

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79807; File No. SR-C2-2017-002]

### Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule

January 17, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 3, 2017, C2 Options Exchange, Incorporated (the “Exchange” or “C2”) 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 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 its Fees Schedule. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.c2exchange.com/Legal/>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The Exchange proposes to amend its Fees Schedule. The Exchange is adding fees for functionality related to its PULSe workstation. The Exchange is also making minor formatting updates to organize the footnotes in PULSe workstation section of its Fees Schedule.<sup>3</sup> The fees herein will be effective on January 3, 2017.

By way of background, the PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of the Exchange. Exchange Trading Permit Holders (“TPHs”) may also make workstations available to their customers, which may include TPHs, non-broker dealer public customers and non-TPH broker dealers.

##### Drop Copies

Financial Information eXchange (“FIX”) language-based connectivity, upon request, provides customers (both TPH and non-TPH) of TPHs that are brokers and PULSe users (“PULSe brokers”) with the ability to receive “drop-copy” order fill messages from their PULSe brokers. These fill messages allow customers to update positions, risk calculations and streamline back-office functions.

The Exchange is proposing a monthly fee to be assessed on TPHs who are either receiving or sending drop copies via a PULSe workstation. This fee will allow for the recoupment of costs of maintaining and supporting drop copy functionality. Whether the drop copy sender or receiver is assessed the fee is dependent upon whether the customer receiving the drop copies is a TPH or non-TPH.

If a customer receiving drop copies is a TPH, that TPH customer (the receiving TPH) will be charged a fee of \$1000 per month, per PULSe broker from whom it receives drop copies via PULSe. For example, if TPH customer A receives drop copies from each of PULSe broker A, PULSe broker B, and PULSe broker C (all of which are TPHs), TPH A (the receiving TPH) will be charged a fee of \$3000 per month for receiving drop copies via PULSe from PULSe brokers A, B and C (the sending TPHs).

If a customer receiving drop copies is a non-TPH, the PULSe broker (the sending TPH) who sends drop copies

via PULSe to that customer will be charged a fee of \$500 per month. If that PULSe broker sends drop copies via PULSe to multiple non-TPH customers, the PULSe broker will be charged the fee for each customer. For example, if PULSe broker A sends drop copies via its PULSe workstation to each of non-TPH customer A, non-TPH customer B and non-TPH customer C, PULSe broker A (the sending TPH) will be charged a fee of \$1500 per month for drop copies it sends via PULSe to non-TPH customers A, B and C (the receiving non-TPHs).

##### Non-PULSe-to-PULSe Routing

Upon request, the Exchange provides customers, both TPH and non-TPH, of PULSe brokers with the ability to transmit orders electronically to PULSe brokers’ PULSe workstations using order management systems other than PULSe (*i.e.*, non-PULSe-to-PULSe).<sup>4</sup> These customers utilize the existing infrastructure of such systems to send orders to their PULSe brokers electronically.

The Exchange is proposing a monthly fee payable by TPH customers who request non-PULSe-to-PULSe functionality. This fee will allow for the recoupment of costs of maintaining and supporting non-PULSe-to-PULSe routing functionality. A TPH customer sending orders electronically to PULSe brokers through these non-PULSe systems will be charged a fee of \$500 a month per PULSe broker to which the customer sends orders. For example, if TPH customer A transmits orders electronically through a non-PULSe order management terminal to PULSe workstations of each of PULSe broker A, PULSe broker B, and PULSe broker C, TPH customer A (the sending TPH) will be charged a fee of \$1500 per month for the ability to send orders electronically to the PULSe workstations of PULSe brokers A, B and C.<sup>5</sup> The Exchange does not assess any fee, to the PULSe broker or otherwise, for a non-TPH customer electing to use non-PULSe-to-PULSe routing functionality.

##### FIX Integration Drop Copy Start-Up/ Cancellation Fees

The Exchange is proposing fees for both the start-up and cancellation of the FIX integration needed to send and

<sup>4</sup> Non-PULSe-to-PULSe routing is an “add-on” feature to drop copy connectivity. If a TPH or non-TPH customer of a PULSe brokers elects to send orders through its third-party order management system to its broker’s PULSe workstations, it must also elect to have the drop copy connectivity.

<sup>5</sup> In addition, the TPH customer would be charged \$3,000/month for receiving drop copies from the three PULSe brokers, as discussed above.

