

other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

17. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

18. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The

Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

19. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

20. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in FINRA Rule 2341.

21. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019-25068 Filed 11-19-19; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-87537; File No. SR-Phlx-2019-48]**

### **Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Customer Rebate Program**

November 14, 2019.

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 November 1, 2019, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities

and Exchange Commission ("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 Customer Rebate Program, as set forth in the Pricing Schedule at Options 7, Section 1, Part B.

The text of the proposed rule change is available on the Exchange's website 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 the proposed rule change is to amend the Exchange's Customer Rebate Program, as set forth in the Pricing Schedule at Options 7, Section 1, Part B. As described in greater detail below, the Exchange proposes to adopt an alternative method for members or member organizations (hereinafter, "members") to qualify for the program's Tier 2 rebates based on the member meeting a certain percentage threshold of total national Customer<sup>3</sup> volume in multiply-listed options classes, reaching the Monthly Firm Fee Cap,<sup>4</sup> and meeting the

<sup>3</sup> The term "Customer" applies to any transaction that is identified by a member for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)). See Options 7, Section 1.

<sup>4</sup> Firms are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap"). Firm Floor Option

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

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

Exchange's Market Access and Routing Subsidy ("MARS") System Eligibility<sup>5</sup> requirements. With the proposed changes, the Exchange seeks to attract additional liquidity and order flow to the Exchange, which will benefit all market participants from increased opportunities for price improvement.

Background

Options 7, Section 4 sets forth a Monthly Firm Fee Cap that limits, or caps, at \$75,000 per month the Firm<sup>6</sup> Floor Option Transaction Charges and

Firm QCC Transaction Fees incurred by members trading in their own proprietary account.<sup>7</sup> The Monthly Firm Fee Cap is designed to provide an incentive for members to bring additional Firm floor and QCC order flow to the Exchange.

Options 7, Section 6, Part E sets forth the Exchange's MARS program, which provides rebates to qualifying members with System Eligibility and that execute the requisite number of Eligible Contracts<sup>8</sup> in a month. MARS is designed to attract electronic equity and

ETF options volume to the Exchange, particularly electronic Firm, Broker-Dealer,<sup>9</sup> JBO<sup>10</sup> and Professional<sup>11</sup> order flow.

As set forth in Options 7, Section 1, Part B, the Exchange presently offers a Customer Rebate Program that is designed to attract electronic Customer order flow to the Exchange. In particular, the program consists of the following five tiers that pay Customer rebates on four Categories, A,<sup>12</sup> B,<sup>13</sup> C,<sup>14</sup> D,<sup>15</sup> of transactions:<sup>16</sup>

Customer Rebate Tiers	Percentage Thresholds of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (monthly)	Category A	Category B	Category C	Category D
Tier 1 .....	0.00%–0.60% .....	\$0.00	\$0.00	\$0.00	\$0.00
Tier 2 .....	Above 0.60%–1.10% .....	0.10	0.10	0.16	0.21
Tier 3 .....	Above 1.10%–1.60% .....	0.15	0.12	0.18	0.22
Tier 4 .....	Above 1.60%–2.50% .....	0.20	0.16	0.22	0.26
Tier 5 .....	Above 2.50% .....	0.21	0.17	0.22	0.27

A Phlx member qualifies for a particular Customer Rebate Tier based on the percentage of total national Customer volume in multiply-listed options that it transacts monthly on the Exchange. Specifically, the Exchange

totals Customer volume in multiply listed options (including SPY) that is electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o), and calculates

this as a percentage of total national customer volume in multiply-listed equity and ETF options classes, excluding SPY. Members under

Transaction Charges and QCC Transaction Fees, as set forth in Options 7, Section 4, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Firm Fee Cap. NDX and NDXP Options Transactions will be excluded from the Monthly Firm Fee Cap. Reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) will be included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap. See Options 7, Section 4.

