October 1, 2025

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

RE: File No. SR-Phlx-2025-30; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Methodology for its Options Regulatory Fee (ORF) as of January 2, 2026

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] submits this comment letter to the Securities and Exchange Commission (the "Commission" or "SEC") in response to the proposal ("Proposal") by Nasdaq Phlx LLC ("Phlx" or "Exchange") to amend its fee schedule to change the methodology by which it assesses the options regulatory fee ("ORF") to only charge the ORF on customer transactions executed on the Exchange.[2] Nasdaq is proposing the same methodology change for its five other options exchanges, with an effective date of January 2, 2026.[3] Nasdaq's options exchanges currently use the ORF to cover the vast majority of their "Options Regulatory Costs" and are not proposing to change this aspect of the ORF.[4] As described below, SIFMA requests that the SEC review whether the ORF continues to be an appropriate mechanism for listed options exchanges to fund their regulatory costs. Given the significant changes in the options marketplace since the ORF was established in 2008 and the continuing, unresolved flaws with the ORF funding structure, SIFMA believes that the ORF

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] Release No. 34-103620 (Aug. 1, 2025), 90 FR 37918 (Aug. 6, 2025).

[3] Release No. 34-103559 (July 28, 2025), 90 FR 36074 (July 31, 2025); Release No. 34-103617 (Aug. 1, 2025), 90 FR 37912 (Aug. 6, 2025); Release No. 34-103558 (July 28, 2025), 90 FR 36080 (July 31, 2025); Release No. 34-103618 (Aug. 1, 2025), 90 FR 37910 (Aug. 6, 2025); Release No. 34-103619 (Aug. 1, 2025), 90 FR 37931 (Aug. 6, 2025).

[4] Phlx notes that "[t]he regulatory costs for options comprise a subset of the Exchange's regulatory budget that is specifically related to options regulatory expenses and encompasses the cost to regulate all member organizations' options activity ("Options Regulatory Cost")." 90 FR at 37919, at n. 9.

should be eliminated and the options exchanges should fund regulatory costs out of their own revenues.

While the SEC undertakes this review, SIFMA supports the implementation of Phlx's Proposal to change its ORF assessment methodology, as well as the identical proposals from Nasdaq's other options exchanges, as they represent an improvement over Nasdaq's current ORF methodology. SIFMA includes certain recommendations below intended to help SIFMA members manage the implementation process of the new ORF assessment methodology proposed by Phlx and Nasdaq's other options exchanges, as well as any other options exchange that moves to this Nasdaq model.

The Proposal

Phlx proposes to change the methodology by which it assesses the ORF. As Phlx notes in the Proposal, Phlx currently assesses its ORF for each customer option transaction that is either: (1) executed by a member organization on Phlx; or (2) cleared by a Phlx member organization at the Options Clearing Corporation ("OCC") in the Customer range,[5] even if the transaction was executed by a non-member organization of Phlx, *regardless of the exchange on which the transaction occurs*. If the OCC clearing member is a Phlx member organization, ORF is assessed and collected on all cleared Customer contracts by that member (after adjustment for clearing member trade assignment ("CMTA") processing at OCC). If the OCC clearing member is not a Phlx member organization, the ORF is collected only on that firm's cleared Customer contracts that were executed at Phlx, taking into account any CMTA instructions which may result in collecting the ORF from another firm. Phlx's current ORF rate is $0.0024 per contract side.[6]

Under the Proposal, Phlx would continue to assess the ORF only on Customer options transactions, but would assess the ORF on Phlx member and non-member organizations *only for executions that occur on the Exchange*. Specifically, the ORF would continue to be collected by OCC on behalf of Phlx from Phlx member organizations and non-member organizations for all Customer transactions executed on Phlx, taking into account adjustments for CMTAs that were provided to Phlx the same day as the trade. In other words, the Exchange would bill ORF according to the clearing instructions provided on the execution and would not take into

[5] Phlx notes that "[c]urrently, the ORF is assessed by Phlx and collected via the OCC from Customers, Professional Customers, and Broker-Dealers that are not affiliated with a clearing member. These market participants clear in the ''C'' range at OCC." 90 FR at 37919, at n. 3.