<sup>37</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> The footnotes in the PULSe workstation section have been changed from asterisks to numerical footnotes to account for the increased volume of footnotes.

receive drop copies from PULSe workstations. The Exchange is proposing a one-time fee of \$500 to recoup the costs required to connect a new drop copy customer to workstations of its PULSe broker(s) and add the drop copy functionality for that customer. Additionally, the Exchange is proposing a one-time fee of \$500 for cancellation of the drop copy functionality to recoup the costs required to disconnect the cancelling drop copy customer from workstations of its PULSe broker(s) and remove the drop copy functionality for that customer. In the case of both start-up and cancellation, the fees are charged to the TPH who is charged for the drop copy connectivity (in the case of a TPH customer, the TPH customer that receives drop copies from PULSe broker; in the case of a non-TPH customer, the PULSe broker that sends drop copies to the non-TPH customer). If the TPH customer is charged these fees, each fee is \$500 for each PULSe broker to which the TPH customer requests to start or cancel drop copy functionality, as applicable. If the PULSe broker is charged these fees, each fee is \$500 for each non-TPH customer that requests to start or cancel drop copy functionality from that PULSe broker.

#### Routing Intermediary Certification and Inactivity Fees

Routing intermediaries route orders entered into PULSe to away markets and to route orders from non-TPH PULSe workstations to TPHs for entry and execution on the Exchange. Routing intermediaries are currently charged routing intermediary transactional fees for away market routing from any PULSe workstation for which it serves as the routing intermediary. The Exchange is proposing a \$5000 one-time fee for certification of a new PULSe routing intermediary. This fee will allow for the recoupment of costs of adding connectivity for the new routing intermediary, including connectivity to away-market routing technology, and testing necessary to support the new order routing features.

The Exchange is also proposing a routing intermediary inactivity fee of up to \$5000. The fees currently charged to routing intermediaries allow for the recoupment of costs of developing, maintaining, and supporting routing intermediary functionality, including away-market routing technology. If the Exchange is unable to collect sufficient fees in a year from a routing intermediary to cover these costs, the inactivity fee allows for sufficient recoupment of these costs for that year. The fee will be charged to a routing

intermediary each calendar year in which the routing intermediary has been charged Away-Market Routing Intermediary and Exchange Routing fees in the aggregate of less than \$5000. The inactivity fee will be reduced by the amount of any of these fees charged to the routing intermediary during a calendar year. For example, if a routing intermediary was charged an aggregate of \$4500 in Away-Market Routing Intermediary and Exchange Routing fees in the calendar year 2017, that routing intermediary would be assessed a \$500 routing intermediary inactivity fee. The routing intermediary inactivity fee may first be charged in the calendar year following the year in which the routing intermediary was charged the routing intermediary certification fee. A TPH that withdraws as a routing intermediary will not be charged an inactivity fee for the calendar year in which they withdrew.

#### OATS Reporting Fees

The Exchange is proposing a \$250 per month Order Audit Trail System ("OATS") reporting fee. The fee will be charged to any PULSe customer (TPH or non-TPH) who elects to receive daily transmission of OATS reports for its orders submitted through PULSe. This fee will allow for the recoupment of costs of developing, maintaining and supporting OATS reporting functionality.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be 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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</sup> which

requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that assessing a \$1000 per month fee on a TPH receiving drop copies from PULSe is reasonable because the Exchange incurs costs to monitor, develop and implement upgrade, maintain and customize PULSe to ensure the TPH customer receives timely and accurate drop copies. The Exchange believes the fee is equitable and not unfairly discriminatory because the monthly fee is assessed to any TPH electing to receive drop copies from a PULSe broker. Use of the drop copy functionality by a TPH customer is voluntary.

The Exchange believes that assessing a \$500 per month fee on a TPH sending drop copies from PULSe to a non-TPH customer is reasonable because the Exchange incurs costs to monitor, develop and implement upgrades, maintain and customize PULSe to ensure a non-TPH customer receives timely and accurate drop copies. The Exchange believes the fee is equitable and not unfairly discriminatory because the monthly fee is assessed equally to any TPH sending drop copies to its non-TPH customers. The Exchange believes that assessing a TPH sending drop copies to a non-TPH a monthly fee of \$500, as opposed to the \$1000 per month rate assessed to TPH customers receiving drop copies from PULSe, is reasonable, equitable, and not unfairly discriminatory. Specially, the lower rates are designed to encourage non-TPH market participants to interact with the Exchange, which will accordingly attract more volume and liquidity to the Exchange and benefit all Exchange participants through increased opportunities to trade. Use of the drop copy functionality by a non-TPH customer is voluntary.

