The Exchanges now seek to extend the exemptions until June 30, 2017.[6] The Exchanges' request was made in conjunction with immediately effective filings that extend the operation of the Programs through the same date.[7] In their request to extend the exemptions, the Exchanges note that the participation in the Programs has increased more recently. Accordingly, the Exchanges have asked for additional time to allow themselves and the Commission to analyze more robust data concerning the Programs, which the Exchanges committed to provide to the Commission.[8] For this reason and the reasons stated in the Order originally granting the limited exemptions, the Commission finds that extending the exemptions, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, each Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in connection with the operation of its Retail Liquidity Program, until June 30, 2017.

The limited and temporary exemptions extended by this Order are subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2016–30815 Filed 12–21–16; 8:45 am]

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additional year, through July 31, 2014, *see* Securities Exchange Act Release Nos. 70096 (August 2, 2013), 78 FR 48520 (Aug. 8, 2013) (SR–NYSE–2013–48), and 70100 (Aug. 2, 2013), 78 FR 48535 (Aug. 8, 2013) (SR–NYSEMKT–2013–60), and then, through various extensions, through December 31, 2016. *See* Securities Exchange Act Release Nos. 72629 (July 16, 2014), 79 FR 42564 (July 22, 2014) (SR–NYSE–2014–35); 72625 (July 16, 2014), 79 FR 42566 (July 22, 2014) (SR–NYSEMKT–2014–60); 74454 (Mar. 6, 2015), 80 FR 13054 (Mar. 12, 2015) (SR–NYSE–2015–10); 74455 (Mar. 6, 2015), 80 FR 13047 (Mar. 12, 2015) (SR–NYSEMKT–2015–14); 75993 (Sept. 28, 2015), 80 FR 59844 (Oct. 2, 2015) (SR–NYSE–2015–41); 75995 (Sept. 28, 2015), 80 FR 59836 (Oct. 2, 2015) (SR–NYSEMKT–2015–69); 77426 (Mar. 23, 2016), 81 FR 17533 (Mar. 29, 2016) (SR–NYSE–2016–25); 77424 (Mar. 23, 2016), 81 FR 17522 (Mar. 29, 2016) (SR–NYSEMKT–2016–39); 78600 (Aug. 17, 2016), 81 FR 57642 (Aug. 23, 2016) (SR–NYSE–2016–54); and 78602 (Aug. 17, 2016), 81 FR 57639 (Aug. 23, 2016) (SR–NYSEMKT–2016–76). Each time the pilot terms of the Programs were extended, the Commission also granted the Exchanges' requests to extend the Sub-Penny exemptions. *See* Securities Exchange Act Release Nos. 70085 (July 31, 2013), 78 FR 47807 (Aug. 6, 2013); 72732 (July 31, 2014), 79 FR 45851 (Aug. 6, 2014); 74507 (Mar. 13, 2015), 80 FR 14421 (Mar. 19, 2015); 76020 (Sept. 29, 2015), 80 FR 60201 (Oct. 5, 2015); 77438 (Mar. 24, 2016), 81 FR 17752 (Mar. 30, 2016); and 78678 (Aug. 25, 2016), 81 FR 60031 (Aug. 31, 2016). The current exemptions expire December 31, 2016.

[6] *See* Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated November 28, 2016.

[7] *See* Securities Exchange Act Release Nos. 79493 (Dec. 7, 2016), 81 FR 90019 (Dec. 13, 2016) (SR–NYSE–2016–82), and 79509 (Dec. 8, 2016), 81 FR 90389 (Dec. 14, 2016) (SR–NYSEMKT–2016–112).

[8] *See* Order, *supra* note 3, 77 FR at 40681.

[9] 17 CFR 200.30–3(a)(83).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79582; File No. SR–NYSE–2016–70]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 902.02 of the NYSE Listed Company Manual To Adopt a Fee Cap Specific to Investment Management Entities and Their Eligible Portfolio Companies

December 16, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 5, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 proposes to amend Section 902.02 of the NYSE Listed Company Manual (the ''Manual'') to adopt a fee cap specific to Investment Management Entities and their eligible portfolio companies. The proposed rule change is available on the Exchange's Web site at *www.nyse.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 self-regulatory organization 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 those 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 parts 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 Section 902.02 of the Manual to adopt a fee cap specific to Investment Management Entities and their eligible portfolio companies.

