

the Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.<sup>30</sup>

The Commission continues to regard skin-in-the-game as a potential tool to align the various incentives of a covered clearing agency's stakeholders, including management and clearing members.<sup>31</sup> OCC's current rules provide for the application of excess capital as skin-in-the-game. The Commission believes that OCC's proposal to set aside capital to maintain a minimum amount of skin-in-the-game strengthens OCC's existing skin-in-the-game rules. OCC's current rules align senior management's personal economic incentives with OCC's overall risk management incentives,<sup>32</sup> but do not guaranty that an amount of OCC capital would be set aside to ensure a pre-determined minimum level of skin-in-the-game. The Commission believes that holding a Minimum Corporate Contribution, in addition to the EDCP unvested balance, to ensure such a minimum level of skin-in-the-game would help to align OCC's economic incentives as a corporation with risk management more broadly, thereby promoting robust risk management at OCC.

Holding a defined Minimum Corporate Contribution, as opposed to an undefined amount of excess capital, may help to incentivize OCC further to maintain the appropriate amount of resources to manage a Clearing Member default, consistent with the promotion

of safety and soundness at OCC. Further, the Commission believes that, to the extent the proposed changes are consistent with promoting OCC's safety and soundness, they are also consistent with supporting the stability of the broader financial system. OCC has been designated as a SIFMU, in part, because its failure or disruption could increase the risk of significant liquidity or credit problems spreading among financial institutions or markets.<sup>33</sup> The Commission believes that the proposed changes would help support the maintenance of OCC as a going concern following a Clearing Member default, which in turn would help support the stability of the financial system by reducing the risk of significant liquidity or credit problems spreading among market participants that rely on OCC's central role in the options market. Finally, the Commission believes that the proposed changes to increase OCC's pre-determined default management resources are consistent with the reduction of systemic risk because such increase enhances the ability of OCC to absorb and contain the spread of any losses that might arise from a member default.

Accordingly, and for the reasons stated above, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.<sup>34</sup>

#### *B. Consistency With Rule 17Ad-22(e)(2) Under the Exchange Act*

Rule 17Ad-22(e)(2) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, are clear and transparent; clearly prioritize the safety and efficiency of the covered clearing agency; and support the public interest requirements of the Exchange Act.<sup>35</sup> In adopting Rule 17Ad-22(e)(2), the Commission discussed comments it received regarding the concept of skin-in-the-game as a potential tool to align the various incentives of a covered clearing agency's stakeholders, including management and clearing members.<sup>36</sup> And, while the Commission declined to include a specific skin-in-the-game requirement in the rule, it

stated its belief that "the proper alignment of incentives is an important element of a covered clearing agency's risk management practices," and noted that skin-in-the-game "may play a role in those risk management practices in many instances."<sup>37</sup> OCC's current rules require the application management compensation and excess capital as skin-in-the-game, which in turn should help further align the interests of OCC's stakeholders, including OCC management and Clearing Members.<sup>38</sup>

As described above, OCC's proposal would not reduce the resources OCC would apply to address default losses or remove the current skin-in-the-game component of OCC's rules. Rather, OCC proposes to set aside a defined amount of capital for the sole purpose of absorbing losses and shortfalls arising out of a Clearing Member default. OCC has clearly stated the factors that the Board would consider when determining the amount of resources to hold as skin-in-the-game, a portion of which would comprise the Minimum Corporate Contribution. OCC also proposes to establish a clear process for addressing reductions in the Minimum Corporate Contribution arising out of a Clearing Member's default. Accordingly, the Commission believes that the proposed changes to establish a persistent minimum level of skin-in-the-game are consistent with Rule 17Ad-22(e)(2) under the Exchange Act.<sup>39</sup>

#### **IV. Conclusion**

*It is therefore noticed*, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to Advance Notice (SR-OCC-2021-801) and that OCC is *authorized* to implement the proposed change as of the date of this notice or the date of an order by the Commission approving proposed rule change SR-OCC-2021-003, whichever is later.

By the Commission.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

##### **Sunshine Act Meetings**

**TIME AND DATE:** 2:00 p.m. on Thursday, April 15, 2021.

<sup>37</sup> Covered Clearing Agency Standards, 81 FR at 70806.

<sup>38</sup> See CMP Approval Order at 5507.

<sup>39</sup> 17 CFR 240.17Ad-22(e)(2).

Notice. One commenter raised issues related solely to the consistency of the proposal with the requirements of Section 17A of the Exchange Act. See letter from Richard J. McDonald, Susquehanna International Group ("SIG"), dated March 30, 2021, to Vanessa Countryman, Secretary, Commission ("SIG Letter"), available at <https://www.sec.gov/comments/sr-occ-2021-003/srocc2021003.htm>.

