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.[20]

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, 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 email to *rule-comments@sec.gov*. Please include File Number SR–BX–2016–007 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–BX–2016–007. 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 Web site (*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 Web site 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–BX–2016–007 and should be submitted on or before March 2, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–02605 Filed 2–9–16; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77054; File No. SR–Phlx–2016–10]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to Professional Customer Definition

February 4, 2016.

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 January 21, 2016, NASDAQ OMX PHLX LLC (''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 Exchange Rule 1000(b)(14) (Applicability, Definitions and References) to add specificity to the definition of a Professional with respect to the manner in which the volume threshold will be calculated by the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, 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

The Exchange proposes to amend the definition of ''Professional'' in Rule 1000(b)(14) to specify the manner in which the Exchange calculates orders to determine if an order should be treated as Professional.

Background

Exchange Rule 1000(b)(14) currently states, 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).[3] In order to properly represent orders entered on the Exchange member organizations are required to indicate whether Customer orders are ''Professional'' orders.''[4] To

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

[2] 17 CFR 240.19b–4.

[3] A Professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g)(except with respect to all-or-none orders, which will be treated like customer orders, except that orders submitted pursuant to Rule 1080(n) for the beneficial account(s) of Professionals with an all-or-none designation will be treated in the same manner as off-floor broker-dealer orders), 1033(e), 1064.02 (except Professional orders will be considered customer orders subject to facilitation), 1080(n) and 1080.07 as well as Options Floor Procedure Advices B–6 and F–5. Member organizations must indicate whether orders are for Professionals.

[4] The Exchange utilizes a special order origin code for Professional orders. The Exchange also disseminates the Professional designator over its new Top of Phlx Options Plus Orders (''TOPO Plus Orders''), which includes disseminated Exchange

comply with this requirement, member organizations are required to review their Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Customer orders or Professional orders.[5]

The Exchange accepts orders routed from other markets that are marked Professional. The designation of Professional or Professional order does not result in any different treatment of such orders for purposes of Exchange rules concerning away market protection. That is, all non-broker or dealer orders, including those that meet the definition of Professional orders, are treated equally for purposes of Exchange away market protection rules.[6] The Exchange continues to believe that identifying Professional accounts based upon the average number of orders entered in qualified accounts is an appropriately objective approach to reasonably distinguish such persons and entities from retail investors or market participants.

Proposal

The Exchange proposes to count each order entered by a Professional toward the number of orders, regardless of the options exchange to which the order was routed in determining Professional orders,[7] except for FLEX orders.[8]

FLEX Orders

FLEX orders will not be counted toward the 390 threshold because these types of orders are non-electronic orders. Furthermore, FLEX orders are typically not traded by a retail Customer, but rather large institutional investors and therefore are not relevant to the type of analysis the Exchange is trying to distinguish as between retail investors and market Professionals.

Cancel and Replace

A cancel and replace order is a type of order that replaces a prior order. The Exchange believes that the second order (the replacement order) should be counted as a new order. Complex Orders [9] consisting of four legs or fewer will be counted as a single order, and with Complex Orders of five options [10] legs or more, each leg will count as a separate order. The exception to the cancel and replace orders is with ''single-strike algorithms,'' which are a series of cancel and replace orders in an individual strike which track the NBBO. Orders resulting from a single-strike algorithm shall be counted as new orders,[11] because the Customer is specifically instructing the executing broker in the ''single-strike algorithm'' scenario to cancel and replace these orders. This type of activity is akin to market making in a Customer account and should be counted, as a new order.

Parent/Child Orders

An order that converts into multiple subordinate orders to achieve an execution strategy shall be counted as one order per side and series, even if the order is routed away.[12] All strategies must comply with Rule 1080 at Commentary .07(a)(ii). An order that cancels and replaces a resulting subordinate order and results in multiple sides/series shall be counted as a new order on each side and series. For purposes of counting Customer orders, the manner in which the Customer submitted the order and whether the order was on the same side and series will determine if the order will count as one order. If one Customer order on the same side and series is subsequently broken-up by a broker into multiple orders for purposes of execution or routed away, this order will count as one order. The Exchange believes that the proposed amendment will provide more certainty to market participants in determining the manner in which the Exchange will compute the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) to determine the Professional designation.

In order to make clear when orders will count as new orders, the Exchange offers the following scenarios as examples.