An Investment Management Entity for purposes of this provision would be defined as a listed company which manages private investment vehicles that are not registered under the Investment Company Act. There are a small number of such companies listed on the NYSE that engage in the business of managing such private equity funds. Through these private equity funds, Investment Management Entities invest in private companies. Investment Management Entities typically provide significant managerial and advisory assistance to their portfolio companies. An Investment Management Entity will frequently seek to exit its funds' investment in a privately-held portfolio company by conducting an initial public offering on behalf of that portfolio company. The Investment Management Entity does not typically sell shares in the IPO but, rather, shares not sold in the IPO are gradually sold off over a period of years in the public market. While these Investment Management Entities have control or influence over the decision making of their portfolio companies in both their pre- and post-public phases, the decision as to where to list is typically made jointly by the portfolio company's senior management team and the Investment Management Entity. The Exchange benefits from its ongoing

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

relationships with these Investment Management Entities (and members of the management teams that had previously dealt with the Exchange) when competing for the listing of their portfolio companies. In addition, the Exchange benefits from the efficiencies in dealing with portfolio companies that are benefiting from the guidance and experience of the Investment Management Entities to which they are related.

The Exchange incurs substantial costs in connection with its marketing to companies choosing a listing venue for their IPO. In those cases where the Exchange has a longstanding relationship with the Investment Management Entity controlling a listing applicant, the Exchange's costs of marketing to the prospect company are often much lower than usual because of the Investment Management Entity's prior experience with the NYSE. Typically, when pitching for the listing of a company that is choosing a listing venue for its IPO, the Exchange incurs significant expense, including the time spent by its CEO and other senior management in preparing for and traveling to meetings with the prospect company, travel costs, the cost of developing pitching strategies, and the cost of producing marketing materials. In addition, it has been the Exchange's experience that an Investment Management Entity puts high-quality and experienced management teams in place at its portfolio companies prior to listing and that the Investment Management Entity continues to provide significant support to those companies after listing. Consequently, those companies require lower levels of support from the NYSE's business and Regulation groups to assist them in navigating the initial and continued listing process and the Exchange devotes significantly smaller staff resources to those companies on average than to the typical newly-listed company that is not controlled prior to listing by an Investment Management Entity.

The Exchange believes that these cost savings attributable to its relationship with an Investment Management Entity make it desirable and reasonable to provide a reduction in continued listing fees to the Investment Management Companies that are significant shareholders in other listed companies, as well as to those portfolio companies that have listed as a consequence of those relationships. The Exchange also believes that the proposed fee reduction would provide an incentive to Investment Management Entities to both remain listed themselves and to list additional portfolio companies on the Exchange.

Under Section 902.02, all listed companies are eligible to benefit from limitations on most fees (including Listing Fees and Annual Fees) (''Eligible Fees'') payable to the Exchange in a calendar year of $500,000 (the ''Total Maximum Fee'').[4] The Exchange proposes to amend Section 902.02 to add a separate limitation on Eligible Fees applicable only to Investment Management Entities and their eligible portfolio companies (''Eligible Portfolio Companies''), with effect from the calendar year commencing January 1, 2017 (the ''Investment Management Entity Group Fee Discount''). An ''Eligible Portfolio Company'' of an Investment Management Entity is a company in which the Investment Management Entity has owned at least 20% of the common stock on a continuous basis since prior to that company's initial listing. The Investment Management Entity Group Fee Discount would be as follows:

- A 30% discount on all Eligible Fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment Management Entity has two Eligible Portfolio Companies.
- a 50% discount on all Eligible Fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment Management Entity has three or more Eligible Portfolio Companies.

The Investment Management Entity Group Fee Discount would be subject to a maximum aggregate discount of $500,000 for the Investment Management Entity and each of its Eligible Portfolio Companies in any given year (the ''Maximum Discount''). The Maximum Discount would be shared among the Investment Management Entity and the Eligible Portfolio Companies in direct proportion to their respective Eligible Fees. In addition to benefiting from the Investment Management Entity Group Fee Discount, the Investment Management Entity and each of the Eligible Portfolio Companies would each continue to have its fees capped by the applicable company's individual Total Maximum Fee of $500,000.