Specifically, SIG expressed concern regarding (i) the extent to which OCC fees, dues, and other charges would be used to finance the equity windfall of OCC shareholders and their commercial interests and (ii) the effect of the proposal on the protection of investors and the public interest. The Commission's evaluation of the Advance Notice is conducted under the Clearing Supervision Act and, as noted above, generally considers whether the proposal will mitigate systemic risk and promote financial stability. The Commission notes that SIG has not explained or demonstrated how the retention of capital, derived from clearing fees, for use as skin-in-the-game would cause the proposal to be inconsistent with the Clearing Supervision Act. The SIG Letter is directed at the Proposed Rule Change and will be addressed in that context.

<sup>30</sup> 12 U.S.C. 5464(b).

<sup>31</sup> Covered Clearing Agency Standards, 81 FR at 70805-06.

<sup>32</sup> See Securities Exchange Act Release No. 87257 (Oct. 8, 2019), 84 FR 55194, 55199 (Oct. 15, 2019) (File No. SR-OCC-2019-805).

<sup>33</sup> See Financial Stability Oversight Council ("FSOC") 2012 Annual Report, Appendix A, <https://home.treasury.gov/system/files/261/here.pdf> (last visited Mar. 17, 2021).

<sup>34</sup> 12 U.S.C. 5464(b).

<sup>35</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>36</sup> Covered Clearing Agency Standards, 81 FR at 70805-06.

**PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

**CONTACT PERSON FOR MORE INFORMATION:**

For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: April 8, 2021.

**Eduardo A. Aleman,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-91481; File No. SR-Phlx-2021-19]

**Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx's Pricing Schedule at Options 7, Section 8, "Membership Fees"**

April 6, 2021.

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> notice is hereby given that on March 25, 2021, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 8, "Membership Fees."

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on April 1, 2021.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, 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.

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

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

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

Phlx proposes to amend its pricing within Options 7, Section 8, "Membership Fees" to (1) waive the Inactive Nominee Fee for a six month period; and (2) remove obsolete language. Each change is described below.

**Options 7, Section 8**

First, Phlx proposes to amend Options 7, Section 8, "Membership Fees," at Part A, "Permit and Registration Fees," to waive the Inactive Nominee<sup>3</sup> Fee which is a fee of \$600 for 6 months.<sup>4</sup> Phlx proposes to waive the Inactive Nominee Fee from April 1, 2021 through September 30, 2021. The Exchange notes that the Clerk Fee<sup>5</sup> of \$100 per month will continue to be assessed.

By way of background, on March 17, 2019 [sic],<sup>6</sup> Phlx suspended open outcry trading as a result of precautions taken with respect to COVID-19. When the Trading Floor reopened on June 3, 2020,<sup>7</sup> the Exchange permitted each Trading Floor member organization to

<sup>3</sup> The term "inactive nominee" shall mean a natural person associated with and designated as such by a member organization and who has been approved for such status and is registered as such with the Membership Department. An inactive nominee shall have no rights or privileges under a permit unless and until said inactive nominee becomes admitted as a member of the Exchange pursuant to the By-Laws and Rules of the Exchange. An inactive nominee merely stands ready to exercise rights under a permit upon notice by the member organization to the Membership Department on an expedited basis. See Options 8, Section 2(a)(3). An Inactive Nominee shall be deemed a Clerk pursuant to Options 8, Section 12(a). An inactive nominee's status expires after six months unless it has been reaffirmed in writing by the member organization or is sooner terminated. A member organization is assessed the Inactive Nominee Fee every time the status is reaffirmed. An inactive nominee is also assessed Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in their inactive nominee status. However, an inactive nominee is not assessed Application and Initiation Fees if such inactive nominee applied for membership without any lapse in that individual's association with a particular member organization. An Inactive Nominee is also assessed the Clerk Fee.

<sup>4</sup> The member organization is assessed \$100 per month for the applicable six month period unless the member organization provides proper notice of its intent to terminate an inactive nominee prior to the first day of the next billing month.

<sup>5</sup> The Clerk Fee is imposed on any registered on-floor person employed by or associated with a member or member organization pursuant to Options 3, Section 19, including Inactive Nominees pursuant to Options 8, Section 7. The Clerk Fee is not imposed on permit holders. See Phlx Rules at Options 7, Section 8A.

<sup>6</sup> See Options Trader Alert #2020-07.

<sup>7</sup> See Options Trader Alert #2020-13.