[6] In a filing the Commission put out for public notice and comment on September 17, 2025, Phlx is reducing its ORF rate as of October 1, 2025 from $0.0024 to $0.0003, a significant decrease. In its filing, Phlx stated the reduction is a result of "fines collected by the Exchange in connection with a disciplinary matter [that] offset Options Regulatory Cost." See Release No. 34-103994, (Sept. 17, 2025), 90 FR 45423 (Sept. 22, 2025) (Nasdaq's other five options exchanges made similar filings to reduce their ORF rates). Reducing the ORF rate to a de minimis amount—for example, applying Phlx's new rate to both contract sides of 25 million options contracts would generate $15,000—calls into question the necessity of the ORF to fund the regulatory costs of a public company like Nasdaq, which has a market capitalization of around $50 billion.

consideration CMTA changes or transfers that occur at OCC. To account for this change, Phlx proposes that its current ORF rate of $0.0024 per contract side be increased to $0.0150 per contract side as of January 2, 2026.

As noted in the Proposal, Phlx's current ORF covers a material portion of the Exchange's Options Regulatory Costs, which consist of its supervision and regulation of member organizations' transactions, including performing routine surveillances, investigations, examinations, financial monitoring, as well as policy, rulemaking, interpretive, and enforcement activities. According to Phlx, Options Regulatory Costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. Direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillance, investigations, and examinations. Indirect expenses are only those expenses that are in support of the regulatory functions, including support from the Office of the General Counsel, technology, finance, and internal audit functions. Phlx further notes that indirect expenses will not exceed 35% of its total Options Regulatory Costs, with direct expenses being 65% or more of total Options Regulatory Costs. Phlx is not proposing to change these aspects of the ORF.

While Phlx does not provide in the Proposal an exact percentage of Options Regulatory Costs that it currently funds through the ORF, SIFMA understands that Phlx currently funds the vast majority of such costs through the ORF. Under the Proposal, Phlx is proposing to adopt a percentage guideline regarding how much Options Regulatory Costs Phlx will fund through the ORF, stating that it will endeavor to ensure that ORF revenue will not exceed 82% of its Options Regulatory Costs.

Discussion

SIFMA urges the SEC to review the appropriateness of Phlx and the other options exchanges funding the vast majority of their regulatory costs through ORF charges on Customer options transactions. As for-profit companies, it is long past time for the options exchanges to move away from this structure of subsidizing their regulatory costs through these charges and instead fund these costs out of their own revenues. While the SEC conducts such a review, SIFMA supports the model proposed by Phlx in which the ORF is assessed only for on-exchange Customer transactions. SIFMA includes for the Commission's consideration certain recommendations on how this new model should be implemented, including that it be adopted by all options exchanges to prevent market distortions.

The ORF Should be Eliminated

In considering Phlx's Proposal, SIFMA members held multiple discussions regarding how SIFMA should respond to it. Recognizing that it is an improvement over Phlx's current ORF methodology (and that of the other options exchanges), SIFMA members nonetheless ultimately concluded that the ORF has no place in today's options marketplace. The listed options marketplace that existed when Cboe initially established an ORF in 2008 as a replacement for registered representative fees is significantly different from today's options marketplace. Moreover, the ORF funding structure is deeply flawed. SIFMA therefore believes that the ORF should be eliminated. SIFMA also believes that the Commission will reach this same conclusion as a result of the ORF review that we urge it to conduct.

At the time the ORF was adopted by Cboe at the end of 2008,[7] Cboe was not a public company but rather an exchange mutually owned by its members. There were far fewer options exchanges at that time, with reports noting that there were seven options exchanges at the end of 2008.[8] Listed options volume was significantly lower in 2008, with about 3.5 billion contracts traded that year.[9] Electronic trading of listed options was still new in the listed options market in 2008.

Today, all options exchanges are for-profit companies, and most exchanges are part of larger exchange holding company structures, some of which are publicly listed and traded.[10] There were 18 listed options exchanges at the end of 2024,[11] with more planned on being launched. Listed options volume in 2024 was almost four times the volume in 2008, with about 12.3 billion traded in 2024.[12] Electronic trading of listed options is the dominant form of trading now. Despite these significant changes to the listed options marketplace, the options exchanges have continued to rely on the ORF to fund the vast majority of their regulatory costs.