The Exchange believes that assessing a \$500 per month fee for a TPH customer electing to use non-PULSe-to-PULSe routing functionality (in addition to receiving drop copies) is reasonable because the Exchange incurs costs to monitor, develop and implement upgrades, maintain and customize PULSe to ensure a reliable connection between a TPH customer and its PULSe broker through which the customer's orders reach the PULSe broker in a timely and accurate manner. The Exchange believes the fee is equitable and not unfairly discriminatory because the monthly fee is assessed equally to any TPH electing to use the non-PULSe-to-PULSe routing functionality. The

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

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

Exchange does not assess any fee, to the PULSe broker or otherwise, for a non-TPH customer electing to use non-PULSe-to-PULSe routing functionality. The Exchange believes not assessing a fee for a non-TPH customer electing to use non-PULSe-to-PULSe routing functionality is reasonable, equitable, and not unfairly discriminatory in that it is designed to encourage non-TPH market participants to interact with the Exchange, which will accordingly attract more volume and liquidity to the Exchange and benefit all Exchange participants through increased opportunities to trade. Use of non-PULSe-to-PULSe routing functionality is voluntary.

The Exchange believes that assessing a TPH sending drop copies to a non-TPH a monthly \$500, as opposed to the \$1,000 per month rate assessed to TPH customers receiving drop copies from PULSe, is reasonable, equitable, and not unfairly discriminatory. The lower rates are designed to encourage non-TPH market participants to interact with the Exchange, which will accordingly attract more volume and liquidity to the Exchange and benefit all Exchange participants through increased opportunities to trade.

The Exchange believes that assessing a \$500 one-time fee for FIX integration necessary to receive or send drop copies from PULSe is reasonable because the Exchange incurs costs in the setup of a new FIX connection to allow the receiving and sending of drop copies via PULSe. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed equally to any TPH electing to receive drop copies from PULSe brokers or to any TPH electing to send drop copies to a non-TPH customer.

The Exchange believes that assessing a \$500 one-time fee for the cancellation of a FIX connection necessary to receive or send drop copies from PULSe is reasonable because the Exchange incurs costs in the shutting down of a FIX connection. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed equally to any TPH electing to cancel a FIX connection to a PULSe broker or to a PULSe broker electing to cancel a connection to a non-TPH customer.

The Exchange believes that assessing a \$5000 one-time fee for the certification of a new PULSe routing intermediary is reasonable because the Exchange incurs costs to develop connectivity for the routing intermediary and test the routing functionality to Exchange and away marketplaces. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed

to every TPH who elects to become a routing intermediary on PULSe. Becoming a routing intermediary is voluntary.

The Exchange believes that assessing a routing intermediary inactivity fee of up to \$5000 in years in which a routing intermediary pays less than that amount in fees is reasonable because the Exchange incurs costs to maintain, monitor, upgrade and test routing intermediary connections. The fees are assessed to cover those Exchange costs in the event the costs are not recovered via routing intermediary transaction fees. The Exchange believes the fee is equitable and not unfairly discriminatory as it will be assessed to any routing intermediary and only to the extent the TPH's routing intermediary transaction fees are less than \$5000 in a calendar year.

The Exchange believes that assessing a \$250 a month fee for the daily transmission of OATS reports from PULSe is reasonable because the Exchange incurs costs to monitor, develop and implement upgrades, maintain and customize PULSe to allow sending and receiving of OATS reports. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed to all customers electing to receive daily OATS reports.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule changes will impose any burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed PULSe-related fees relate to optional reports and/or functionality and are assessed equally on PULSe users or TPH electing to use the functionality and/or receive the reports. The Exchange does not believe that the proposed change will cause any unnecessary burden on intermarket competition because the proposed relate to use of an Exchange-provided order entry system. To the extent that any proposed change makes the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Exchange market participants.

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

The Exchange neither solicited nor received comments on the proposed rule change.

#### **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) of the Act<sup>9</sup> and paragraph (f) of Rule 19b-4<sup>10</sup> thereunder. 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 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 will institute proceedings 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](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2017-002 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-C2-2017-002. 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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f).

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-C2-2017-002 and should be submitted on or before February 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Eduardo A. Aleman,**

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79805; File No. SR-Phlx-2016-82]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a New Exception in Phlx Rule 1000(f) for Sub-MPV Split-Price Orders

January 17, 2017.