- The Exchange proposes to count multiple orders that were submitted by the member as separate orders as multiple orders.
- The Exchange proposes to count a single order submitted by a member, which was automatically executed in multiple parts by the trading system, as one order, because the member did not intervene to create multiple orders. Another example is where an order was entered in the trading system and only partially filled, the order would count as one order. The subsequent fills, which could be multiple executions, would not count as additional orders in determining the 390 limit. The manner in which the order is ultimately executed, as one order or multiple orders, should not itself determine whether the activity is that of a Professional; also the member did not intervene in that circumstance.
- The Exchange proposes to not count an order which reprices, for example because of a locked and crossed market, as a new order because the member did not intervene.
- The Exchange proposes to count orders, which result in multiple Orders due to cancel and replacement orders, as new orders. This is because in this situation the member did intervene to create the subsequent orders.
- The Exchange proposes to count an order submitted by the Customer as a single order, on the same side and series, as a single order despite the fact that a broker broke-up the order into multiple orders for purposes of execution.

The Exchange notes that other options exchanges have issued notices which describe the manner in which those Exchanges believe thresholds should be computed for determining if an order qualifies as a Professional order.[13] The

top-of-market data (including orders, quotes and trades) together with all of the data currently available on the Specialized Order Feed (''SOF'').

[5] Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional orders for the next calendar quarter. Member organizations will be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While member organizations will only be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as customer orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the member organization and the member organization will be required to change the manner in which it is representing the customer's orders within five days.

[6] *See* Exchange Rules 1080(m), 1083, 1084, and 1086.

[7] All order types count toward the 390 orders on average per day.

[8] The term ''FLEX option'' means a FLEX option contract that is traded subject to Exchange Rule 1079.

[9] 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 exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i). A Complex Order must meet this definition to be transacted on the Exchange.

[10] Orders that have five legs, where one leg is a stock, will be considered one order. Stock orders shall not count toward the number of legs.

[11] Cancel messages do not count as an order.

[12] An order which is placed for the beneficial account(s) of a person or entity that is not a broker or dealer in securities that is broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer. Strategies include Complex Orders and volatility orders, for example.

[13] *See* NYSE Arca, Inc.'s and NYSE MKT LLC's Joint Regulatory Bulletin (RBO–15–03 and RBO–15–06, respectively) dated September 9, 2015; CBOE's Regulatory Circulator (RG10–126) dated December 1, 2010; and the International Securities

Continued

Exchange believes that there is industry confusion as to which orders count toward the 390 contract threshold. The Exchange's proposal is intended to provide clarity and to continue to promote consistency in the treatment of orders as Professional orders.

Below are some examples of the calculation of Professional orders.

Example #1:

A Customer has an order to buy 100 calls at a volatility level of 35. The order then generates a child order resulting in a 1.00 bid for 100 options which is sent to exchange A. After the underlying stock price ticks up 2 cents the child order is then adjusted to reflect a 35 level volatility which in this case (50 delta) results in a 1.01 bid sent to Exchange A replacing the current 1.00 bid.

In determining the number of orders that attribute to the 390 order count, in this case, because the child order is being canceled and replaced in the ''same series'' this would only count as one (1) order for purposes of Professional designation calculation.

Example #2:

A Customer has an order to buy 20k Vega at a 35 volatility level in symbol XYZ. The order then generates 50 child orders across different strikes. Throughout the day those 50 orders are adjusted as the stock moves resulting in the replacement of child orders to the tune of 5 times per order (50 × 5 cancels) resulting in 250 total orders generated to Exchange A.

In determining the number of orders that attribute to the 390 order count, in this case, because the child orders generated are across multiple series it would be necessary to count all 250 orders.

In addition to the above examples, the Exchange provides the below chart to demonstrate the manner in which it will count orders.

	Singular	Multiple
Single Strike Activity:		
Customer order posted to 1 SRO order Book	x	
Customer order posted to Multiple SRO order Books simultaneously	x	
Cancel/Replace Activity	x	
Cancel/Replace Activity tracking NBBO		x
Complex Order Activity (4 option strikes or fewer):		
Customer order posted to 1 SRO order Book	x	
Customer order posted to Multiple SRO Complex order Books simultaneously	x	
Cancel/Replace Activity	x	
Cancel/Replace Activity tracking NBBO	x	
Complex Order Activity (5 option strikes or greater):		
Customer order posted to 1 SRO order Book		x
Customer order posted to Multiple SRO Complex Order Books simultaneously		x
Cancel/Replace Activity		x
Cancel/Replace Activity tracking NBBO		x

Singular—counts as a single order towards the 390 count.
Multiple—each order applies towards the 390 count.

