

market into DMMs.<sup>14</sup> As a result, market makers on the NYSE MKT equity market are called DMMs and on the NYSE Amex Options LLC (“NYSE Amex Options”) options market are called specialists.<sup>15</sup> However, several provisions of the Operating Agreement were not updated and refer only to specialists. Accordingly, the Exchange proposes to amend Sections 2.02 and 2.03(h)(i) to add references to DMMs.

Section 2.02 of the Operating Agreement provides that the Board has general supervision over Member Organizations and over approved persons in connection with their conduct with or affecting Member Organizations. Section 2.02 further provides that the Board “may disapprove of any member acting as a specialist or odd lot dealer.” The Exchange proposes to add “designated market maker (as defined in Rule 2 of the Company Rules) (‘DMM’)” after “specialist” in Section 2.02.

Section 2.03(h)(i) sets out the categories of individuals that shall be represented on the DCRC. The Exchange proposes to add “or DMM” to the references to “specialist” in categories (ii) and (iii), so that they reference both types of market makers. The changes would be consistent with the categories of members of the Committee for Review set forth in Section 2.03(h)(iii), which refers to both DMMs and specialists.<sup>16</sup>

Finally, the Exchange proposes to make technical and conforming changes to the recitals and signature page of the Operating Agreement.

### III. Discussion and Commission's Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of Section 6 of the Act<sup>17</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>18</sup>

<sup>14</sup> See Securities Exchange Act Release Nos. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63) (approval order) and 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10) (amending equity rules to conform to NYSE New Market Model Pilot rules). See also Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) (approving rule change to create NYSE New Market Model Pilot).

<sup>15</sup> The Exchange operates a marketplace for trading options through NYSE Amex Options, a facility of the Exchange. See Rule 2—Equities (i) & (j) (defining DMM) and Rule 927NY (defining specialist).

<sup>16</sup> See note 13, *supra*, and accompanying text.

<sup>17</sup> 15 U.S.C. 78f.

<sup>18</sup> The Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

The Commission finds that the proposed rule change is consistent with Section 6(b)(1),<sup>19</sup> which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(3) of the Act,<sup>20</sup> which requires, among other things, that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and administration of its affairs.

The proposed rule change would remove the requirement that the ICE NGC nominate the candidates for Non-Affiliated Directors and instead have the DCRC nominate the candidates for Non-Affiliated Director directly.<sup>21</sup> Because the ICE NGC currently is required to nominate the candidate recommended to it by the DCRC, this proposed change would remove an additional step in the process of nominating candidates for Non-Affiliated Director positions and thus may improve the efficiency of the nomination process.

In addition, the proposed rule change would remove the requirement that the ICE NGC make the determination of whether persons endorsed to be Petition Candidates are eligible to be a Non-Affiliated Director, and would have the Exchange make such determination instead. The proposed process would maintain an independent review of the eligibility of any Petition Candidates, while avoiding the potential conflict of interest that could arise if, for example, the DCRC were to be responsible for both proposing and nominating candidates and making eligibility determinations of Petition Candidates proposed by Member Organizations. The Commission previously considered and approved rules of another exchange that similarly provide for that exchange to determine the eligibility of proposed Petition Candidates.<sup>22</sup>

Further, eliminating the requirement that the DCRC include representatives from the fourth category of members

<sup>19</sup> 15 U.S.C. 78f(b)(1).

<sup>20</sup> 15 U.S.C. 78f(b)(3).

<sup>21</sup> The Commission notes that the DCRC is appointed by the Board. See Section 2.03(h)(i) of the Operating Agreement.

<sup>22</sup> See *supra* note 8. See generally Securities Exchange Act Release Nos. 56876 (November 30, 2007), 72 FR 70357 (December 11, 2007) (SR-NASDAQ-2007-068) (approving process for electing Member Representative Directors).

described above (formerly REMMs) would remove a reference to an obsolete category of member from the Operating Agreement. The Commission finds that eliminating such an obsolete reference would add clarity to the Exchange's rules and be consistent with the public interest and the protection of investors.

Finally, the proposed addition of references to DMMs in Section 2.02 and 2.03(h)(i) of the Operating Agreement would more accurately reflect that specialists in the Exchange's equity market are now referred to as DMMs and also would make these sections consistent with Section 2.03(h)(iii) (categories of members of the Committee for Review), which refers to both DMMs and specialists. The proposed addition of a reference to DMMs in Section 2.02 would clarify that the Board has general supervision over all Member Organizations, including the ability to disapprove of any member acting as a DMM, as well as a specialist or odd lot dealer. The proposed addition of references to DMMs in Section 2.03(h)(i) would clarify that DMMs, as well as specialists, are categories of individuals that would be represented on the DCRC.

