposed requirements will uniformly apply to all market participants desiring to qualify for MARS.

With respect to Complex Orders, the Exchange believes that not requiring the Phlx members to enable the electronic routing of orders to all of the U.S. options exchanges and not requiring Phlx members to provide current consolidated market data from the U.S. options exchanges, in connection with Complex Orders, does not create an undue burden on intra-market competition because all Phlx members that qualify for the subsidy will have the ability to count Complex Orders toward their Eligible Contracts and be subject to similar requirements. The Exchange also notes that CBOE currently offers ORS and CORS which, similar to the current proposal, allow CBOE members to enter into subsidy arrangements with TPHs that provide certain order routing functionalities to other CBOE TPHs and/or use such functionalities themselves.[41]

MARS Eligible Contracts

The Exchange believes that excluding floor, QCC, PIXL, Mini Options and Single Listed Orders does not create an undue burden on intra-market competition because these types of orders will uniformly be excluded from the volume calculation for all qualifying Phlx members for MARS.

The Exchange believes that excluding Customer, Market Makers and Specialists orders from the types of orders that would be eligible for MARS does not create an undue burden on intra-market competition because Customers are not assessed transaction fees and are eligible for rebates. With respect to Specialists and Market Makers, the Exchange offers as Specialists and Market Makers certain rebates in SPY, assesses them lower transaction fees as compared to other market participants and offers them the ability cap their transaction fees.

Finally, the Exchange believes that the 30,000 Eligible Contracts requirement does not create an undue burden on intra-market competition because this level will be uniformly applied to all qualifying Phlx members.

MARS Payment

The Exchange believes that paying the proposed MARS Payment to qualifying Phlx members that have System eligibility and have executed the Eligible Contracts does not create an undue burden on intra-market competition, even when a different Phlx member, other than the Phlx member receiving the subsidy, may be liable for transaction charges, because this sort of arrangement already exists on the Exchange and would be uniformly applied to all qualifying Phlx members.

The Exchange believes that paying the proposed MARS Payment to qualifying Phlx members that have System eligibility and have executed the Eligible Contracts in a month, solely on executed Firm orders, does not create an undue burden on intra-market competition because the Exchange is counting all Firm, JBO, Broker-Dealer and Professional volume toward the Eligible Contracts. Customers, Specialists and Market Makers are offered other pricing incentives such as rebates, no fees or lower fees and the Monthly Market Maker Cap. The increased order flow will bring

[41] *See* note 43. CBOE's programs permit both CBOE members and CBOE non-members to be eligible for a rebate. CBOE members are eligible to receive exchange transaction fees on transactions that earn a non-CBOE member a subsidy payment.

increased liquidity to 50the Exchange for the benefit of all Exchange participants. To the extent the purpose of the proposed MARS is achieved, all the Exchange's market participants, including Professionals and Broker-Dealers, should benefit from the improved market liquidity.

The Exchange believes that preventing members from receiving any other revenue for the use of its routing system, specifically with respect to orders routed to Phlx, with the exception of PFOF, does not create undue burden on intra-market competition because the Exchange would continue to uniformly apply its MARS requirements to all Phlx members.

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.[42]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.* Please include File Number SR–Phlx–2015–89 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–2015–89. 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–2015–89, and should be submitted on or before December 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–29602 Filed 11–19–15; 8:45 am]

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[42] 15 U.S.C. 78s(b)(3)(A)(ii).

[43] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76441; File No. SR–Phlx–2015–91]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1014, ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders''

November 16, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 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 Phlx Rule 1014 entitled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders'' to remove the maximum option price change from the Rule.

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.

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 Phlx Rule 1014, entitled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders,'' to eliminate the provision providing for bids (offers) to be no more than $1 lower (higher) than the last preceding transaction price for the particular option.

Today, Phlx Rule 1014 specifies, ''Bidding no more than $1 lower and/or offering no more than $1 higher than the last preceding transaction price for the particular option contract. However,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.