

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102978; File No. SR-Phlx-2025-21]

## **Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Discontinue the Options Regulatory Fee Model Scheduled to Be Implemented in June 2025**

May 2, 2025

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 April 28, 2025, 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 discontinue the ORF model scheduled to be implemented in June 2025.<sup>3</sup>

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rulefilings>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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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 Exchange Act Release No. 101892 [sic] (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). See also Securities Exchange Act Release No. 102368 (February 6, 2025), 90 FR 9451 (February 12, 2025) (SR-Phlx-2025-06) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Implementation of the New Options Regulatory Fee (ORF) and ORF Methodology Proposed in SR-Phlx-2024-66) (collectively “June 2025 ORF”).

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 discontinue the ORF model scheduled to be implemented in June 2025.<sup>4</sup>

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”). 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>6</sup> The Exchange also filed to 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 be implemented on June 1, 2025.<sup>7</sup>

At this time, the Exchange proposes to discontinue its June 2025 ORF. The Exchange

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<sup>4</sup> See June 2025 ORF.

<sup>5</sup> See June 2025 ORF.

<sup>6</sup> See June 2025 ORF.

<sup>7</sup> See Securities Exchange Act Release No. 102368 (February 6, 2025), 90 FR 9451 (February 12, 2025) (SR-Phlx-2025-06) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Implementation of the New Options Regulatory Fee (ORF) and ORF Methodology Proposed in SR-Phlx-2024-66).

received feedback from members and member organizations<sup>8</sup> and SIFMA<sup>9</sup> related to the implementation of its June 2025 ORF. In particular, two fields necessary for information sharing of executing exchange information among members and member organizations and Clearing Members will not be available after an upcoming technology migration at OCC.<sup>10</sup> In light of this information, the Exchange has been re-evaluating its ORF model and plans to revamp the current process of assessing and collecting ORF, which would be subject to, and described further in, a future rule filing. Particularly, the Exchange is exploring proposing a modified ORF model in which ORF would only be assessed to on-exchange transactions and would continue to be assessed only to customers. At this this time, the Exchange expects to continue assessing ORF as it does today and will continue to ensure that ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed Options Regulatory Cost.

To create real ORF reform, moving to a new ORF model that only assesses a fee to transactions that occur on the Exchange would remove any duplicative ORF billing. The Exchange believes that each exchange should likewise adopt a similar model to ensure consistent industry billing of ORF to the benefit of market participants. A consistent methodology of assessing and collecting ORF will also remove confusion and complexity in the billing of ORF. The Exchange has been engaged in remodeling its current ORF over the last year and has held many conversations with market participants to establish a framework that is practical and fair. The Exchange remains committed to ORF reform and will continue to evaluate its ORF model and seek feedback from market participants.

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<sup>8</sup> The Exchange has discussed the implementation of its June 2025 ORF with various Clearing Members.

<sup>9</sup> See SIFMA comment letter at <https://www.sec.gov/comments/sr-nasdaq-2024-078/srnasdaq2024078-550079-1574622.pdf>.

<sup>10</sup> See <https://www.theocc.com/company-information/occ-transformation>.

The Exchange also proposes to remove a sentence that states, “As of November 1, 2024, the ORF is \$0.0022 per contract side.” This sentence is outdated.

## 2. 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>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>12</sup>, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>13</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange’s proposal to discontinue its June 2025 ORF is reasonable because it has come to light that certain information necessary for billing of ORF would not be available later in 2025. In light of this information, the Exchange has been re-evaluating its ORF model and plans to revamp the current process of assessing and collecting ORF, which would be subject to, and described further in, a future rule filing. Particularly, the Exchange anticipates moving to a modified ORF model in which ORF would only be assessed to on-exchange transactions and would continue to be assessed only to customers. At this this time, the Exchange expects to continue assessing ORF as it does today and will continue to ensure that ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed Options

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

Regulatory Cost.

The Exchange's proposal to discontinue its June 2025 ORF is equitable and not unfairly discriminatory as the proposal would not apply to any member or member organization.

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.

This proposal does not create an unnecessary or inappropriate intra-market burden on competition because no member or member organization would be subject to the June 2025 ORF as a result of this proposal.

Additionally, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of ORF Regulatory Revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed Options Regulatory Cost.

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) of the Act<sup>14</sup> and paragraph (f) of Rule 19b-4<sup>15</sup> 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,

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

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

for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will 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](mailto:rule-comments@sec.gov). Please include file number SR-Phlx-2025-21 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-2025-21. 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-Phlx-2025-21 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>16</sup> 17 CFR 200.30-3(a)(12).