

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76508; File No. SR-ISE-2015-42]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating Alternative Primary Market Makers

November 23, 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 November 16, 2015, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items 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 purpose of this proposed rule change is to permit any Competitive Market Maker (“CMM”) that is appointed to act as an Alternative Primary Market Maker (“Alternative PMM”) to voluntarily act as a Back-Up Primary Market Maker (“Back-Up PMM”). The text of the proposed rule change is available on the Exchange’s Web site (<http://www.ise.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 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 permit any CMM that is approved to act as an Alternative PMM to voluntarily act as a Back-Up PMM in options series in which it is quoting when the appointed PMM fails to have a quote in the System. In doing so, the Exchange would further enhance its markets by having additional Back-Up PMMs to take over a PMM’s responsibilities when the appointed PMM faces operational difficulties or ceases operations. The Exchange also proposes to amend the process by which a Back-Up PMM is chosen to replace a PMM that fails to have a quote in the System, when more than one CMM is quoting in the series.

##### Background

Currently, CMMs that are also PMMs on the Exchange may voluntarily act as Back-Up PMMs when the appointed PMM has technical difficulties that interrupt its participation in the market.<sup>3</sup> These CMMs/PMMs are permitted to be Back-Up PMMs because they already have systems built to undertake the responsibilities of a PMM on the Exchange.<sup>4</sup> Back-Up PMMs reduce volatility that occurs during, and the duration of, non-firm or “fast market” states disseminated by the ISE and facilitate uninterrupted trading even when a PMM experiences difficulties that cause it to remove its quotes from the market. In these situations, the Back-Up PMM assumes most of the responsibilities and privileges of a PMM under the Rules with respect to any series in which the appointed PMM fails to have a quote in the System.<sup>5</sup> The system automatically switches back to the appointed PMM when it re-establishes its quotes in the series, but the Back-Up PMM continues to be responsible for any outstanding unexecuted orders it is handling.

The Exchange’s Rules also allow the Exchange to appoint a CMM as an Alternative PMM when a PMM does not

wish to trade in an option class.<sup>6</sup> These CMMs are permitted to be Alternative PMMs because they have appropriate systems and procedures in place to undertake the responsibilities of a PMM. Alternative PMMs enable the Exchange to list and retain options classes that PMMs do not wish to trade.<sup>7</sup> Specifically, when no PMMs want the allocation of an option class, the Alternative PMMs are offered the opportunity to serve as PMM in the option class in accordance with the Exchange’s regular allocation procedures. In these situations, the Alternative PMM has all of the responsibilities and privileges of a PMM with respect to all appointed options classes.<sup>8</sup> Additionally, if an Alternative PMM ceases trading in an option class, that option class would be reallocated by the Exchange.

##### Proposed Rule Change

The Exchange now proposes to permit an Alternative PMM to voluntarily act as a Back-Up PMM in options series in which it is quoting<sup>9</sup> and assume most of the responsibilities and privileges of a PMM under the Rules with respect to any option series in which the appointed PMM fails to have a quote in the System.<sup>10</sup> This may occur when, for example, the appointed PMM has technical difficulties that interrupt its participation in the market or a PMM exits the options market making business. Under the proposal, an Alternative PMM is eligible to act as a Back-Up PMM because it already has in place written procedures and systems built to assume the responsibilities of a

<sup>6</sup> Securities Exchange Act Release No. 34-59250 (January 14, 2009), 74 FR 4062 (January 22, 2009) (SR-ISE-2008-90).

<sup>7</sup> Under Rule 802, allocations are voluntary, and at times ISE was unable to list new products because none of the PMMs were interested in trading the class. As a result, the Exchange was unable to list new products because existing PMMs were not interested in trading the option class. At other times, ISE delisted certain products due to lack of PMM interest. ISE represents that this occurs most frequently with respect to options on stocks that have pending corporate actions and options products that are not listed at any other options exchange. ISE believes that despite the lack of PMM interest, these products may be of interest to other Members of the Exchange.

<sup>8</sup> For example, Alternative PMMs would enjoy privileges that include, among other things, participation rights and small order execution preference while accepting responsibilities that include, among other things, the obligation to provide continuous quotations in the option class to which the Alternative PMM is appointed, and the obligation to conduct the opening rotation on a daily basis for as long as the Alternative PMM is appointed to that option class.

<sup>9</sup> The Exchange notes that under its current rules it may only appoint PMMs (*i.e.* CMMs that are also PMMs in other option classes) as Back-up PMMs.

<sup>10</sup> See Supplementary Material .03(a) to ISE Rule 803.

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

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

<sup>3</sup> Securities Exchange Act Release No. 34-53419 (March 6, 2006), 71 FR 12758 (March 13, 2006) (SR-ISE-2005-50).