Given this evolution, SIFMA believes there is no longer any justifiable policy reason why the options exchanges should be able to continue to subsidize their regulatory obligations through the ORF. As for-profit companies, options exchanges have access to a wide variety of revenue sources to fund their regulatory expenses, including transaction, connectivity and market data fees. For those options exchange that are part of public companies, they also have access to funding sources from the public capital markets such as equity and debt issuances. Given all of

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[7] The ORF was adopted in October 2008 and implemented in March 2009. See, e.g., (https://cdn.cboe.com/resources/regulation/circulars/regulatory/RG09-030.pdf).

[8] See (https://www.optionseducation.org/getmedia/e8630f86-9daf-441a-9155-133fbb874e20/equity-options-trading-2008.pdf).

[9] See (https://www.theocc.com/market-data/market-data-reports/volume-and-open-interest/historical-volume-statistics).

[10] For example, as noted, Nasdaq's market capitalization as of September 2025 is approximately $50 billion. Intercontinental Exchange Exchange Inc., which owns the NYSE family of options exchanges, has a market capitalization of approximately $97 billion. Cboe, which owns the Cboe family of options exchanges, has a market capitalization of approximately $25 billion.

[11] See (https://annualreport.theocc.com/2024/year-in-review-2024).

[12] Id.

these funding sources, there is no reason now why the options exchanges need to rely on the ORF to fund their regulatory costs.[13]

Moreover, this dynamic of exchanges funding their regulatory costs through a customer transaction fee does not exist in the equities market. Equity exchanges fund their regulatory costs through a variety of fees that are also designed to generate revenue for the exchanges as for-profit companies, such as transaction, connectivity, and market data fees. The only exception to this structure in the equities market is FINRA, which does not have access to these revenue sources because it is a not-for-profit membership organization. Instead, FINRA relies in part on its trading activity fee ("TAF") to help fund its regulatory costs. However, this fee covers around 50% of FINRA's regulatory costs and is assessed on a wide variety of products traded by FINRA members besides listed options, including equities and fixed income securities.[14] The regulatory funding structure in the equities market demonstrates that a dedicated customer transaction fee is not needed to fund exchange regulatory costs.

Moreover, if the ORF were to be eliminated, the Commission has several tools at its disposal to ensure that the options exchanges adequately fund their regulatory programs. One of the Commission's concerns when exchanges converted from mutually-owned entities to for-profit corporations was that as for-profit corporations, exchanges would not spend enough on regulation because their incentive would be to focus on activities that maximize profit.[15] While this concern is now dated given the experience in the equities market in which exchanges fund regulatory costs out of their revenue, the Commission has the authority to appropriately monitor and address exchange spending on regulation without the ORF, if necessary. For example, we understand that the options exchanges have for many years submitted confidential information to the Commission as part of their ORF fee filings that provides the Commission with more detail than the public filings regarding the amount and sources of the exchanges' regulatory revenue, the amount the exchanges spend on regulation, and a breakdown of that regulatory spending. If the ORF were eliminated, the Commission could potentially use this information, as well as more targeted or current information through examinations or ongoing confidential reporting requirements, to ensure that the options exchanges continue to spend an appropriate amount on regulation in compliance with the exchanges' responsibilities under the Securities Exchange Act of 1934 ("Exchange Act").

The ORF Funding Structure is Deeply Flawed

There also continue to be significant, unresolved flaws with the ORF funding structure that support its elimination. One of the most problematic aspects of the ORF funding structure is

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[13] Even if the options exchanges were still mutually owned, SIFMA would continue to have concerns about the options exchanges relying on a Customer transaction fee to fund regulatory costs given the various revenue sources for options exchanges and the regulatory funding structure in the equities market, which is discussed below.

[14] See (https://www.finra.org/sites/default/files/2023-06/sr-finra-2023-009.pdf).

