

1. Text of the Proposed Rule Change

(a) Nasdaq Phlx LLC (“Phlx” or “Exchange”), 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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to delay the implementation of the new Options Regulatory Fee (“ORF”) and methodology proposed in SR-Phlx-2024-66.<sup>3</sup> Specifically, the Exchange proposes to delay the new ORF and methodology therein which will be implemented on June 1, 2025 and sunset on December 1, 2025.<sup>4</sup> Additionally, effective March 1, 2025, the Exchange proposes to revert its ORF to \$0.0034 per contract side.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

<sup>3</sup> See Securities and Exchange Act Release No. 101893 (December 12, 2024), 89 FR 103003 (December 18, 2024) (SR-Phlx-2024-66) (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) (“SR-Phlx-2024-66”).

<sup>4</sup> On January 13, 2025, SR-Phlx-2025-03 was filed. The Exchange is withdrawing SR-Phlx-2025-03 on January 28, 2025 and replacing it with this rule change.

Questions and comments on the proposed rule change may be directed to:

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

a. Purpose

Phlx previously filed a proposed amendment to its ORF, effective as of January 1, 2025,<sup>5</sup> 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").<sup>6</sup> Additionally, Phlx proposed to assess a different rate for trades executed on Phlx ("Local ORF Rate") and trades executed on non-Phlx exchanges ("Away ORF Rate").<sup>7</sup>

At this time, the Exchange proposes to (1) delay the implementation of SR-Phlx-2024-66, with respect to the new ORF and methodology therein which was effective on January 1, 2025, so that it would now be implemented on June 1, 2025; and (2) revert its ORF to \$0.0034 per contract side effective March 1, 2025.

**Delay of Implementation**

In light of a comment letter from SIFMA dated December 20, 2024,<sup>8</sup> the Exchange proposes to delay the implementation of SR-Phlx-2024-66, with respect to the new ORF and methodology therein, until June 1, 2025. This delay would provide market

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<sup>5</sup> See supra note 3.

<sup>6</sup> ORF revenues are not used to fund the building or operation of CAT systems that are funded through a separate CAT Fee.

<sup>7</sup> See supra note 3.

<sup>8</sup> <https://www.sec.gov/comments/sr-nasdaq-2024-078/srnasdaq2024078-550079-1574622.pdf>.

participants additional time to track the new ORF charges on both Local and Away executions in the “Firm” range. This delay would also allow market participants the additional time needed to design, test and implement changes to the ORF. Delaying the January 1, 2025 implementation would allow the Exchange to continue to assess the ORF that was in effect since November 1, 2024 of \$0.0022 per contract side for January 2025 transactions and thereafter until March 1, 2025 when the ORF would be amended as proposed. The revamped ORF and methodology would not take effect until June 1, 2025.

Additionally, the Exchange proposes to amend the sunset date from July 1, 2025 to December 1, 2025 in light of the proposed delay. The sunset date would revert the ORF back to the ORF methodology and rate of \$0.0034 per contract side.<sup>9</sup> The Exchange is not substantively amending the proposed ORF with this proposal.

#### **Amended ORF**

In light of the unanticipated delay of implementation of its January 1, 2025 amendments to its ORF and methodology to accommodate the industry’s timeline, Phlx will revert its ORF back to the rate that was in effect prior to November 1, 2024. Therefore, Phlx’s ORF would be adjusted from \$0.0022 to \$0.0034 per contract side effective March 1, 2025.<sup>10</sup>

SR-Phlx-2024-66 reduced the amount of ORF collected by the Exchange from \$0.0022 to \$0.0034 per contract side, from November 1, 2024, through December 31, 2024, to account for certain fines. By lowering its ORF in 2024, Phlx was able to ensure

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<sup>9</sup> The Exchange proposes to reconsider the sunset date and determine whether to proceed with the proposed ORF structure at that time.

