SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78116; File No. SR-Phlx-2016-69)

June 21, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange's Pricing Schedule

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 June 10, 2016, NASDAQ 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule ("Pricing Schedule") at Section B, entitled "Customer Rebates," and Section IV, Part E., entitled "Market Access and Routing Subsidy ("MARS")"[3] to propose a change regarding the MARS Payment.[4]

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

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

2 17 CFR 240.19b-4.

3 Multiply Listed Options Fees include fees on options overlying equities, exchange traded funds ("ETFs"), exchange traded notes ("ETNs"), and indexes which are Multiply Listed.

4 MARS and MARS Payment are discussed below.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Exchange’s Pricing Schedule at Section IV, Part E. to propose two MARS Payment levels and at Section B to propose a MARS incentive to obtain higher rebates.

Change 1 - New MARS Payment Tiers

The Exchange proposes to amend the MARS Eligible Contracts to remove the “at least 30,000 Eligible Contracts” requirement and replace it with two-tier pricing in the MARS Payment section.

The Exchange proposes to amend the MARS Payment to offer two tiers for MARS Payment. Proposed Tier 1 would offer a MARS Payment of $0.01 per contract to Phlx members that have executed 1,000 average daily volume (“ADV”) or more contracts.

Proposed Tier 2, which is similar to the current MARS Payment threshold of at least 30,000 contracts in a month, would offer a MARS Payment of $0.10 per contract to Phlx members that have executed 30,000 ADV in a month or more contracts. In each instance all of the contracts have to be executed on Phlx.

For the purpose of qualifying for the Tier 1 or Tier 2 MARS Payment, Eligible Contracts would continue to include Firm,[5] Broker-Dealer,[6] Joint Back Office, or "JBO"[7] or Professional[8] equity option orders that are electronically delivered and executed.[9]

MARS is a subsidy program that pays Phlx members that provide certain order routing functionalities to other Phlx members and/or use such functionalities[10] themselves. Generally,

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5 The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. See Preface to the Phlx's Pricing Schedule.

6 The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Preface to the Phlx's Pricing Schedule.

7 A member, member organization or non-member organization may maintain a JBO arrangement with a clearing broker-dealer subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System. See also Rule 703.

8 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).

9 A Phlx member is not entitled to receive any other revenue for the use of its System specifically with respect to orders routed to Phlx, with the exception of Payment for Order Flow. This requirement does not prevent the member from charging fees (for example, a flat monthly fee) for the general use of its System. Nor does it prevent the member from charging fees or commissions in accordance with its general practices with respect to transactions effected through its System. 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.

10 The order routing functionalities permit a Phlx member to provide access and connectivity to other members as well as 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

under MARS, Phlx makes payments to participating Phlx members to subsidize their costs of providing routing services to route orders to Phlx. The proposed amendments to MARS are intended to attract higher volumes of electronic equity and ETF options volume to the Exchange from non-Phlx market participants as well as Phlx members.

To qualify for MARS, a Phlx member's order routing functionality is required to complete a form[11] and meet certain criteria.[12] With respect to Complex Orders,[13] a Phlx member's routing system would not be required to enable the electronic routing of orders to all

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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.

11 The Exchange requires Phlx members desiring to participate in MARS 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 is permitted to apply for MARS, provided the requirements are met, including a robust and reliable System. The member is solely responsible for implementing and operating its System.

12 Specifically the member's routing system (hereinafter "System") is 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.

13 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 ETF coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .07(a)(i).

of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges.

Section IV, Part E. of the Exchange's Pricing Schedule provides that Phlx members that have executed the required MARS Eligible Contracts ("Eligible Contracts") may receive the MARS Payment on all their Eligible Contracts. The Exchange proposes to make the MARS Payment tiered according to ADV, as discussed.

The Exchange believes that the proposed change will incentivize market participants to bring liquidity and order flow to the Exchange for the benefit of all market participants. Liquidity benefits all market participants by providing more trading opportunities.

Currently, Section IV, Part E. in the Pricing Schedule states that a MARS Payment is made to Phlx members that have System Eligibility and have routed and executed at least 30,000 Eligible Contracts daily in a month on Phlx.