[15] See, e.g., Release No. 34-50699 (Nov. 18. 2004), 69 FR 71126 (Dec. 8, 2004).

its lack of transparency, which SIFMA has pointed out to the exchanges and the Commission over the years.[16] In this respect, there is no public breakdown by each exchange about how much they spend annually on regulation and the categories of costs included in their regulatory spending. While some options exchanges provide certain disclosures in their Form 1 about how much ORF revenue they receive, these disclosures do not include information on how much the exchanges spend on regulation or break out the sources of regulatory costs.[17] In addition, these Form 1 disclosures show that certain exchanges are significantly over-collecting ORF in relation to their regulatory expenses. There appears to be no policy reason why this regulatory spending information should be non-public, as regulatory spending should not be a competitive issue among the options exchanges. The Commission previously seemed to have shared this view, as it sought to provide further transparency about exchange regulatory costs and expenses by proposing in 2004 to amend Form 1 to require such disclosures, though it never moved forward with that proposal.[18] Among other things, transparency in regulatory spending by the exchanges would allow the public to assess whether the exchanges are spending regulatory revenue efficiently, including whether certain exchanges may be attributing more costs to regulation than other exchanges.

This lack of transparency regarding the ORF funding structure, as well as the variation among exchanges regarding the percentage of regulatory costs their ORFs fund, seem to create an unlevel playing field among exchanges regarding their approaches to ORF. For example, to the extent an exchange characterizes more of its overall expenses as regulatory, such an exchange can fund more of those overall expenses through the ORF. Similarly, to the extent an exchange decides to fund more of its regulatory costs through the ORF, such an exchange will not have to fund those expenses from other revenue sources. Since there is no universal approach to ORF and these determinations are somewhat subjective, these dynamics seem to place exchanges that are more conservative in characterizing their expenses as regulatory and/or that choose to fund a lower percentage of their regulatory costs though the ORF at a disadvantage to those exchanges that are more aggressive in characterizing costs as regulatory or that rely on the ORF to fund more of their regulatory costs.

Other significant flaws with the ORF funding model include the variation of its structure and rates across various exchange groups, which leads to significant market participant and investor confusion. Exchanges using the ORF model first developed by Cboe in 2008 assess an ORF charge on all Customer transactions regardless of the exchange on which they occur and regardless of whether the firm clearing the transaction is a member of the exchange assessing the

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[16] See, e.g., (https://www.sifma.org/wp-content/uploads/2020/09/SIFMA-Comment-Letter-on-SR-CBOE-2020-069-Final.pdf).

[17] See (https://www.sec.gov/Archives/edgar/vprr/2500/25000246.pdf). Two of Cboe's options exchange - Cboe and C2 - show ORF over-collection balances in the financials in the form of deferred revenues.

[18] See supra note 15. In this release, the Commission proposed among other things amendments to Form 1 that would require exchanges to provide detailed disclosure regarding the portion of their overall revenues devoted to regulatory expenses as well as a break-down of those expenses.

ORF. This model is followed by all of Cboe's options exchanges, the BOX options exchange, and all of the MIAX options exchanges. The NYSE has its own separate ORF model that its two options exchanges use. This model assesses an ORF charge on all Customer transactions effected by its members, including ones effected on away exchanges, but excludes trades cleared by non-members, including ones executed on an NYSE exchange. The third model is the model currently used by Nasdaq for its six options exchanges, which is described above. The impact of these three different models on firms and investors is that the same options trade executed by a firm for a customer could result in up to three different ORF assessments depending on which exchange(s) the trade was executed. In other words, similar to other exchange fees that the Commission has recently found to be problematic, investors are unable to predict the amount of ORF to be assessed on an order at the time of entry because it depends on the assessment methodology and rate of the exchange(s) where the order is executed.[19]

In addition to the complexity of having these three different ORF assessment models, market participants and investors must grapple with different ORF rates at the individual exchanges. Given that options orders can be routed to one (or more) of the current 18 exchanges, these different assessment methodologies and rates make it extremely difficult for market participants and investors to predict how much in ORF charges a particular option transaction will be assessed. Because of these differences in assessment methodologies and rates, it is especially difficult for firms to calculate how much in ORF charges should be passed through to customers on their options transactions should they choose to do so. These differences in assessment methodologies and rates results in significant and continuing market participant and investor confusion. Although firms have found a work-around to address the ORF complexity by charging customers a blended rate to recoup their ORF costs, this practice does not resolve the underlying confusion and complexity associated with the different assessment methodologies and rates.[20]