<sup>10</sup> See Options Trader Alert #2025 – 6. The Exchange provided members and member organizations at least 30 calendar days prior to the effective date of the change.

that revenue collected from the ORF, in combination with its other regulatory fees and fines, did not exceed Options Regulatory Costs.<sup>11</sup> SR-Phlx-2024-66 also specified that as of January 1, 2025, Phlx revamped its ORF to adopt a new methodology and proposed rate changes. Phlx's proposed ORF for March 1, 2025 is the preadjusted rate that was in effect prior to November 1, 2024. On January 1, 2025, Phlx's ORF would have been amended once again as noted in SR-Phlx-2024-66, which new rates accounted for the proposed 2025 budget. As noted above, Phlx delayed its January 1, 2025 amendments to its ORF and methodology in light of industry feedback requesting additional time to track the new ORF charges. The Exchange did not plan to delay the implementation and would otherwise have been collecting under the January 1, 2025 ORF rates if it were not for the delay. The proposed change to revert Phlx's ORF allows Phlx to continue as planned with an amended ORF until it may proceed with its proposed change on June 1, 2025.

b. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>12</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>13</sup>, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other

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<sup>11</sup> The regulatory costs for options comprise a subset of the Exchange's regulatory budget that is specifically related to options regulatory expenses and encompasses the cost to regulate all members' and member organizations' options activity ("Options Regulatory Cost").

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

### **Delay of Implementation**

The Exchange's proposal to delay the implementation of SR-Phlx-2024-66, with respect to the revamped new ORF and methodology therein which was effective on January 1, 2025, until June 1, 2025 (notwithstanding the March 1, 2025 amendment that is discussed below), is consistent with the Act because it will provide market participants additional time to track the new ORF charges on both Local and Away executions in the "Firm" range, as well as to design, test and implement changes to the ORF. The proposal to amend the sunset date from July 1, 2025 to December 1, 2025 is also consistent with the Act as the revamped ORF and methodology will not go into effect until June 1, 2025. The Exchange is not substantively amending the proposed ORF with this proposal.

### **Amended ORF**

The Exchange's proposal to revert its ORF back to the rate that was in effect prior to November 1, 2024, thereby adjusting its ORF from \$0.0022 to \$0.0034 per contract side, effective March 1, 2025, is consistent with the Act because it will allow Phlx to continue as planned with an amended ORF until it may proceed with its proposed revamp of its ORF on June 1, 2025. As noted herein, SR-Phlx-2024-66 reduced the amount of ORF collected by the Exchange from \$0.0022 to \$0.0034 per contract side, from November 1, 2024, through December 31, 2024, to account for certain fines. By lowering its ORF in 2024, Phlx was able to ensure that revenue collected from the ORF,

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

in combination with its other regulatory fees and fines, did not exceed Options Regulatory Costs.<sup>15</sup> SR-Phlx-2024-66 also specified that as of January 1, 2025, Phlx revamped its ORF to adopt a new methodology and proposed rate changes. Phlx's proposed ORF for March 1, 2025 is the preadjusted rate that was in effect prior to November 1, 2024. On January 1, 2025, Phlx's ORF would have been amended once again as noted in SR-Phlx-2024-66, which new rates accounted for the proposed 2025 budget. As noted above, Phlx delayed its January 1, 2025 amendments to its ORF and methodology in light of industry feedback requesting additional time to track the new ORF charges. The Exchange did not plan to delay the implementation and would otherwise have been collecting under the January 1, 2025 ORF rates if it were not for the delay.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange will continue to assess the ORF in effect since November 1, 2024 to all members and member organizations until March 1, 2025 when the ORF will be amended. No member or member organization would be subject to the revamped ORF and methodology until June 1, 2025. The Exchange is not substantively amending the proposed ORF by delaying its implementation. The Exchange does not believe that the proposed rule change to delay its January 1, 2025 ORF implementation will impose any burden on inter-market competition not necessary or appropriate in furtherance of the purposes of the Act as other options exchanges may elect to adopt a

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<sup>15</sup> The regulatory costs for options comprise a subset of the Exchange's regulatory budget that is specifically related to options regulatory expenses and encompasses the cost to regulate all members' and member organizations' options activity ("Options Regulatory Cost").

similar proposal and select their own implementation date.

The Exchange does not believe that the proposed rate reversion will impose any burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act as the proposed ORF rate for March 1, 2025 will approximate a rate equivalent to its January 1, 2025 ORF rates had they been in effect. The Exchange does not believe that the proposed rate reversion will impose any burden on inter-market competition not necessary or appropriate in furtherance of the purposes of the Act as other options markets may amend their respective ORFs.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>16</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.