The Exchange proposes to implement this rule on April 1, 2016 to provide market participants with advance notice for their quarterly calculations. The Exchange will issue an Options Trader Alert in advance to inform market participants of such date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(5) of the Act [15] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by promoting the consistent application of its rules by further defining the manner in which the Exchange will compute the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) for purposes of determining the Professional designation. Furthermore, the Exchange believes that specifying the manner in which the 390 threshold will be calculated within its Rules will provide members with certainty and provide them with insight as they conduct their own quarterly reviews for purposes of designating orders.

The Exchange believes that counting all orders toward the number of orders, regardless of the options exchange to which the order was routed, will promote the consistent application of its rules by making clear that all order types shall be counted as well as all orders for the purpose of determining whether the definition of Professional has been met. The Exchange previously noted in its filing which created Professional orders that,

> [t]he Exchange believes that identifying Professional accounts based upon the average number of orders entered for a beneficial account is an appropriately objective approach that will reasonably distinguish such persons and entities from retail investors. The Exchange proposes the threshold of 390 orders per day on average over a calendar month, because it believes that this number far exceeds the number of orders that are entered by retail investors in a single day, while being a sufficiently low number of orders to cover the Professional account holders that are competing with broker-dealers in the Phlx marketplace. In addition, basing the standard on the number of orders that are entered in listed options for a beneficial account(s) assures that Professional account holders cannot inappropriately avoid the purpose of the rule by spreading their trading activity over multiple exchanges, and using an average number over a calendar month will prevent gaming of the 390 order threshold.[16]

FLEX Orders

FLEX orders will not be counted toward the 390 threshold because these types of orders are non-electronic orders. Furthermore, FLEX orders are typically not traded by a retail Customer, but by large institutional investors and are not relevant to the type of analysis the Exchange is trying to distinguish between retail investors and market Professionals. The Exchange believes that not counting FLEX orders toward the 390 threshold is consistent with the Act because these types of orders are not utilized by retail Customer and the proposal should assure that retail investors continue to receive the appropriate marketplace advantages in the Exchange marketplace, while furthering fair competition among marketplace Professionals.

Exchange LLC's Regulatory Information Circular (2009–179) dated June 23, 2009.

[14] 15 U.S.C. 78f(b).

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

[16] *See* Securities Exchange Act Release No. 61426 (January 26, 2010), 75 FR 5360 (February 2, 2010) (SR–Phlx–2010–05).

Cancel and Replace

With respect to determining the Professional designation, a cancel and replace order which replaces a prior order shall be counted as a second order. An order that is filled partially or in its entirety or is a replacement order that is automatically canceled or reduced by the number of contracts that were executed will not count as second order because it was not replaced.[17] The Exchange believes that counting the replacement order as a second order is consistent with Exchange Rules because the replacement order is viewed as a new order with its own unique identifier.

The Exchange believes that counting cancel and replace orders with ''single-strike algorithms,'' which are a series of cancel and replace orders in an individual strike which track the NBBO, as new orders is consistent with the Act because the Customer is specifically instructing the executing broker in the ''single-strike algorithm'' scenario to cancel and replace these orders. Tracking the NBBO[18] is akin to market making on the Exchange in a Customer account and should be counted as new orders. The Exchange believes that the Customers order designation should be reserved for retail Customer.

Further, the Exchange's interpretation that Complex Orders consisting of four legs or fewer will be counted as a single order, and respecting Complex Orders of five options legs or more, each leg will count as a separate order is consistent with the Act, because the Exchange believes that five or more options legs is sufficient quantity to justify counting these orders separately toward the volume count. The initial purpose of the rule change was to distinguish retail investors over market Professionals. The Exchange believes that typically Customer orders will not be as complex as to have five legs and therefore using five as the threshold reasonably differentiates Customer orders from Professional orders. The Exchange believes that five or more options legs evidences the distinction between the trading behavior of a retail investors as compared to a market Professional that would engaged in Complex Orders with five or more options legs.