<sup>5</sup> To qualify for MARS, a Phlx member's routing system (hereinafter "System") would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx's API to access current Phlx match engine functionality. Further, the member's System would also need to cause Phlx to be the one of the top five default destination exchanges for individually executed marketable orders if Phlx is at the national best bid or offer ("NBBO"), regardless of size or time, but allow any user to manually override Phlx as a default destination on an order-by-order basis. Notwithstanding the above, with respect to Complex Orders a Phlx member's routing system would not be required to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. Any Phlx member would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies Phlx that it appears to be robust and reliable. The member remains solely responsible for implementing and operating its system. See Options 7, Section 6, Part E.

<sup>6</sup> The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC. See Options 7, Section 1.

<sup>7</sup> The Firm Floor Option Transaction Charges and QCC Transaction Fees are set forth in Options 7, Section 4. QCC Transaction Fees apply to both electronic and floor QCC orders.

<sup>8</sup> Eligible Contracts include the following: Firm, Broker-Dealer, Joint Back Office or "JBO" or Professional equity option orders that are electronically delivered and executed. Eligible Contracts do not include floor-based orders, qualified contingent cross or "QCC" orders, price improvement or "PIXL" orders, Mini Option orders or Singly Listed Orders. Options overlying NDX and NDXP are not considered Eligible Contracts. See Options 7, Section 6, Part E.

<sup>9</sup> The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

<sup>10</sup> The term "Joint Back Office" or "JBO" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Exchange Rule 703.

<sup>11</sup> The term "Professional" applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(14) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

<sup>12</sup> The Category A Rebate is paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer

Simple Orders in Non-Penny Pilot Options in Options 7, Section 4 symbols.

<sup>13</sup> The Category B Rebate is paid on Customer PIXL Orders in Options 7, Section 4 symbols that execute against non-Initiating Order interest. In the instance where member qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order are paid a rebate of \$0.14 per contract. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order for Simple PIXL Orders.

<sup>14</sup> The Category C Rebate is paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options in Options 7, Section 4 symbols. Rebates are paid on Customer PIXL Complex Orders in Options 7, Section 4 symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order are not paid a rebate under any circumstances. The Category C Rebate is not paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order.

<sup>15</sup> The Category D Rebate is paid to members executing electronically-delivered Customer Complex Orders in Non-Penny Pilot Options in Options 7, Section 4 symbols. Rebates are paid on Customer PIXL Complex Orders in Options 7, Section 4 symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order are not paid a rebate under any circumstances. The Category D Rebate is not paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order.

<sup>16</sup> Rebates are not paid on NDX or NDXP contracts in any Category; however, NDX and NDXP contracts count toward the volume requirement to qualify for a Customer Rebate Tier.

Common Ownership<sup>17</sup> may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Affiliated Entities<sup>18</sup> may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates.

#### Proposal

The Exchange now proposes to adopt an alternative method for members to qualify for the applicable Tier 2 rebates described above. As discussed above, the proposed alternative will be based on the member meeting a certain percentage threshold of total national Customer volume in multiply-listed options classes, reaching the Monthly Firm Fee Cap, and meeting the MARS System Eligibility requirements. Specifically, the Exchange proposes to add the following language at the end of Options 7, Section 1, Part B: “The Exchange will pay the applicable Tier 2 rebates to qualifying members or member organizations, qualifying affiliates under Common Ownership, or qualifying Affiliated Entities, provided they: (1) Execute a Percentage Threshold of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (monthly), of above 0.25%; (2) reach the Monthly Firm Fee Cap as defined in Options 7, Section 4; and (3) meet the MARS System Eligibility requirements as provided in Options 7, Section 6, Part E.”

#### Applicability to and Impact on Participants

The proposed change is designed to incentivize members who reach the Monthly Firm Fee Cap and have MARS System Eligibility to increase their electronic Customer volume to qualify for the applicable Tier 2 rebates. The proposal may correspondingly encourage members to qualify for the Monthly Firm Fee Cap and the MARS System Eligibility requirements (which should increase Firm floor volume and Firm QCC volume as well as electronic Firm, Broker-Dealer, JBO and Professional volume). The Exchange notes that all market participants stand

<sup>17</sup> The term “Common Ownership” shall mean members or member organizations under 75% common ownership or control. See Options 7, Section 1.