<sup>4</sup> If there is more than one eligible member quoting in the series, the System will automatically switch to the member with the largest offer in the series.

<sup>5</sup> A CMM does not become subject to the requirement in Rule 804(e)(1) to enter continuous quotations in all of the series of all of the options classes to which it is appointed, as opposed to only 60% of the options classes under Rule 804(e)(2), by acting as a Back-Up PMM.

PMM on the Exchange. The Exchange also proposes to further amend the process by which a Back-Up PMM is chosen to replace a PMM that fails to have a quote in the System, when more than one Back-Up PMM is quoting in the series.

In situations where a PMM fails to have a quote in the System, the System will choose a Back-Up PMM, from the available CMMs, to replace the PMM. The System will choose the CMM with the lowest offer price in the series at that time. If there are two or more CMMs at the same offer price, the CMM with the highest bid price will be chosen. If there are two or more CMMs at the same bid and offer price, the CMM with the largest offer quantity will be chosen. If there are two or more CMMs with the same offer quantity, the CMM with the largest bid quantity will be chosen. If there remains two or more CMMs with the same bid and offer quantity and prices, the one with the highest time priority on the offer will be chosen as the Back-Up PMM.<sup>11</sup> Additionally, when possible, the System will automatically switch back to the appointed PMM when it re-establishes its quotes in the series, but the Back-Up PMM will continue to be responsible for any outstanding unexecuted orders it is handling.

The proposed rule change enhances ISE's market because it ensures ISE has an adequate number of willing Members to act as Back-Up PMMs for PMMs that are not participating in the market. Ultimately, having more Back-Up PMMs will further: (1) Reduce the volatility that occurs during, and the duration of, non-firm or "fast market"<sup>12</sup> states disseminated by ISE and (2) allow for virtually seamless trading even when multiple PMMs experience difficulties that cause PMMs to remove their quotes from the market.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>14</sup> in

<sup>11</sup> See Supplementary Material .03(b) to ISE Rule 803.

<sup>12</sup> Fast markets occur when there is rapid trading in a security that causes a delay in the electronic updating of its last sale. Trades can occur so rapidly that market orders may be executed at a very different price from the price at the time the order was placed. This leads to investors being disadvantaged because 1) quotes can be inaccurate when PMMs are unable to keep up with the pace of trading or 2) a broker may not be able to fill orders when investors want or expect them to because the PMM is not quoting the other side of the market resulting in the purchase or sale of an investor's securities at undesirable price levels.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by enhancing the Exchange's market by reducing volatility that occurs during and the duration of non-firm or "fast market" states disseminated by the ISE and allowing for virtually uninterrupted trading even when multiple PMMs experience difficulties that cause PMMs to remove their quotes from the market. Uninterrupted trading is possible because 1) Back-Up PMMs have appropriate systems and procedures in place to undertake the responsibilities of a PMM when necessary and 2) having an adequate amount of Back-Up PMMs means a Back-Up PMM will be available to take over for a PMM, and post firm and accurate quotes when a situation causes a PMM to fail to have a quote in the System. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it enhances the Exchange's ability to disseminate firm markets. Additionally, by amending and explaining the detailed steps for choosing Back-Up PMMs, members will have additional clarity on the process by which a Back-Up PMM is chosen in certain situations.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act because ISE is enhancing its market by allowing additional Members, which have systems built to assume the responsibilities of a PMM on the Exchange to be Backup-PMMs when appointed PMMs face operational difficulties or cease market making operations.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup> The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time as designated by the Commission, as required by Rule 19b-4(f)(6).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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 No. SR-ISE-2015-42 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-ISE-2015-42. 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

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

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

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-ISE-2015-42 and should be submitted by December 21, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-30244 Filed 11-27-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76513; File No. SR-Phlx-2015-79]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving a Proposed Rule Change Relating to the Active Specialized Quote Feed Port Fee

November 24, 2015.

#### I. Introduction

On September 23, 2015, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to pay eligible Specialists and Market

Makers a refund for a portion of the monthly variable Active Specialized Quote Feed ("SQF") Port Fees ("Variable Active SQF Port Fees") that were in effect under Section VII.B. of the Phlx Pricing Schedule during the month of April 2015. The proposed rule change was published for comment in the **Federal Register** on October 13, 2015.<sup>3</sup> The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

On April 2, 2015, the Exchange submitted a proposed rule change for immediate effectiveness pursuant to Section 19(b)(3)(A)<sup>4</sup> of the Act and Rule 19b-4(f)(2)<sup>5</sup> thereunder to, among other things, replace monthly Variable Active SQF Port Fees applicable to Specialists<sup>6</sup> and Market Makers<sup>7</sup> with a monthly fixed Active SQF Port Fee ("Fixed Active SQF Port Fee").<sup>8</sup> According to the Exchange, all Specialists and Market Makers on the Exchange were subject to the following Variable Active SQF Port Fees beginning in April 2015:<sup>9</sup>