The Commission finds that the foregoing revisions to the Operating Agreement are consistent with the Act.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-NYSEMKT-2016-26), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016-12787 Filed 5-31-16; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77908; File No. SR-Phlx-2016-59]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to PIXL Pricing

May 25, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 11, 2016, NASDAQ 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 Section IV, Part A of the Pricing Schedule entitled "PIXL Pricing."

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 purpose of this rule change is to amend the PIXL<sup>3</sup> pricing located in the Pricing Schedule at Section IV, Part A. The Exchange amends the PIXL Pricing to incentivize market participants to direct more PIXL Orders to Phlx.

Today, the Exchange assesses a \$0.07 per contract Initiating Order Fee. If the

member or member organization qualifies for the Tier 4 or 5 Customer Rebate<sup>4</sup> in Section B, the member or member organization will be assessed a discounted Initiating Order Fee of \$0.05 per contract for Simple PIXL Orders and \$0.03 per contract for Complex<sup>5</sup> PIXL Orders. The Exchange is proposing to make three changes to the PIXL Pricing.

##### Pricing Change Number 1

The Exchange proposes to assess a \$0.05 per contract discounted Initiating Order Fee to members and member organizations that qualify for the Tier 4 or 5 Customer Rebate in Section B, regardless of whether the order is a Simple or Complex PIXL Order. The Initiating Order Fee for Simple PIXL Orders would therefore be assessed the same lower rate when the member or member organization would qualify for this reduced fee. The Exchange proposes to increase the discounted Complex PIXL Initiating Order Fee from \$0.03 to \$0.05 per contract provided the member or member organization qualifies for Tier 4 or 5 of the Customer Rebate in Section B.

##### Pricing Change Number 2

Additionally, the Exchange proposes a new incentive for members or member organizations that deliver equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and exchange-traded fund ("ETF") option classes, excluding SPY options,<sup>6</sup> in a given month to lower

<sup>4</sup> Currently, the Exchange has a Customer Rebate Program consisting of five tiers that pay Customer rebates on three Categories, A, B and C of transactions. 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. The Exchange calculates Customer volume in Multiply Listed Options by totaling electronically-delivered and executed volume, excluding volume associated with electronic Qualified Contingent Cross ("QCC") Orders, as defined in Exchange Rule 1080(o). In calculating electronically-delivered and executed Customer volume in Multiply Listed Options, the numerator of the equation includes all electronically-delivered and executed Customer volume in Multiply Listed Options. The denominator of that equation includes national customer volume in multiply-listed equity and ETF options volume, excluding SPY. See Section B of the Pricing Schedule.

<sup>5</sup> 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.

<sup>6</sup> Options overlying Standard and Poor's Depository Receipts/SPDRs ("SPY") are based on

their Initiating Order Fee to \$0.00 per contract for Complex PIXL Orders. This proposal will offer members submitting Complex PIXL Orders the opportunity to pay no Initiating Order Fee instead of a \$0.05 per contract<sup>7</sup> discounted Complex PIXL Initiating Order Fee if the member qualifies for the incentive.

##### Pricing Change Number 3

The Exchange also proposes to offer this new incentive to members or member organizations under Common Ownership.<sup>8</sup> Today, any member or member organization under Common Ownership with another member or member organization that qualifies for a Tier 4 or 5 Customer Rebate in Section B will be assessed a discounted PIXL Initiating Order Fee of \$0.05 per contract for Simple PIXL Orders and \$0.03 per contract for Complex PIXL Orders. The Exchange proposes that any member or member organization under Common Ownership with another member or member organization that executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month will be assessed a discounted PIXL Initiating Order Fee of \$0.05 for Simple PIXL Orders and \$0.00 for Complex PIXL Orders. The Exchange also proposes to increase the discounted Complex PIXL Initiating Order Fee for members or member organizations under Common Ownership that qualify for Customer Rebate Tier 4 or 5 in Section B. With this proposal, any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier 4 or 5 in Section B will be assessed a discounted Complex PIXL Initiating Order Fee of \$0.05 per contract.

