

given the lower volume that is attributed to these Participants combined with the activity that is required to be regulated both on the Exchange and across options markets. There are Exchange rules that involve cross market surveillances that relate to activities conducted by Firm and Broker-Dealer Participants.⁵³ While not large in number, when compared to the overall number of Exchange rules that are surveilled by NOM for on-Exchange activity, the Away ORF that would be assessed to Firm and Broker-Dealer Transactions would account for those Options Regulatory Costs. Additionally, the Exchange believes that limiting the amount of ORF assessed for activity that occurs on non-NOM exchanges does not impose a burden on intra-market competition, rather it avoids overlapping ORFs that would otherwise be assessed by NOM and other options exchanges that also assess an ORF. With this model, Customer transactions would be assessed a higher Local ORF, while not being assessed an Away ORF as compared to Firm and Broker-Dealer Transactions. The Exchange believes that this difference in allocation is appropriate and correlates to the degree of regulatory responsibility and Options Regulatory Costs borne by different Participants of the Exchange in light of the volume different Participants transact on the Exchange.

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 Act⁵⁴ and Rule 19b-4(f)(2)⁵⁵ thereunder.

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 interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

⁵³ NOM conducts surveillances and enforces NOM Rules, however only a subset of those rules is subject to cross-market surveillance, such as margin and position limits. Of note, some NOM trading rules are automatically enforced by NOM's System.

⁵⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵⁵ 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-078 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-NASDAQ-2024-078. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-078 and should be submitted on or before January 8, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁶

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101889; File No. SR-Phlx-2024-51]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend FLEX Floor Trading

December 12, 2024.

On October 8, 2024, Nasdaq PHLX LLC filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to: (i) amend Options 8, Section 34, FLEX Trading to clarify certain functionality; (ii) list p.m.-settled FLEX Index Options whose exercise settlement value is derived from closing prices on the last trading day prior to expiration that expire on or within two business days of a third Friday-of-the-month expiration day for a non-FLEX Option; and (iii) permit FLEX Options on certain Exchange-Traded Funds to be settled by delivery in cash if the underlying security meets prescribed criteria and set forth the applicable position and exercise limits for these options; and (iv) require that position and exercise limits for FLEX Options be aggregated with non-FLEX options in certain circumstances. The proposed rule change was published for comment in the **Federal Register** on October 29, 2024.³ The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the

⁵⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101413 (October 23, 2024), 89 FR 86007.

⁴ 15 U.S.C. 78s(b)(2).

proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 13, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change, so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates January 27, 2025, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-Phlx-2024-51).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101893; File No. SR-Phlx-2024-66]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Lower the Options Regulatory Fee (ORF) and Adopt a New Approach to ORF in 2025

December 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 27, 2024, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 6D, Options Regulatory Fee.³

While the changes proposed herein are effective upon filing, the Exchange has designated certain amendments to be operative on November 1, 2024, and other amendments to be operative on January 1, 2025, as noted in the Exhibit 5 and herein.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, 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 to amend its current ORF in several respects. In summary, first, Phlx proposes to reduce its ORF from \$0.0034 to \$0.0022 per contract side from November 1, 2024, through December 31, 2024. Second, as of January 1, 2025, Phlx proposes to amend its methodology of collection to: (1) specify that it is including options transactions in Phlx proprietary products; and (2) assess ORF in all clearing ranges except market makers who clear as "M" at The Options Clearing Corporation ("OCC"). Additionally, Phlx will assess a different rate for trades executed on Phlx ("Local ORF Rate") and trades executed on non-Phlx exchanges

("Away ORF Rate"). Each change will be described below in greater detail.

Background on Current ORF

Today, Phlx assesses its ORF for each Customer⁴ option transaction that is either: (1) executed by a member organization⁵ on Phlx; or (2) cleared by a Phlx member organization at OCC in the Customer range,⁶ even if the transaction was executed by a non-member organization of Phlx, regardless of the exchange on which the transaction occurs.⁷ If the OCC clearing member is a Phlx member organization, ORF is assessed and collected on all ultimately cleared Customer contracts (after adjustment for CMTA⁸); and (2) if the OCC clearing member is not a Phlx member organization, ORF is collected only on the cleared Customer contracts executed at Phlx, taking into account any CMTA instructions which may result in collecting the ORF from a non-member organization.⁹

Today, in the case where a member organization both executes a transaction and clears the transaction, the ORF will

⁴ Today, ORF is collected from Customers, Professionals and broker-dealers that are not affiliated with a clearing member that clear in the "C" range at OCC. See *supra* notes 18 and 19 for descriptions of Customers and Professionals.

⁵ The term "member organization" means a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of General 3, Sections 5 and 10 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization. See General 1, Section 1(17).

⁶ Market participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that member organizations mark orders with the correct account origin code.

⁷ The Exchange uses reports from OCC when assessing and collecting the ORF.

⁸ CMTA or Clearing Member Trade Assignment is a form of "give-up" whereby the position will be assigned to a specific clearing firm at OCC.

⁹ By way of example, if Broker A, a Phlx member organization, routes a Customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by Phlx from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than Phlx, it was cleared by a Phlx member organization in the member organization's OCC clearing account in the Customer range, therefore there is a regulatory nexus between Phlx and the transaction. If Broker A was not a Phlx member organization, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on Phlx nor was it cleared by a Phlx member organization.

³ On October 31, 2024, SR-Phlx-2024-50 was filed to amend ORF. On November 27, 2024, SR-Phlx-2024-50 was withdrawn and this rule change was filed. The current proposal amends the ORF Rate for Local Customer "C" Origin Code transactions executed on Phlx, Local Firm "F" Origin Code transactions executed on Phlx, and Away ORF Rate Firm "F" Origin Code multi-list transactions executed on non-Phlx exchanges.

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.