Below are two examples:

- An Investment Management Entity owes the Total Maximum Fee of $500,000. The Investment Management Entity and its three Eligible Portfolio Companies as a group owe an aggregate of $1.0 million in Eligible Fees before application of the 50% discount. The aggregate 50% discount for the group upon application of the Management Entity Group Fee Discount would be $500,000. As the Investment Management Entity's proportionate share of the aggregate fees owed by the group would be 50% ($500,000/$1.0 million), the Investment Management Entity would receive a $250,000 discount (50% of the $500,000 maximum Investment Management Entity Group Fee Discount), resulting in total Eligible Fees for the Investment Management Entity in that year of $250,000 ($500,000 minus $250,000). The Eligible Portfolio Companies would share the remaining $250,000 discount available under the Maximum Discount in proportion to their respective Eligible Fee obligations for that calendar year.
- An Investment Management Entity owes $400,000 in Eligible Fees. The Investment Management Entity and its two Eligible Portfolio Companies as a group owe an aggregate of $1.0 million in Eligible Fees before application of the 30% discount. The aggregate 30% discount for the group upon application of the Investment Management Entity Group Fee Discount would be $300,000. As the Investment Management Entity's proportionate share of the aggregate fees owed by the group would be 40% ($400,000/$1.0 million), the Investment Management Entity would receive a $120,000 discount (40% of the $300,000 aggregate Investment Management Entity Group Fee Discount), resulting in total Eligible Fees for the Investment Management Entity in that year of $280,000 ($400,000 minus $120,000). The Eligible Portfolio Companies would share the remaining $180,000 discount available under the Investment Management Entity Group Fee Discount in proportion to the amounts of their respective Eligible Fee obligations for that calendar year.

In order to qualify for the Investment Management Entity Group Fee Discount in any calendar year for itself and its Eligible Portfolio Companies, an Investment Management Entity must submit satisfactory proof to the Exchange no later than December 31 that it has met the ownership requirements specified for the entire period between January 1 and September 30 of that year.

In the event that a listed company qualifies as an Eligible Portfolio

[4] The Total Maximum Fee cap, however, does not include the following fees: (i) Listing Fees and Annual Fees for Investment Company Units, streetTRACKS® Gold Shares, Currency Trust Shares, and Commodity Trust Shares; (ii) Listing Fees and Annual Fees for closed-end funds; (iii) Listing Fees for structured products; and (iv) Annual Fees for structured products other than retail debt securities.

Company of two or more Investment Management Entities, for purposes of the Investment Management Entity Group Fee Discount, such company will be treated as an Eligible Portfolio Company only of the Investment Management Entity which has the largest equity interest in such Eligible Portfolio Company. If two or more of such Investment Management Entities own identical equity interests in such listed company, such company will be treated as an Eligible Portfolio Company of each of such Investment Management Entities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[5] in general, and furthers the objectives of Sections 6(b)(4)[6] of the Exchange Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges and is not designed to permit unfair discrimination among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act, in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

The Exchange is proposing to adopt fee discounts for listed Investment Management Entities and their Eligible Portfolio Companies. The Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Exchange Act in that it represents an equitable allocation of fees and does not unfairly discriminate among listed companies. In particular, the Exchange believes the proposal represents an equitable allocation of fees and is not unfairly discriminatory because the Exchange benefits from significant cost and resource-utilization savings when listing portfolio companies of Investment Management Entities as it does not have to engage in significant marketing efforts as the decision makers at the Investment Management Entity are very familiar with the Exchange. Typically when pitching for the listing of a company that is choosing a listing venue for its IPO, the Exchange incurs significant expense, including: The time spent by its CEO and other senior management in preparing for and traveling to meetings with the prospect company, travel costs, the cost of developing pitching strategies, and the cost of producing marketing materials. As the Exchange saves much of this expense when pitching to a portfolio company of an Investment Management Entity with which the Exchange has a deep relationship, the Exchange believes that it is appropriate to share some of those savings with the Investment Management Entity and its Eligible Portfolio Companies. In addition, the Exchange typically has lower costs and resource utilization in connection with the initial and continued listing of Eligible Portfolio Companies than with other new listings, as the Exchange benefit from dealing with the high-quality and experienced management teams Investment Management Entities put in place at portfolio companies prior to listing and the ongoing relationship those companies maintain with staff at the Investment Management Entity who are experienced in dealing with the NYSE. The Exchange also believes that the proposed discount is reasonable in that it will create a reasonable commercial incentive for Investment Management Entities and the management of their portfolio companies to consider listing on the Exchange and to remain listed.