Despite the increase to the discounted Complex PIXL Initiating Order Fee for members and member organizations that qualify for a Customer Rebate Tier 4 or 5 in Section B, the Exchange believes that the increased discounted rate will continue to encourage members to direct more Complex PIXL Orders to the Exchange.<sup>9</sup>

the SPDR exchange-traded fund, which is designed to track the performance of the S&P 500 Index.

<sup>7</sup> Today the Complex PIXL Initiating Order Fee for members and member organizations that qualify for the Tier 4 or 5 Customer Rebate in Section B is \$0.03 per contract. This proposal increases that fee to \$0.05 per contract.

<sup>8</sup> The term "Common Ownership" shall mean members or member organizations under 75% common ownership or control.

<sup>9</sup> Currently, the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer

Continued

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

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

<sup>3</sup> PIXL<sup>SM</sup> is the Exchange's price improvement mechanism known as Price Improvement XL or PIXL. A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity ("PIXL Order") against principal interest or against any other order (except as provided in Rule 1080(n)(i)(F) it represents as agent ("Initiating Order")), provided it submits the PIXL order for electronic execution into the PIXL Auction pursuant to Rule 1080. See Exchange Rule 1080(n).

## 2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</sup> 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 the Exchange 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.”<sup>12</sup>

Likewise, in *NetCoalition v. Securities and Exchange Commission*<sup>13</sup> (“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 claiming that Congress mandated a cost-based approach.<sup>14</sup> 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.”<sup>15</sup>

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’ . . . .”<sup>16</sup> 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.

### Pricing Change Number 1

The Exchange’s proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract is reasonable because the Exchange assesses this discounted same [sic] rate for the Simple PIXL Initiating Order Fee. Furthermore, the Exchange believes that this fee is reasonable because it continues to be lower than the \$0.07 per contract Initiating Order Fee for members and member organizations that do not qualify for Tier 4 or 5 of the Customer Rebate in Section B. Finally, the Exchange is offering members and member organizations an opportunity to lower the Complex PIXL Initiating Order Fee to \$0.00 per contract provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF option classes, excluding SPY options, in a given month.

The Exchange’s proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract is equitable and not unfairly discriminatory because the Exchange will apply the proposed fees in a uniform manner to all market participants who qualify for the discounted rate. Further, all market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL Auction.

### Pricing Change Number 2

The Exchange’s proposal to offer members and member organizations an opportunity to pay no Complex PIXL Initiating Order Fee provided they transact equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF option classes, excluding SPY options, in a given month is reasonable because it will encourage market participants to transact Customer volume as well as a greater number of Complex PIXL Orders on the Exchange. Today, members and member organizations may lower their

Complex PIXL Order Initiating Order Fees by qualifying for Tiers 4<sup>17</sup> or 5<sup>18</sup> of the Customer Rebate in Section B. In order to qualify for Section B Customer Rebate Tiers 4 or 5 a member or member organization is required to transact a certain percentage of total National Customer Volume (above 1.60%) in Multiply-Listed options in a month on Phlx to receive a lower Complex PIXL Initiating Order Fee of \$0.05<sup>19</sup> as compared to the Initiating Order Fee of \$0.07 per contract. With this proposal the Exchange offers members and member organizations an opportunity to pay no Initiating Order Fee for Complex PIXL Orders provided they deliver equal to order [sic] greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month is transacted on Phlx [sic]. The Exchange seeks to encourage market participants to increase the amount of Customer order flow that is directed to Phlx by offering the opportunity to pay no Complex PIXL Initiating Order Fee. In order to qualify for this new incentive, a greater amount of Customer volume is necessary to be transacted than the volume currently required to qualify for the Customer Rebate Tiers 4 and 5 in Section B.

The Exchange believes that members and member organizations will direct a greater amount of Customer liquidity to Phlx to qualify for a Complex PIXL Initiating Order Fee of \$0.00 per contract. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts 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. The Exchange’s proposal to offer member and member organizations an opportunity to pay no Complex PIXL Initiating Order Fee provided they transact equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month is equitable and not unfairly discriminatory because the

PIXL Order will be reduced to \$0.00 if the Customer PIXL Order is greater than 399 contracts. The Exchange is not amending this provision.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>12</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>13</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>14</sup> See *NetCoalition*, at 534–535.

<sup>15</sup> *Id.* at 537.

<sup>16</sup> *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

<sup>17</sup> Tier 4 requires member and member organizations to transact above 1.60%–2.50% of National Customer Volume in Multiply-Listed Equity and ETF Options.