For the purpose of qualifying for the MARS Payment, Eligible Contracts include the following: Firm, Broker-Dealer, JBO, or Professional equity option orders that are electronically delivered and executed. Eligible Contracts do not include floor-based orders, qualified contingent cross or "QCC" orders,[14] price improvement or "PIXL" orders,[15] Mini Option[16] orders or Singly Listed Orders.[17]

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14 A QCC Order is comprised of an order to buy or sell at least 1000 contracts, or 10,000 contracts in the case of Mini Options, 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).

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

Today, 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. No payment is 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. The Exchange does not propose to amend the MARS System Eligibility.

In addition to amending the MARS Eligible Contracts section to remove the "at least 30,000 Eligible Contracts" requirement and replace it with two-tier pricing payments in the MARS Payment section, as described above, the Exchange also proposes to add a sentence that summarizes when MARS Payments will be paid.

The proposed sentence indicates, in one place, that a MARS Payment will be paid on all executed Eligible Contracts that are routed to Phlx through a participating Phlx member's System, and that meet the requisite eligible ADV contracts.

The proposed summary sentence is similar to another options market with MARS Payments, namely the NASDAQ Options Market LLC ("NOM").[18] The tiered MARS Payment system as proposed for Phlx is similar in structure to the existing MARS subsidy program on NOM.[19]

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16 Mini Options are further specified in Phlx Rule 1012, Commentary .13.

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

18 See NOM Chapter XV, Section 2(6). NOM is, along with Phlx and BX Options Market of NASDA BX, Inc., one of three options markets under the umbrella of Nasdaq, Inc.

19 Id. As discussed, however, NOM has three MARS Payment tiers.

The Exchange believes that the fees and rebates in its Pricing Schedule are structured to attract liquidity. The Exchange believes that the proposed tiered MARS Payment schedule will further encourage Phlx members to transact additional liquidity on the Exchange.

Change 2 – Customer Rebate Program

Currently, the Exchange has a Customer Rebate Program consisting of five tiers that pay Customer rebates on three Categories, A,[20] B,[21] and C[22] of transactions.[23] A Phlx member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options that it transacts monthly on Phlx, excluding SPY Options.[24] The Exchange calculates Customer volume in Multiply Listed Options, including SPY, by totaling electronically-delivered and executed volume, excluding volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o).[25]

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20 Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols.

21 Category B rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order are paid a rebate of $0.14 per contract. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order for Simple PIXL Orders.

22 Category C rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order are not paid a rebate under any circumstances. The Category C Rebate is paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order leg for Complex PIXL Orders.

23 See Section B of the Pricing Schedule.

24 The Exchange does not pay Customer Rebates on options overlying NDX and MNX.

25 Members and member organizations under common ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving

The Exchange now pays the following rebates:[26]

Customer Rebate Tiers	**Percentage Thresholds of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (Monthly)**	**Category A**	**Category B**	**Category C**
Tier 1	0.00% - 0.60%	$0.00	$0.00	$0.00
Tier 2	Above 0.60% - 1.10%	$0.10*	$0.10*	$0.17*
Tier 3	Above 1.10% - 1.60%	$0.15	$0.12*	$0.17*
Tier 4	Above 1.60% - 2.50%	$0.20	$0.16	$0.22
Tier 5	Above 2.50%	$0.21	$0.17	$0.22

The Exchange proposes to pay a $0.05 per contract Category C rebate in addition to the applicable Tier 2 and 3 rebates to members or member organizations or member or member organization affiliate under Common Ownership provided the member or member organization qualified for a Tier 1 or 2 MARS Payment in Section IV, Part E. The Exchange's proposal is

rebates. Common ownership means members or member organizations under 75% common ownership or control. See the Preface of the Pricing Schedule.

26 SPY is included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program, however, the rebates do not apply to electronic executions in SPY. Additionally, the Exchange pays a $0.02 per contract Category A and B rebate and a $0.03 per contract Category C rebate in addition to the applicable Tier 2 and 3 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in Section II. See Section B of the Pricing Schedule.

intended to attract additional Customer volume to the Exchange to the benefit of all market participants that are able to interact with this Customer liquidity.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,[28] 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 Phlx 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, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[29] Likewise, in NetCoalition v. Securities and Exchange Commission[30] ("NetCoalition") 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

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[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(4), (5).