Parent/Child Orders

The Exchange's adoption of the Professional order was to treat orders in listed options per day on average during a calendar month in his or her own beneficial account differently from Customer orders for purposes of priority within the order Book and pricing.[19] For this reason, the Exchange is adopting rules concerning the computation of orders which convert into multiple subordinate orders for the purpose of determining the Professional designation. The Exchange's proposal to count multiple subordinate orders that achieve an execution strategy as one order per side and series and count an order that cancels and replaces a resulting subordinate order and results in multiple sides/series as a new order is consistent with the Act, because the Exchange is distinguishing where the member is actively entering orders that result in multiple orders and canceling and replacing orders that result in multiple orders versus where the member had no control of the resulting executions. Allowing orders on the same side of the market to be counted as a single order is consistent with the original intent of the Professional order designation. The same side of market distinction protects retail Customers. This practice is typically the type of transaction Customers execute versus a Professional trader. Multiple related orders resulting from a large order filled in part, or an order which is cancelled and replaced several times are considered part of a related order. The Exchange does not desire to count large orders filled in part as multiple orders because the member did not intervene in the outcome of the execution. An order that results in several separate and unrelated orders would be counted as multiple orders because the member intervened in this circumstance.

The Exchange believes that the proposed amendment will provide more certainty to market participants in determining the computation of the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) to determine the Professional designation. The Exchange notes that other options exchanges have issued notices describing the manner in which they believe that Professional order should be counted when determining if an order qualifies as a Professional order.[20] The Exchange believes that there is confusion as to which orders count toward the 390 contract threshold. The Exchange proposes to provide clarity to its Rules with specific guidance as to the computation of Professional orders, which it believes will promote consistency in the treatment of orders as Professional orders. The Exchange believes that this proposed guidance will promote consistency and permit the proper calculation of options orders to prevent members with high volume from receiving benefits reserved for Customer orders. The Professional designation focuses specifically on the number of orders generated.

Pursuant to Exchange Rule 1014(g), a Customer account is an account other than a controlled account; a controlled account is an account controlled by or under common control with a broker-dealer. Customer priority is one of the marketplace advantages provided to Customer orders on the Exchange; Customer priority means that Customer orders are given execution priority over non-Customer orders and quotations of specialists and Registered Options Traders (''ROTs'')[21] at the same price. Another marketplace advantage afforded to Customer orders on the Exchange is that member organizations are generally not assessed transaction fees for the execution of Customer orders. The purpose of these marketplace advantages is to attract retail order flow to the Exchange by leveling the playing field for retail investors over market Professionals [sic].[22] The Exchange

[17] *See* Exchange Rule 1080. A cancel with replacement order is a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed. The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained.

[18] Tracking the NBBO shall mean any parent order that consumes any self-regulatory organization order book data feed, or the OPRA feed, to generate automated child orders, and move with, or follow the Bid or Offer of the series in question.

[19] *See* Exchange Rule 1080 and the Exchange's Pricing Schedule.

[20] *See* NYSE Arca, Inc.'s and NYSE MKT LLC's Joint Regulatory Bulletin (RBO–15–03 and RBO–15–06, respectively) dated September 9, 2015; The Chicago Board Options Exchange, Incorporated's Regulatory Circulator (RG10–126) dated December 1, 2010; and the International Securities Exchange LLC's Regulatory Information Circular (2009–179) dated June 23, 2009.

[21] A ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. The term ''ROT'' shall include a Streaming Quote Trader (''SQT''), and a Remote Streaming Quote Trader. An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. An SQT may only trade in a market making capacity in classes of options in which the SQT is assigned.

[22] Market Professionals [sic] have access to sophisticated trading systems that contain functionality not available to retail customers, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously and order and risk management tools.

believes that permitting certain types of orders to be counted as a single order and other types of orders to be counted as multiple orders is consistent with the original intent of the Professional designation which was to continue to provide Customer accounts with marketplace advantages and distinguish those accounts non-Professional retail investors from the Professionals accounts some non-broker-dealer individuals and entities have access to information and technology that enables them to Professionally trade listed options in the same manner as a broker or dealer in securities.[23]

Finally, the proposed guidance is being issued to stem confusion as to the manner in which options exchanges compute the Professional order volume. The Exchange's Rules may be similar to notices issued by NYSE Arca, Inc, NYSE MKT LLC (''NYSE MKT'') and International Securities Exchange LLC (''ISE'').

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 because the Exchange will uniformly apply the rules to calculate volume on all member organizations in determining Professional orders. The designation of Professional orders would not result in any different treatment of such orders for purposes of the Exchange's Rules concerning order protection or routing to away exchanges. Also, SIFMA supports the guidance issued by NYSE Arca and NYSE MKT. The guidance is being issued to stem confusion as to the manner in which options exchanges compute the Professional order volume.

The Exchange is adopting similar counting methods the Exchange believes is currently being utilized by NYSE MKT, NYSE ARCA and ISE related to designation of Professional orders.

