

appropriateness of the relevant Fund's participation in the Facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, CIM will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of each Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.<sup>2</sup> The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds involved to resolve the dispute.

16. Each Fund will maintain, and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the Facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the Interfund Loan Rate, the rate of interest available at the time each Interfund Loan is made on overnight repurchase agreements and bank borrowings, and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. The Fund Administration Department will prepare and submit (through CIM) to the Board of each Fund for review an initial report describing the operations of the Facility and the procedures to be implemented to ensure that all Funds are treated fairly. After commencement of the Facility, the Fund Administration Department will report on the operations of the credit facility at each Board's quarterly meetings. In addition, each Fund's chief compliance officer, as defined in rule 38a-1(a)(4) under the Act, shall prepare an annual report for its Board each year that the Fund participates in the Facility, which report evaluates the Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance. Each Fund's chief compliance officer will also annually file a certification pursuant to Item 77Q3 of Form N-SAR, as such Form may be revised, amended,

or superseded from time to time, for each year that the Fund participates in the Facility, that certifies that the Fund and CIM have established procedures reasonably designed to achieve compliance with the terms and conditions of the order. In particular, such certification will address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board of each Fund; and (e) that the Interfund Loan Rate does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

Additionally, each Fund's independent public accountants, in connection with their audit examinations of the Fund, will review the operation of the Facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N-SAR.

18. No Fund will participate in the Facility upon receipt of requisite regulatory approval unless it has fully disclosed in its prospectus and/or statement of additional information all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2016-20738 Filed 8-29-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78665; File No. SR-Phlx-2016-85]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Connectivity Fees at Chapter VIII of the NASDAQ PHLX LLC Pricing Schedule

August 24, 2016.

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 August 12, 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. 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 the Exchange's connectivity fees at Chapter VIII of the NASDAQ PHLX LLC Pricing Schedule to: (i) limit the total monthly fee a PSX Participant may be assessed for connectivity under the rule; and (ii) provide a waiver of all connectivity fees to new PSX Participants for a limited time; (iii) eliminate prorated billing; and (iv) change the name of the fees assessed under the rule.

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. 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 the proposed rule change is to amend the Exchange's connectivity fees under "Access Services Fees" at Chapter VIII of the NASDAQ PHLX LLC Pricing Schedule to: (i) limit the total monthly fee a PSX Participant may be assessed for connectivity under the rule; (ii) provide a waiver of all connectivity fees to new PSX Participants for a limited time; (iii) eliminate prorated billing; and (iv) change the name of the fees assessed

<sup>2</sup> If the dispute involves Funds with different Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

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

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

under the rule from “Access Services Fees” to “Port Fees,” as described further below. Access Services Fees include the choices for connecting to PSX and receipt of data therefrom, together with the fees assessed for that connectivity.

#### First Change

The purpose of the first change is to limit the overall costs to Participants for connecting to the Exchange by capping the total monthly fee a Participant may be assessed at \$30,000. The Exchange believes that the proposed fee cap will make PSX a more attractive venue for Participants, and help PSX both retain and attract new Participants. The proposed fee cap will apply to all Access Services<sup>3</sup> fees assessed under the rule, in aggregate and per Participant. Thus, a Participant may meet the \$30,000 per month fee cap with any combination of subscriptions provided under the rule.

#### Second Change

Similar to the first change, the purpose of the second change is to reduce the costs of connecting to the Exchange for market participants that are not currently Participants on PSX by providing a waiver of all connectivity fees under the rule to new PSX Participants for a limited time. Specifically, the Exchange is proposing to waive all Access Services Fees for every Participant that is a “new PSX Participant” through August 1, 2017. The Exchange is defining a “new PSX Participant” as a Participant that was not a Participant after July 1, 2016. The Exchange believes that the proposed fee waiver will make PSX a more attractive venue for prospective Participants.

#### Third Change

The purpose of the third change is to harmonize the billing practices for subscription to PSX ports under Access Services Fees with those of the Exchange’s Options Market by no longer applying a prorated fee for subscriptions that are effective other than the first of any given month.<sup>4</sup> The Exchange does not prorate options market connectivity subscriptions; thus, options participants would be assessed a full month’s fee for a connectivity subscription if they direct the Exchange to make the subscribed

connectivity live on any day of the month, including the last day thereof.<sup>5</sup>

Currently, connectivity on PSX under the rule is prorated based on the day that it is activated, with the PSX Participant only fee liable for the remaining days of the partial month. The Exchange has found that prorating billing has inserted complexity into the billing process. As a consequence, the Exchange is harmonizing the billing process with that of the Exchange’s Options market and not permitting prorated billing.