[29] Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) ("Regulation NMS Adopting Release").

[30] NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

claiming that Congress mandated a cost-based approach.[31] 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."[32]

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'…."[33] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Change 1 – New MARS Payment Tiers

In Change 1 the Exchange proposes to specify two tiers for MARS Payment. The Exchange also proposes to add a sentence that summarizes when MARS Payments will be paid. Today, 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 if they have routed at least 30,000 System Eligible Contracts. The Exchange proposes to make the current requirement into the Tier 2 $0.10 per contract MARS Payment; and proposes a new Tier 1 $0.01 per contract MARS Payment for Phlx members that bring a smaller number of Eligible Contracts, namely 1,000 daily

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31 See id. at 534-535.

32 See id. at 537.

33 Id. at 539 (quoting Securities Exchange Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) at 73 FR at 74782-74783).

contracts, to the Exchange. As discussed, the current 30,000 daily ADV and MARS Payment amount of $0.10 per contract is simply moved from the current MARS Payment standard to Tier 2. The Exchange believes that the proposed changes are reasonable, equitable and not unfairly discriminatory for the following reasons.

The Exchange proposes to expand MARS Payments by structuring a tiered system of payments. The proposed tiered MARS Payment system is reasonable because it will encourage additional Phlx members to participate in MARS and deliver an even greater amount of liquidity on the Exchange. The proposed change would allow qualifying MARS volume to receive a MARS Payment, at two different levels. With the proposed change, all Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment of $0.01 or $0.10 per contract. The Exchange believes that this is reasonable because it will incentivize more Phlx members to route Eligible Contracts for execution on the Exchange.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the increased ability to receive MARS Payment will be applied uniformly to all. In addition, any Phlx member is permitted to apply for MARS, provided the requirements are met, including a robust and reliable System. Thus, a $0.01 per contract MARS Payment will be made pursuant to Tier 1 to those Phlx members that have System Eligibility and have executed at least 1,000 daily ADV contracts; and a $0.10 per contract MARS Payment will be made pursuant to Tier 2 to those Phlx members that have System Eligibility and have executed at least 30,000 ADV contracts. In each instance, the Eligible Contracts must be properly routed and executed on Phlx in order to get MARS Payment.

The proposed tiered MARS Payment for Phlx is reasonable because, as discussed, it is similar to the existing MARS Payment system on NOM.[34] Moreover, the Exchange believes that the proposed Tiers for MARS Payment are reasonable in that they reflect a structure that is not novel in the options markets but rather is similar to that of other options markets and competitive with what is offered by other exchanges.[35] In addition, the Exchange believes that making changes to add Tiers for MARS Payment is reasonable because it will attract more orders and liquidity to the Exchange. Activity that enhances liquidity on the Exchange benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange believes that the proposed 1,000 contract and 30,000 contract ADV levels are reasonable because the Exchange is only counting volume from Firms, Broker-Dealers, JBOs and Professionals which are electronically delivered and executed. The Exchange believes that these numbers reflect an appropriate level of commitment from Phlx members to earn the MARS Payment. The Exchange believes that these levels are equitable and not unfairly discriminatory because they will be uniformly applied to all qualifying Phlx members.[36]

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

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34 See NOM Chapter XV, Section 2(6).

35 See NOM Chapter XV, Section 2(6).

36 Moreover, the proposed Tier 2 level of 30,000 or more contracts is reasonable because, as discussed, it is similar to the current MARS Payment threshold of at least 30,000 contracts in a month.

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 and 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.[37]

The Exchange also proposes to add a sentence that summarizes when MARS Payments will be paid. The added sentence is reasonable, equitable, and not unfairly discriminatory because it is simply a way to summarize, in one place, that a MARS Payment has to be properly routed and executed and has to add a certain amount of liquidity. The proposed summary sentence is similar to that of NOM.

The Exchange desires to continue to incentivize members and member organizations, through the Exchange's rebate and fee structure, to select Phlx as a venue for bringing liquidity and trading by offering competitive pricing. Such competitive, differentiated pricing exists today on other options exchanges. The Exchange's goal is creating and increasing incentives to attract orders to the Exchange that will, in turn, benefit all market participants through increased liquidity at the Exchange. The Exchange believes that the proposed change promotes the goal of creating and increasing incentives to attract liquidity.