<sup>18</sup> The term “Affiliated Entity” is a relationship between an Appointed MM and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Members under Common Ownership may not qualify as a counterparty comprising an Affiliated Entity. Each member may qualify for only one (1) Affiliated Entity relationship at any given time. See Options 7, Section 1.

to benefit from increased volume, which facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>19</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>20</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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

#### The Proposal is Reasonable

The Exchange believes that the proposed alternative method to qualify for the applicable Tier 2 rebates in the Customer Rebate Program is reasonable for several reasons. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>21</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including tiered rebates that apply based upon members achieving certain

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

<sup>20</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>21</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

volume thresholds.<sup>22</sup> Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors. The Exchange’s proposal is designed to attract additional liquidity and order flow to the Exchange, similar to other exchange programs with competitive pricing programs,<sup>23</sup> thereby promoting market depth, price discovery and improvement, and enhancing order execution opportunities for market participants. As discussed above, the proposed changes provide an additional opportunity for members to earn the applicable Tier 2 Customer rebates if they execute a percentage threshold of national Customer volume in multiply-listed equity and ETF options classes, excluding SPY options, of above 0.25% on the Exchange, reach the Monthly Firm Fee Cap, and have MARS System Eligibility. Today, the Exchange provides the same Tier 2 rebates to members that execute a percentage threshold of national Customer volume in multiply-listed equity and ETF options classes, excluding SPY options, of above 0.60% to 1.10% on the Exchange. This proposal would offer members an alternative route to earn the same Tier 2 rebates, provided they meet the lower percentage threshold of above 0.25% and also qualify for both the Monthly Firm Fee Cap and the MARS System Eligibility requirements. The Exchange believes that the proposed percentage threshold is set at an appropriate level that would encourage members to bring more Customer order flow to the Exchange to qualify for the applicable Tier 2 rebates. While the Exchange cannot predict with certainty whether any members would avail themselves of the proposed incentive

<sup>22</sup> See, e.g., NYSE American Options Fee Schedule, Section I.E (setting forth the American Customer Engagement (“ACE”) Program that provides tiered customer credits on customer electronic volume, provided the member achieves certain total industry customer equity and ETF option average daily volume percentage thresholds), Section I.H (setting forth the Professional Step-Up Incentive that provides discounted rates or credits, as applicable, to professional customer, broker-dealer, non-NYSE American Options market maker, and firm ranges, and also ties some of these benefits to the ACE Program), and Section I.I (setting forth the Firm Monthly Fee Cap that caps at \$100,000 per month the fees associated with Firm Manual transactions, and also lowers the firm fee cap for members that achieve the applicable ACE Program tiers).

<sup>23</sup> *Id.*

given that this incentive is new, assuming historical behavior can be predictive of future behavior, the Exchange believes that at present participation rates, almost 30% of active firms on the Exchange have comparable trading volume in the Customer category. The Exchange also believes that the proposed lower percentage threshold (*i.e.*, above 0.25% versus the current Tier 2 threshold of above 0.60% to 1.10%) is reasonable because members must meet additional qualifications (*i.e.*, reach the Monthly Firm Fee Cap and have MARS System Eligibility) under the proposed alternative method to receive the Tier 2 rebates on Customer transactions.

Furthermore, the Exchange believes that its proposal will encourage members to increase the amount of Customer order flow directed to the Exchange. In addition, because members will also be required to reach the Monthly Firm Fee Cap and have MARS System Eligibility to receive the applicable Tier 2 Customer rebates, the proposed program may encourage members to direct Firm floor and QCC order flow as well as electronic Firm, Broker-Dealer, JBO and Professional order flow, in addition to electronic Customer order flow. The Exchange notes that all market participants stand to benefit from increased order flow—whether Customer, Firm, Broker-Dealer, JBO or Professional, and whether floor or electronic—as such increase promotes market depth, facilitates tighter spreads, enhances price discovery, and may lead to an increase in order flow from other market participants that would not otherwise qualify for the proposed alternative route to the Tier 2 Customer rebates.

#### The Proposal Is an Equitable Allocation of Rebates

The Exchange believes that its proposal is an equitable allocation of the applicable Tier 2 rebates. The proposal is based on the amount and type of business transacted on the Exchange, and members can opt to avail themselves of these rebates or not. Furthermore, this proposal is designed to encourage members to bring and execute their order flow (particularly electronic Customer volume and, in turn, Firm floor, QCC, and electronic Firm, Broker-Dealer, JBO and Professional volume) to the Exchange. To the extent at the proposed changes attract such additional volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed changes

would improve market quality for all market participants on the Exchange, and increase its attractiveness to existing and prospective members.