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

The Variable Active SQF Port Fees were capped at \$42,000 per month.<sup>10</sup> Under the Fixed Active SQF Port Fees, Specialists and Market Makers would pay \$1,250 per port per month and this fee would also be capped at \$42,000 per month.<sup>11</sup>

The Exchange notes that the April 2015 submission proposing to replace the monthly Variable Active SQF Port

<sup>3</sup> See Securities Exchange Act Release No. 76083 (October 6, 2015), 80 FR 61537 (SR-Phlx-2015-79) ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> A "Specialist" is an Exchange member who is registered as an options specialist pursuant to Exchange Rule 1020(a).

<sup>7</sup> "Market Makers" include Registered Options Traders (Exchange Rule 1014(b)(i) and (ii)), which include Streaming Quote Traders (Exchange Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (Exchange Rule 1014(b)(ii)(B)).

<sup>8</sup> See SR-Phlx-2015-33, available at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/pdf/phlx-filings/2015/SR-Phlx-2015-33.pdf>.

<sup>9</sup> See Notice, *supra* note 3, at 61538.

<sup>10</sup> See *id.* at 61537. See also Securities Exchange Act Release No. 73687 (November 25, 2014), 79 FR 71485 (December 2, 2014) (SR-Phlx-2014-73) (implementing the Variable Active SQF Port Fees with a delayed operative date of April 1, 2015).

<sup>11</sup> See Notice, *supra* note 3, at 61538 (referencing note 26 in Section VII.B. of the Phlx Pricing Schedule).

Fees with a monthly Fixed Active SQF Port Fee was rejected.<sup>12</sup> As a result, the Exchange assessed Specialists and Market Makers the applicable Variable Active SQF Port Fees that were in effect from April 1, 2015—April 30, 2015 ("April 2015 Billing Period") and not the comparably lower Fixed Active SQF Port Fee.<sup>13</sup> The Exchange subsequently refiled another proposed rule change for immediate effectiveness pursuant to Section 19(b)(3)(A)<sup>14</sup> of the Act and Rule 19b-4(f)(2)<sup>15</sup> thereunder to replace the monthly Variable Active SQF Port Fees with the monthly Fixed Active SQF Port Fee.<sup>16</sup> This proposal became operative May 1, 2015.

According to the Exchange, because the April 2015 submission to replace the Variable Active SQF Port Fees with the Fixed Active SQF Port Fee was rejected, the Exchange is proposing to pay a refund to eligible Specialists and Market Makers for a portion of the Variable Active SQF Port Fees that the Exchange assessed during the month of April 2015 and that these eligible Specialists and Market Makers paid to the Exchange.<sup>17</sup> The Exchange states that it did not intend to impose the Variable Active SQF Port Fees in April 2015, but rather the Exchange intended to charge the less expensive Fixed Active SQF Port Fee for the April 2015 Billing Period.<sup>18</sup> The Exchange notes that, because the Fixed Active SQF Port Fee did not become operative until May 1, 2015, and the fee reduction resulting from the Fixed Active SQF Port Fee did not occur as intended on April 1, 2015, Specialists and Market Makers were not able to take advantage of the cheaper Fixed Active SQF Port Fee for April 2015 and had to pay the more expensive Variable Active SQF Port Fees for the April 2015 Billing Period. The Exchange also states that Specialists and Market Makers paid more in April 2015 than was anticipated by the Exchange and the Specialists and Market Makers.<sup>19</sup>

<sup>12</sup> See *id.* at 61537.

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

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> See Securities Exchange Act Release No. 74833 (April 29, 2015), 80 FR 25749 (May 5, 2015) (SR-Phlx-2015-36) (proposed rule change that, among other things, instituted the Fixed Active SQF Port Fee in lieu of the Variable Active SQF Port Fees as of May 1, 2015).

<sup>17</sup> See Notice, *supra* note 3, at 61537.

<sup>18</sup> See *id.*

<sup>19</sup> See Nasdaq Equity Trader Alert No. 2015-37 (March 25, 2015), available at <http://nasdaqtrader.com/TraderNews.aspx?id=ETA2015-37>; and Nasdaq Options Trader Alert No. 2015-9 (April 14, 2015), available at <http://www.phlx.com/TraderNews.aspx?id=OTA2015-9> (the "Alerts"). The Exchange notes that the Alerts show how some Exchange members may have anticipated the proposed lower Fixed Active SQF Port Fee in April

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

<sup>18</sup> 15 U.S.C. 78s(b)(1).

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