Counting All Orders

The Exchange believes that counting all orders entered by a Professional toward the number of orders, regardless of the options exchange to which the order was routed, does not create an undue burden on intra-market competition because this proposed rule change will be consistently applied to all members in determining Professional orders. FLEX orders will not be counted toward the 390 threshold because these types of orders are non-electronic orders.

Cancel and Replace

The Exchange believes that its application of cancel and replace orders does not create an undue burden on intra-market competition because this application is consistent with Exchange Rules, where the replacement order is viewed as a new order. This treatment is consistent with the manner in which this order type is applied today within the order Book.

The Exchange's interpretation that Complex Orders consisting of four legs or fewer will be counted as a single order, and respecting Complex Orders of five legs or more, each leg will count as a separate order does not create an undue burden on intra-market competition because the Exchange will apply this method of calculation uniformly among its member organizations.

Parent/Child Orders

The Exchange's treatment of subordinate orders does not create an undue burden on intra-market competition because allowing orders on the same side of the market to be counted as a single order is consistent with the original intent of the Professional order designation which is to count distinct orders and focus on the number of orders generated.

The Exchange does not believe that the proposed rule change will impose an undue burden on inter-market competition because other exchanges have announced the intent to adopt similar guidance.[24] The Exchange believes that disparate rules regarding Professional order designation, and a lack of uniform application of such rules, does not promote the best regulation and may, in fact, encourage regulatory arbitrage. The Exchange believes that it is therefore prudent and necessary to conform its rules to that of other options exchanges for purposes of calculating the threshold volume of orders to be designated as a Professional. This is particularly true where the Exchange's third-party routing broker-dealers are members of several exchanges that have rules requiring Professional order designations.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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 email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2016–10 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 No. SR–Phlx–2016–10. 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 Web site (*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 Web site viewing and

[23] For example, some broker-dealers provided their Professional customers with multi-screened trading stations equipped with trading technology that allows the trader to monitor and place orders on all six options exchanges simultaneously. These trading stations also provide compliance filters, order managements tools, the ability to place orders in the underlying securities, and market data feeds.

[24] *See supra* note 13.

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 such filing will also 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 No. SR–Phlx–2016–10 and should be submitted on or before March 2, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–02606 Filed 2–9–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77055; File No. SR–BOX–2016–02]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Lower Certain Fees for Non-Auction Transactions on the BOX Market LLC (''BOX'') Options Facility

February 4, 2016.

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 January 27, 2016, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to lower certain fees for Non-Auction transactions on the BOX Market LLC (''BOX'') options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on February 1, 2016. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

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

The Exchange proposes to make changes to Section I.A. of the BOX Fee Schedule, Exchange Fees for Non-Auction Transactions.

Specifically, the Exchange proposes to amend certain fees in the pricing model outlined in Section I.A. (Non-Auction Transactions).[5] In this section, fees and credits are assessed depending on upon three factors: (i) The account type of the Participant submitting the order; (ii) whether the Participant is a liquidity provider or liquidity taker; and (iii) the account type of the contra party. Non-Auction Transactions in Penny Pilot Classes are assessed different fees or credits than Non-Auction Transactions in Non-Penny Pilot Classes.

Specifically, the Exchange proposes to reduce the Taker fees for Professional Customers, Broker Dealers and Market Makers interacting with Public Customers in Penny Pilot Classes. The fee for Professional Customers and Broker Dealers taking liquidity against Public Customers will be lowered to $0.50 from $0.64 and the fee for Market Makers taking liquidity against Public Customers will be lowered to $0.50 from $0.55.

These transactions will remain exempt from the Liquidity Fees and Credits outlined in Section II of the BOX Fee Schedule. The revised fee structure for Non-Auction Transactions will be as follows:

Account type	Contra party	Penny pilot classes		Non-penny pilot classes	
		Maker fee	Taker fee	Maker fee	Taker fee
Public Customer	Public Customer	$0.00	$0.00	$0.00	$0.00
	Professional Customer/Broker Dealer.	0.00	0.00	0.00	0.00
	Market Maker	0.00	0.00	0.00	0.00
Professional Customer or Broker Dealer.	Public Customer	0.60	0.50	0.95	1.07
	Professional Customer/Broker Dealer.	0.25	0.40	0.35	0.40
	Market Maker	0.25	0.44	0.35	0.44
Market Maker	Public Customer	0.51	0.50	0.85	1.03
	Professional Customer/Broker Dealer.	0.00	0.05	0.00	0.10
	Market Maker	0.00	0.29	0.00	0.29

[25] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).

[5] Non-Auction Transactions are those transactions executed on the BOX Book.