#### The Proposal Is Not Unfairly Discriminatory

The Exchange believes that its proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the options market.

As discussed above, the proposal is based on the amount and type of business transacted on the Exchange, and members are not obligated to try to achieve the proposed alternative route to the Tier 2 Customer rebates. Rather, the proposal is designed to encourage these members to bring additional order flow (particularly electronic Customer volume and, in turn, Firm floor, QCC, and electronic Firm, Broker-Dealer, JBO and Professional volume) to the Phlx market, improving market quality and price discovery. The Exchange believes that the proposed qualification for the Tier 2 Customer rebates is not unfairly discriminatory because to the extent the proposed changes attract more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, among other things. As noted above, all market participants stand to benefit from increased order flow—whether Customer, Firm, Broker-Dealer, JBO or Professional, and whether floor or electronic—as such increase promotes market depth, facilitates tighter spreads, enhances price discovery, and may lead to an increase in order flow from other market participants that would not otherwise qualify for the proposed alternative route to the Tier 2 Customer rebates. Thus, the Exchange believes the proposed changes will help to improve market quality and the attractiveness of the Exchange's options market to all existing and prospective members.

#### 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.

#### Intramarket Competition

The proposed amendments to the Exchange's Customer Rebate Program described above do not impose an undue burden on intra-market competition. By fortifying participation in this program, the proposed changes are designed to attract additional order flow (particularly electronic Customer volume and, in turn, Firm floor, QCC, and electronic Firm, Broker-Dealer, JBO and Professional volume) to the Exchange. The Exchange believes that its proposal would incentivize market participants to direct additional volume to the Exchange. As noted above, all market participants stand to benefit from increased order flow as such increase promotes market depth, facilitates tighter spreads, enhances price discovery, and may attract additional liquidity and volume to the Exchange. For these reasons, the Exchange does not believe that its proposal will place any category of Exchange market participant at a competitive disadvantage.

#### Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of 16 competing options exchanges 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 and rebates to remain competitive with other exchanges and to attract order flow to the Exchange. Because competitors are free to modify their own fees and rebates in response, the Exchange believes that the degree to which pricing changes in this market may impose any burden on competition is extremely limited.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share 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>24</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-2019-48 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2019-48. 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 website (<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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2019-48 and should be submitted on or before December 11, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019-25103 Filed 11-19-19; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 33683; 812-14364]

**Fidelity Beach Street Trust, et al.; Notice of Application**

November 14, 2019.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for exemptive relief.

**SUMMARY OF APPLICATION:** Applicants request an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. If granted, the requested order would permit registered open-end investment companies that are exchange-traded funds ("ETFs") and are actively managed to operate without

being subject to a daily portfolio transparency condition.

**APPLICANTS:** Fidelity Management & Research Company and FMR Co., Inc. (collectively, "FMR"); Fidelity Beach Street Trust (the "Trust"); and Fidelity Distributors Corporation.

**FILING DATES:** The application was filed on September 26, 2014, and amended on January 26, 2018, May 18, 2018, August 8, 2018, April 30, 2019, June 7, 2019, July 16, 2019, October 15, 2019, October 22, 2019 and November 8, 2019.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 9, 2019, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090; Applicants: Fidelity Beach Street Trust, Fidelity Management & Research Company, FMR Co., Inc., and Fidelity Distributors Corporation, 245 Summer Street, Boston, Massachusetts 02210.

**FOR FURTHER INFORMATION CONTACT:** Bradley Gude, Senior Counsel; Andrea Ottomanelli Magovern, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

**I. Introduction**

1. Applicants seek to introduce a novel type of actively-managed ETF that would not be required to disclose its portfolio holdings on a daily basis (each, a "Fund"). Due to their characteristics, ETFs (including those proposed by Applicants) are only permitted to operate in reliance on Commission exemptive relief from certain provisions

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>25</sup> 17 CFR 200.30-3(a)(12).