#### I. Introduction

On August 3, 2016, NASDAQ PHLX LLC (the "Exchange" or "Phlx") 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 provide an additional exception to the mandatory use of the Exchange's Floor Broker Management System ("FBMS") pursuant to Rule 1000(f)(iii) to permit Floor Brokers to execute certain sub-minimum price variation ("sub-MPV") split-price orders in the trading crowd. The proposed rule

change was published for comment in the **Federal Register** on August 22, 2016.<sup>3</sup> On October 3, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 20, 2016.<sup>4</sup> On November 17, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On December 9, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>6</sup> The Commission received no comments on the proposed rule change. This order provides notice of filing of Amendment No. 1 and approves the proposal, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposal<sup>7</sup>

### A. Background

Currently, Phlx Rule 1000(f) requires that all Exchange options transactions be executed in one of the following three ways: "(i) [a]utomatically by the Exchange Trading System pursuant to Rule 1080 and other applicable options rules; (ii) by and among members in the Exchange's options trading crowd none of whom is a Floor Broker; or (iii) through the Options [FBMS] for trades involving at least one Floor Broker."<sup>8</sup> Although a Floor Broker may represent orders in the trading crowd, a Floor

Broker is not permitted to execute an order in the trading crowd unless one of three exceptions applies.<sup>9</sup> The exceptions to the mandatory use of the FBMS<sup>10</sup> are set forth in Phlx Rule 1000(f)(iii). These exceptions allow a Floor Broker to execute a transaction in the trading crowd (rather than through the FBMS) if: (i) There is a problem with Exchange's systems; (ii) the Floor Broker is executing the trade pursuant to Phlx Rule 1059 ("Accommodation Transactions") or Phlx Rule 1079 ("Flex Index, Equity and Currency Options"); or (iii) the transaction involves a multi-leg order with more than 15 legs.<sup>11</sup>

### B. Split-Price Order Exception Proposal

Phlx Rule 1014(g)(i)(B) provides a priority rule regarding open outcry split-price transactions in equity options and options overlying ETFs to permit a member who is responding to an order for at least 100 contracts who buys (sells) at least 50 contracts at a particular price to have priority over all others in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price without being required to yield to existing customer interest in the limit order book.<sup>12</sup> Absent Phlx Rule 1014(g)(i)(B), such orders would be required to yield priority. The Exchange states that "[t]he purpose behind the split-price priority exception was 'to bring about the execution of large orders, which by virtue of their size and the need to execute them at multiple

<sup>9</sup> See Phlx Rule 1000(f)(iii).

<sup>10</sup> The original FBMS ("FBMS 1") began operating in 2005. The Exchange retired FBMS 1 on March 31, 2016 after operating it concurrently with the Exchange's enhanced FBMS ("FBMS 2"), which was made available on March 7, 2014. As of April 1, 2016, the Exchange only operated FBMS 2. See Notice, *supra* note 3, at 56725. On November 3, 2016, the Exchange implemented FBMS 3 and retired FBMS 2. According to the Exchange, FBMS 3 is currently the sole operating version of FBMS on the Exchange. See Amendment No. 1, *supra* note 6, at 3 and 8-10. References throughout this Order to "FBMS" refer to FBMS 3.

<sup>11</sup> See Notice, *supra* note 3, at 56726. See also Phlx Rule 1000(f)(iii)(A)-(C). According to the Exchange, each time a Floor Broker uses one of the current exceptions to Phlx Rule 1000(f)(iii), the Floor Broker is required by Phlx Rule 1063(e)(ii), to record the information required by Phlx Rule 1063(e)(i) on paper trade tickets. The Exchange further represents that a Floor Broker may only represent an order for execution that has been timestamped with the time of entry on the trading floor. In addition, according to the Exchange, once an execution occurs, the trade ticket must be stamped with the time of execution of such order. See Notice, *supra* note 3, at 56726 and Amendment No. 1, *supra* note 6, at 11.

<sup>12</sup> See Notice, *supra* note 3, at 56726 (citing Securities Exchange Act Release No. 51820 (June 10, 2005), 70 FR 35759 (June 21, 2005) (SR-Phlx-2005-28)) (approving pilot). See also Securities Exchange Act Release No. 55993 (June 29, 2007), 72 FR 37301 (July 9, 2007) (SR-Phlx-2007-44) (permanent approval).

<sup>11</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>7</sup> A more detailed description of the proposal appears in the Notice and in Amendment No. 1.

<sup>8</sup> See Phlx Rule 1000(f).