<sup>18</sup> Tier 5 requires member and member organizations to transact above 2.50% of National Customer Volume in Multiply-Listed Equity and ETF Options.

<sup>19</sup> Today the Complex PIXL Initiating Order Fee for members and member organizations that qualify for the Tier 4 or 5 Customer Rebate in Section B is \$0.03 per contract. This proposal increases that fee to \$0.05 per contract.

opportunity to pay no Complex PIXL Initiating Order Fee is available to all market participants. In addition, all market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL Auction.

#### Pricing Change Number 3

The Exchange's proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations under Common Ownership that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract is reasonable for the same reasons explained herein. It is also reasonable to offer member and member organizations under Common Ownership an opportunity to pay no Complex PIXL Order Initiating Order Fee provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month for the same reasons explained herein. The Exchange believes that applying the same pricing to members under Common Ownership as wholly-owned entities avoids disparate treatment of members that have divided their various business activities between separate corporate entities as compared to members that operate those business activities within a single corporate entity.

The Exchange's proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations under Common Ownership that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract is equitable and not unfairly discriminatory for the same reasons explained herein. It is also equitable and not unfairly discriminatory to offer member and member organizations under Common Ownership an opportunity to pay no Complex PIXL Initiating Order Fee provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed Equity and ETF options classes, excluding SPY options, in a given month for the same reasons explained herein. The Exchange believes that its proposed pricing is equitable and not unfairly discriminatory because it permits both wholly owned and common control members and member organizations to be subject to the same pricing for PIXL.

#### *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, that the degree to which fee changes in this market may impose any burden on inter-market competition is extremely limited.

#### Pricing Change Number 1

The Exchange believes that increasing the discounted Complex PIXL Initiating Order Fee for members and member organizations that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract does not create an undue burden on intra-market competition because the Exchange will apply the proposed fees in a uniform manner to all market participants who qualify for the discounted rate. All market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL auction. Also, encouraging 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.

#### Pricing Change Number 2

The Exchange believes that it does not create an undue burden on intra-market competition to offer member and member organizations an opportunity to lower the Complex PIXL Initiating Order Fee to \$0.00 per contract provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and

ETF options classes, excluding SPY options, in a given month because all market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL auction. Also, encouraging 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.

#### Pricing Change Number 3

The Exchange's proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations under Common Ownership that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract and the proposal to lower the Complex PIXL Initiating Order Fee to \$0.00 per contract provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month do not create an undue burden on intra-market competition because the pricing subjects both wholly owned and common control members and member organizations to the same pricing for PIXL.

The Exchange does not believe that the proposed rule changes to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations, including those under Common Ownership, that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract and offer a new incentive to reduce the Complex PIXL Initiating Order Fee to \$0.00 per contract, including those members under Common Ownership, will impose any burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act because all market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL auction. Also, encouraging 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.

*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.<sup>20</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2016-59 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-2016-59. 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-Phlx-2016-59 and should be submitted on or before June 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2016-12793 Filed 5-31-16; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-77910; File No. SR-NYSEMKT-2016-13]**

**Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 955NY(c) by Revising the Clearing Member Requirements for Entering an Order Into the Electronic Order Capture System**

May 25, 2016.

On March 22, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend Rule 955NY(c) to change the timing for recording the name of the Clearing Member<sup>3</sup> in the Electronic Order Capture system ("EOC"). On March 29, 2016,<sup>4</sup> the

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Rule 900.2NY defines "Clearing Member" as an Exchange ATP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.

<sup>4</sup> The Commission notes that the amendment date of March 30, 2016 in the SR-NYSEMKT-2016-13

Exchange filed Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change, as modified by Amendment No. 1, for comment in the **Federal Register** on April 11, 2016.<sup>5</sup> The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act<sup>6</sup> provides that, within 45 days of the publication of the notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> the Commission designates July 10, 2016, as the date by which the Commission should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR-NYSEMKT-2016-13), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Brent J. Fields,**  
*Secretary.*

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Notice is incorrect and the proper date is March 29, 2016.

<sup>5</sup> See Securities Exchange Act Release No. 34-77518 (April 5, 2016), 81 FR 21415 ("Notice"). Amendment No. 1 was included in the Notice and provided the clarification that the CMTA Information and the name of the clearing ATP Holder would be entered into the EOC "as the events occur and/or during trade reporting procedures which may occur after the representation and execution of the order."

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> *Id.*

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(ii).