Change 2 – Customer Rebate Program

The Exchange's proposal to amend Section B to offer members and member organizations an additional $0.05 per contract Category C rebate in Tiers 2 and 3 provided the

[37] 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.

member or member organization qualified for a Tier 1 or 2 MARS Payment in Section IV, Part E is reasonable because it will encourage market participants to send a greater amount of Customer liquidity to Phlx. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Certain market participants will receive higher Tier 4 and 5 Category B rebates for transacting the same Customer order flow as today, while other market participants may become eligible for higher Customer Rebates in Section B of the Pricing Schedule.

The Exchange's proposal to amend Section B to offer members and member organizations an additional $0.05 per contract Category C rebate in Tiers 2 and 3 provided the member or member organization qualified for a Tier 1 or 2 MARS Payment in Section IV, Part E is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. All members are eligible to receive the rebate provided they submit a qualifying number of electronic Customer volume. In addition, any Phlx member is permitted to apply for MARS, provided the requirements are met, including a robust and reliable System.

Additionally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to pay market participants different rebates for transacting Simple versus Complex Orders. Today, the Exchange pays different Category A (Simple Order) and Category B (Complex Order) rebates. The Exchange also differentiates pricing for Simple and Complex Orders transaction fees in Section I as do other options exchanges.

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. The Exchange believes that its proposal to establish MARS Payment tiers will continue to encourage eligible market participants to transact orders on the Exchange in order to obtain MARS Payments.

The Exchange operates in a highly competitive market, comprised of fourteen 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 fees that are assessed and the rebates paid by the Exchange described in the above proposal 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.

Change 1 - Tiered MARS Payment

The Exchange believes that the proposal to amend MARS Payments to offer tiers will continue to encourage order flow to be directed to the Exchange. Certain market participants will receive $0.10 per contract Tier 2 MARS Payments for transacting the same order flow as today, while other market participants may become eligible for new lower $0.01 per contract Tier 1 MARS Payments for transacting a smaller amount of order flow. The Exchange believes that MARS Payments will continue to encourage order flow to be directed to the Exchange. Any Phlx member is permitted to apply for MARS, provided the requirements are met, including a robust and reliable System. All Phlx members are eligible to qualify for a MARS Payments. By incentivizing members to route Eligible Contracts, the Exchange desires to attract liquidity to the Exchange, which in turn benefits all market participants.

The Exchange does not believe that this proposal will impose an undue burden on intra-market competition because it will be applied to all market participants in a uniform manner. All Phlx members are eligible to receive MARS Payments provided they submit a qualifying number of Eligible Contracts. In addition, any Phlx member is permitted to apply for MARS, provided the requirements are met, including a robust and reliable System. The Exchange believes this pricing amendment does not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange.

Change 2 – Customer Rebates

The Exchange believes that the Customer Rebate Program will continue to encourage Customer order flow to be directed to the Exchange. Certain market participants will receive higher Tier 4 and 5 Category B rebates for transacting the same Customer order flow as today, while other market participants may become eligible for higher Customer Rebates in Section B of the Pricing Schedule. The Exchange believes that the Customer Rebate Program will continue to encourage Customer order flow to be directed to the Exchange. By incentivizing members to route Customer orders, the Exchange desires to attract liquidity to the Exchange, which in turn benefits all market participants. All market participants are eligible to qualify for a Customer Rebate.

The Exchange does not believe that this proposal will impose an undue burden on intra-market competition because it will be applied to all market participants in a uniform matter. All members are eligible to receive the rebate provided they submit a qualifying number of electronic Customer volume. In addition, any Phlx member is permitted to apply for MARS, provided the requirements are met, including a robust and reliable System. The Exchange believes this pricing amendment does not impose a burden on competition but rather that the proposed rule change will continue to promote competition 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 Act.[38]

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,

[38] 15 U.S.C. 78s(b)(3)(A)(ii).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2016-69 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-2016-69. This file number should be included on the subject line if e-mail 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 (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 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 10:00 a.m.

and 3:00 p.m. Copies of the 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-2016-69, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Brent J. Fields
Secretary

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[39] 17 CFR 200.30-3(a)(12).