#### Fourth Change

The purpose of the fourth change is to rename the title of the section from “Access Services Fees” to “Port Fees,” which the Exchange believes is a more accurate description of the connectivity provided by the rule. In this regard, the Exchange notes that each connectivity option under the rule provides the Participant with a specific port, which is noted in the rule. The proposed name change in no way alters what is offered under the rule.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</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 designed to prevent fraudulent and manipulative acts and practices, 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; and are not designed to permit unfair

<sup>5</sup> For example, in a filing increasing an Order Entry Port Fee the Exchange noted:

The Exchange currently assesses an Order Entry Port Fee per month, per mnemonic of \$500. This fee is assessed on members regardless of whether the order entry mnemonic is active during the billing month. The fee is assessed regardless of usage, and solely on the number of order entry ports assigned to each member organization.

See Securities Exchange Act Release No. 68473 (December 19, 2012), 77 FR 76128 (December 26, 2012) (SR-Phlx-2012-140).

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

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

discrimination between customers, issuers, brokers, or dealers.

#### First Change

The Exchange believes that the first change is reasonable because it will limit the overall costs to Participants for connecting to the Exchange and may, in turn, attract new Participants and retain existing Participants. Attracting and retaining Participants will benefit all market participants on PSX by ensuring that the market remains deep and liquid. The fee cap may also provide incentive to Participants to subscribe to additional ports, potentially for the purpose of increasing their activity on PSX. Moreover, the proposed fee cap is set a level that will allow the Exchange to continue to cover costs associated with providing connectivity to PSX. For these reasons, the Exchange believes that the proposed fee cap is reasonable.

The Exchange believes that the first change is an equitable allocation and is not unfairly discriminatory because the Exchange will uniformly apply the same fee to all similarly situated members. In this regard, all Participants have the opportunity to take advantage of the fee cap to the extent their subscriptions exceed the \$30,000 per month level. Participants that are unwilling to subscribe to connectivity at a level that exceeds the fee cap will still benefit from the liquidity provided by Participants that have increased their connectivity and participation in the PSX market.

#### Second Change

The Exchange believes that the second change is reasonable because it will limit the overall costs incurred by new Participants in connecting to the Exchange, which may as a consequence attract new Participants. Attracting new Participants will benefit all market participants on PSX by ensuring that PSX remains deep and liquid. The Exchange believes that the second change is an equitable allocation and is not unfairly discriminatory because the Exchange will uniformly apply the same fee to all similarly situated Participants. In this regard, the Exchange is proposing to apply the fee waiver to new PSX Participants, which the Exchange proposes to define as a Participant that was not a Participant prior to July 1, 2016.

Limiting eligibility for the fee waiver, as described, will ensure that the waiver is only available to market participants that were not already considering becoming a Participant imminently, thus limiting the incentive to attracting truly new Participants. Waiving the fees for new Participants will ease the

<sup>3</sup> As discussed below, the Exchange is proposing to rename “Access Services Fees” under the rule as “Port Fees.”

<sup>4</sup> See NASDAQ PHLX LLC Pricing Schedule, Chapters VI.A, VI.B, VI.C, VII.A and VII.B. Chapter VII.B. is titled “Port Fees” and sets forth the connectivity choices for the Phlx Options market.

burden of participating on PSX, which may be a significant reason that such market participants have historically declined to become Participants. Thus, to the extent this waiver is successful, the proposed change will broaden participation on PSX, which will benefit all Participants by providing more liquidity.

#### Third Change

The Exchange believes that the third change is reasonable because it will reduce a complexity in the billing process and will harmonize it with the process applied to Exchange Options market participants. As noted above, Participants choose when they want a new connectivity subscription to begin and thus may make the determination of when they wish to be fee liable. Participants will continue to choose when they become fee liable under the proposed change, but now the Exchange will assess the full month's fee regardless of when the port is subscribed.

The Exchange believes that the third change is an equitable allocation and is not unfairly discriminatory because it will apply the same fee to all similarly situated Participants. Moreover, the Exchange believes the proposed change is an equitable allocation and is not unfairly discriminatory because it will harmonize the billing process with that of the Exchange's Options market. Thus, the Exchange will apply the same process to both its Options and Equities market Participants.

#### Fourth Change

The Exchange believes that the proposed renaming of the fee section under the rule further perfects the mechanism of a free and open market and a national market system, and, in general, promotes the public interest because the proposed new name is more reflective of the type of connectivity provided under the rule. Therefore, the Exchange believes that the proposed change will promote better market participant understanding over the scope and nature of the fees.

