



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103994; File No. SR-Phlx-2025-43]

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

September 17, 2025.

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 September 5, 2025, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 decrease Phlx’s Options Regulatory Fee or “ORF.”

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on October 1, 2025.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 decrease its ORF at Options 7, Section 6, D from \$0.0024 to \$0.0003 per contract side effective October 1, 2025.

Background on Current ORF

Today, Phlx assesses its ORF for each Customer option transaction that is either: (1) executed by a member organization³ on Phlx; or (2) cleared by a Phlx member organization at OCC in the Customer range, even if the transaction was executed by a non-member organization of Phlx, regardless of the exchange on which the transaction occurs.⁴ If the OCC clearing member is a Phlx member organization, ORF is assessed and collected on all ultimately cleared Customer contracts (after adjustment for CMTA⁵); 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.⁶ The current Phlx ORF is \$0.0024 per contract side.

³ 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).

⁴ The Exchange uses reports from OCC when assessing and collecting the ORF. 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 members mark orders with the correct account origin code.

⁵ CMTA or Clearing member organization Trade Assignment is a form of “give-up” whereby the position will be assigned to a specific clearing firm at OCC.

⁶ By way of example, if Broker A, an 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 an Phlx member organization in the member’s OCC clearing account in the Customer range, therefore there is a regulatory nexus between Phlx and the transaction. If

Today, in the case where a member organization both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that member organization. Today, in the case where a member organization executes a transaction and a different member organization clears the transaction, the ORF will be assessed to and collected from the member organization who clears the transaction and not the member organization who executes the transaction. Today, in the case where a non-member executes a transaction at an away market and a member organization clears the transaction, the ORF will be assessed to and collected from the member organization who clears the transaction. Today, in the case where a member organization executes a transaction on Phlx and a non-member clears the transaction, the ORF will be assessed to the member organization that executed the transaction on Phlx and collected from the non-member who cleared the transaction. Today, in the case where a member organization executes a transaction at an away market and a non-member ultimately clears the transaction, the ORF will not be assessed to the member organization who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the member organization executing the trade at an away market.

ORF Revenue and Monitoring of ORF

Today, the Exchange monitors the amount of revenue collected from the ORF (“ORF Regulatory Revenue”) to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs.⁷ In determining whether an expense is considered an Options Regulatory Cost, the Exchange reviews all costs and makes determinations if there is a

Broker A was not an 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 an Phlx member organization.

⁷ 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 member organizations’ options activity (“Options Regulatory Cost”).

nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset Options Regulatory Cost.

ORF Regulatory Revenue, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover the Options Regulatory Costs to the Exchange of the supervision and regulation of member Customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Options Regulatory Costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillance, investigations and examinations. The indirect expenses are only those expenses that are in support of the regulatory functions, such areas include Office of the General Counsel, technology, finance, and internal audit. Indirect expenses will not exceed 35% of the total Options Regulatory Costs, in which case direct expenses could be 65% or more of total Options Regulatory Costs.⁸

Proposal for October 1, 2025

At this time, the Exchange proposes to decrease Phlx's ORF from \$0.0024 to \$0.0003 per contract side, effective October 1, 2025, as a result of fines received by the Exchange. As noted above, fines collected by the Exchange in connection with a disciplinary matter offset Options Regulatory Cost.

Phlx notes that there can be no assurance that the Options Regulatory Costs for the remainder of 2025 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with regulatory fees and fines, the ORF Regulatory Revenue that may be generated utilizing an ORF rate of \$0.0024 per

⁸ Direct and indirect expenses are based on the Exchange's 2025 Regulatory Budget.

contract side may result in ORF Regulatory Revenue which exceeds the Exchange's estimated Options Regulatory Costs for 2025. The Exchange therefore proposes to reduce its ORF to \$0.0003 per contract side to ensure that ORF Regulatory Revenue does not exceed the Exchange's estimated Options Regulatory Costs in 2025. Particularly, the Exchange believes that reducing the ORF when combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering its Options Regulatory Costs, while lessening the potential for generating excess revenue that may otherwise occur using the rate of \$0.0024 per contract side.⁹ The Exchange notified member organizations of the proposed decrease to the ORF through an Options Trader Alert.¹⁰

The Exchange will continue to monitor the amount of ORF Regulatory Revenue collected from the ORF to ensure that ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed Options Regulatory Costs. If the Exchange determines that to be the case, the Exchange will adjust the ORF by submitting a fee change filing to the Commission and notifying¹¹ its member organizations via an Options Trader Alert.¹²

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.¹³ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act¹⁴,

⁹ The Exchange notes that its regulatory responsibilities with respect to member organizations compliance with options sales practice rules have largely been allocated to FINRA under a 17d-2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

¹⁰ See Options Trader Alert #2025-37.

¹¹ The Exchange will provide member organizations with such notice at least 30 calendar days prior to the effective date of the change.

¹² The Exchange notes that in connection with this proposal, it provided the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a projected regulatory expense.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

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)¹⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed reduction of ORF is reasonable because it would help ensure that ORF Regulatory Revenue does not exceed a material portion of the Exchange's ORF Regulatory Costs. As noted above, the ORF is designed to recover a material portion, but not all, of the Exchange's ORF Regulatory Costs. Further, the Exchange believes the proposed fee change is reasonable because Customer transactions will be subject to a lower ORF than the rate that would otherwise be in effect on October 1, 2025.

The Exchange had designed the ORF to generate ORF Regulatory Revenue that would be less than the amount of the Exchange's ORF Regulatory Costs to ensure that it, in combination with its other regulatory fees and fines, does not exceed ORF Regulatory Costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after review of its ORF Regulatory Costs and ORF Regulatory Revenue, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF it may collect ORF Regulatory Revenue which would exceed its ORF Regulatory Costs. Indeed, the Exchange notes that when taking into account the fines received by the Exchange, it estimates the ORF may generate ORF Regulatory Revenue that would cover more than the approximated Exchange's projected ORF Regulatory Costs. As such, the Exchange believes it's reasonable and appropriate to reduce the ORF amount from \$0.0024 to \$0.0003 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly

¹⁵ 15 U.S.C. 78f(b)(5).

discriminatory in that it is charged to all member organizations on all their transactions that clear in the Customer range at OCC.¹⁶ The Exchange believes the ORF ensures fairness by assessing higher fees to those member organizations that require more Exchange regulatory services based on the amount of Customer options business they conduct. Regulating Customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-Customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (e.g., staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-Customer component of its regulatory program. Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to activities of its member organizations, a small portion of which takes place on away exchanges. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group ("ISG")¹⁷ the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to Customer trading activity of its member organizations.

¹⁶ If the OCC clearing member is a Phlx member organization, ORF will be assessed and collected on all cleared Customer contracts (after adjustment for CMTA); and (2) if the OCC clearing member is not a Phlx member organization, ORF will be 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.

¹⁷ ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the self-regulatory organizations by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

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 ORF applies to all customer activity, thereby raising ORF Regulatory Revenue to offset Options Regulatory Cost. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, 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 combinations 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 Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ 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 Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

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-Phlx-2025-43 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-2025-43. 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 filing 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-2025-43 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.²⁰

Sherry R. Haywood,

Assistant Secretary.

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