The Exchange believes that it is not unfairly discriminatory to discount continued listing fees as a means of recognizing its cost savings related to the listing of an Investment Management Company and its Eligible Portfolio Companies. This is because a significant portion of the Exchange's savings arise from the efficiencies it experiences on an ongoing basis in dealing with Eligible Portfolio Companies for such time as the Investment Management Entity retains a significant investment and is thereby motivated to provide ongoing advice and assistance. In addition, the Investment Management Entity will in all cases already be listed on the Exchange and can therefore only share in the benefits of any fee discount if it is provided on a continued listing basis.

The Exchange believes that the tiered discounts of 30% and 50% are not unfairly discriminatory, as they are reasonably related to the cost savings the Exchange benefits from when dealing with an Investment Management Entity and its Eligible Portfolio Companies rather than an individual listed company. In addition, it is not unfairly discriminatory to provide a higher percentage discount when there are a greater number of Eligible Portfolio Companies as there are economies of scale in dealing with a larger group of related entities because the incremental resources devoted by the Exchange in dealing with each additional Eligible Portfolio Company tend to be less.

The Exchange believes that, where a company is an Eligible Portfolio Company of two or more Investment Management Entities, it is not unfairly discriminatory to provide the Investment Management Entity Group Fee Discount to the Investment Management Entity which has the largest ownership interest in the company as it would typically play the sole or lading leading role in advising the company. In the case where two or more Investment Management Entities own identical equity interests in a listed company, the Exchange believes it is not unfairly discriminatory to treat such company as an Eligible Portfolio Company of each of such Investment Management Entities, as all of them would typically provide significant levels of assistance to the company.

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 that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is designed to reflect the cost savings the Exchange derives from its relationship with listed Investment Management Entities whose portfolio companies also list on the Exchange. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

[6] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 shall institute proceedings under Section 19(b)(2)(B)[9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–70 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–NYSE–2016–70. 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 such filing also will be available for inspection and copying at the principal offices 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–NYSE–2016–70, and should be submitted on or before January 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30793 Filed 12–21–16; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 15 U.S.C. 78s(b)(2)(B).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79584; File No. SR–Phlx–2016–119]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the PIXL Price Improvement Auction in Phlx Rule 1080(n) and To Make Pilot Program Permanent

December 16, 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 December 6, 2016, NASDAQ PHLX LLC (''Phlx'' or ''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. On December 15, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1080(n), concerning a price-improvement mechanism entitled ''Price Improvement XL'', also known as ''PIXL.'' Certain aspects of PIXL are currently operating on a pilot basis (''Pilot''), which was initially approved by the Commission in 2010,[3] and which is set to expire on January 18, 2017.[4] In this proposal, the Exchange proposes to make the Pilot permanent, and to change the requirements for providing price improvement for PIXL Auction Orders, other than Auctions involving Complex Orders, of less than 50 option contracts.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.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 proposed rule change is to make permanent certain pilots within Rule 1080(n), relating to PIXL. In addition, Phlx proposes to modify the requirements for PIXL auctions involving less than 50 contracts (other than auctions involving Complex Orders) where the National Best Bid and Offer (''NBBO'') is only $0.01 wide.

Background

The Exchange adopted PIXL in October 2010 as a price-improvement

[3] *See* Securities Exchange Act Release No. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108) (''PIXL Approval Order'').

[4] *See* Securities Exchange Act Release No. 78301 (July 12, 2016), 81 FR 46731 (July 18, 2016) (SR–PHLX–2016–75).