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

In this instance, the proposed changes generally reduce the fee burdens on Participants in an effort to attract and retain Participants, which benefits all market participants on PSX to the extent the incentives are effective. Although eliminating prorated fees for subscriptions under the rule will result in an increase in fees for new subscriptions, the Exchange notes that it is doing so to both simplify the process and harmonize it with the process applied to the Exchange's Options Participants.

The Exchange notes that participation on PSX is completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. Thus, to the extent that the proposed changes to the connectivity fees proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share and Participants as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

#### *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>8</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-2016-85 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2016-85. 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-2016-85 and should

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

be submitted on or before September 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016–20734 Filed 8–29–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78668; File No. SR–BOX–2016–28]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Order Approving a Proposed Rule Change To Expand the Short Term Option Series Program To Allow Wednesday Expirations for SPY Options

August 24, 2016.

#### I. Introduction

On June 30, 2016, BOX Options Exchange LLC (“BOX” or “Exchange”) 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 its rules governing the Short Term Option Series Program<sup>3</sup> to allow the listing and trading of options on the SPDR S&P 500 ETF Trust (“SPY”) with Wednesday expirations. The proposed rule change was published for comment in the **Federal Register** on July 13, 2016.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Under the terms of the current Short Term Option Series Program, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire on each of the next five Fridays, provided that such Friday is not a Friday in which monthly options series or Quarterly Options Series expire.<sup>5</sup>

The Exchange’s proposed rule change would expand the Short Term Option Series Program to permit BOX to open

for trading, on any Tuesday or Wednesday that is a business day, series of options on SPY that expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (“Wednesday SPY Expirations”).<sup>6</sup> Wednesday SPY Expirations would be subject to the same rules as the standard Short Term Option Series program,<sup>7</sup> with two exceptions. The Exchange proposes that the current limitation of no more than five Short Term Option Series expiration dates in a class<sup>8</sup> would not include any Wednesday SPY Expiration. Instead, the Exchange proposes a separate limit of five consecutive Wednesday SPY expiration dates<sup>9</sup> so that the Exchange could list five Short Term Option Series expiration dates for SPY expiring on Friday as well as five Wednesday SPY Expiration dates.<sup>10</sup> In addition, unlike other option series in the Short Term Option Series program, Wednesday SPY Expirations could expire in the same week in which monthly option series in the same class expire.<sup>11</sup>

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with section 6(b) of the Act.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, 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 Commission believes that the proposed rule change may provide the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in SPY options, thus allowing them to better manage their risk exposure.

In approving this proposal, the Commission notes that the Exchange has represented that it has an adequate surveillance program in place to detect manipulative trading in Wednesday SPY Expirations.<sup>14</sup> The Exchange further states that it has the necessary systems capacity to support the new options series.<sup>15</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR–BOX–2016–28) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016–20737 Filed 8–29–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78663; File No. SR–NYSEMKT–2016–80]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending and Restating the Second Amended and Restated Certificate of Incorporation of the Exchange’s Ultimate Parent Company, Intercontinental Exchange, Inc.

August 24, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on August 17, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have

<sup>9</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> See IM–5050–6 to BOX Rule 5050.

<sup>4</sup> See Securities Exchange Act Release No. 78243 (July 7, 2016), 81 FR 45346 (July 13, 2016) (“Notice”).

<sup>5</sup> See Securities Exchange Act Release No. 62505 (July 15, 2010), 75 FR 42792 (July 22, 2010).

<sup>6</sup> Under the proposal, the Exchange would expand the definition of “Short Term Option Series” in BOX Rule 100(a)(64) and add a description of Wednesday SPY Expirations in proposed IM–5050–6(c) to BOX Rule 5050. For further details, see Notice, *supra* note 4, at 45346.

<sup>7</sup> For example, Wednesday SPY Expirations would be subject to the same series limitations and strike interval rules as standard Short Term Option Series and would be P.M.-settled. See IM–5050–6(b) to BOX Rule 5050. See also Notice, *supra* note 4, at 45346–47.

<sup>8</sup> See IM–5050–6(a) to BOX Rule 5050.

<sup>9</sup> See proposed IM–5050–6(c) to BOX Rule 5050.

<sup>10</sup> See Notice, *supra* note 4, at 45346.

<sup>11</sup> See *id.*

<sup>12</sup> 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See Notice, *supra* note 4, at 45347.

<sup>15</sup> See *id.*

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.