An additional flaw with the ORF is that it seems to allow exchange groups to launch new options exchanges without any out-of-pocket regulatory expenses. In this regard, because all three current ORF assessment models impose charges on off-exchange trading, such a newly formed exchange can start collecting ORF revenue on customer options transactions immediately and without any market share. In addition, newly formed exchanges can charge an ORF rate similar to that of an exchange with substantial market share even if the new exchanges have no volume. In other words, the ORF funding structure subsidizes new or existing exchange groups' costs of launching new exchanges.

Another flaw with the ORF funding structure is that it appears to be a duplicative and excessive method for funding regulation. In this respect, CAT has replaced the need for

[19] The SEC recently amended Rule 610 of Regulation NMS to require exchange fees for NMS stocks to be determinable at the time of execution. Release No. 34-101070 (Sept. 18, 2024), 89 FR 81620 (Oct. 8, 2024).

[20] This discussion excludes the ever-changing nature of ORF rates to account for changes in volume even though exchange regulatory budgets likely remain relatively static throughout the year.

individual exchanges and FINRA to expend resources to develop their own systems (i.e., audit trails) to track and surveil options trading. Prior to CAT, options exchanges had to develop individual systems and programs to review trading activity on their own exchange, and they relied on the Intermarket Surveillance Group and FINRA to help with cross exchange surveillance of trading activity. CAT, which is separately funded, seems to have eliminated the need for such exchange and FINRA-specific systems and programs and their associated costs. Despite this significant change to the regulatory structure of the options market, SIFMA is not aware of any options exchange announcing that it would reduce its ORF due to the implementation of the CAT. It seems evident that CAT would reduce exchanges' regulatory spending, yet this has not been reflected in any exchanges' ORF rule filings to our knowledge.

Similarly, the ORFs charged by exchange holding companies with multiple options exchanges, such as Nasdaq and Cboe, do not appear to benefit from the economies of scale that would be expected from applying the same regulatory program (personnel, surveillance, etc.) across the group of exchanges within the holding companies. This does not make economic sense for a number of reasons. For example, the incremental regulatory revenues and costs associated with adding a new exchange should affect the individual ORFs charged by the other exchanges in that group. However, SIFMA is not aware of exchange groups reducing their per-exchange ORF fees even when new exchanges are added, even though the same regulatory staff at the exchange holding company are performing the same regulatory functions for all of the options exchanges owned by that holding company.

Further, many options exchanges have outsourced their regulatory functions to FINRA pursuant to regulatory service agreements ("RSAs"). It seems appropriate for an exchange holding company with multiple exchanges to receive discounts on RSAs with FINRA based on the duplicative nature of cross-market surveillance conducted for each of those individual exchanges, yet this does not seem to have occurred. Some of Nasdaq's exchanges recently announced ORF rate reductions that referenced renegotiated RSAs with FINRA.[21] However, these Nasdaq filings did not explain why the costs of certain Nasdaq exchange RSAs with FINRA were reduced and others apparently were not. Options exchanges do not appear to be incentivized to control regulatory costs, for example by regularly revisiting the efficiency of surveillances they utilize or RSA agreements they are a party to, because they are able to recoup any regulatory costs via the ORF.

Most if not all of these flaws with the ORF funding structure have been publicly known for many years. Despite this public knowledge, the ORF has not been meaningfully reformed to address them. This lack of meaningful reforms to the ORF funding structure shows the challenges with reforming it and strongly indicates that it should instead be replaced with a different structure. As SIFMA notes above, the Commission and the exchanges should look to the regulatory funding structure in the equities market as a replacement.

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[21] See, e.g., Release No. 34-103395 (July 7, 2025), 90 FR 30715 (July 10, 2025).

<u>SIFMA Supports Implementation of Phlx's New ORF Methodology While the SEC Conducts a Broader Review of the Ongoing Necessity of the ORF</u>

While the SEC undertakes a review of the ORF funding structure, SIFMA supports the implementation of Phlx's Proposal to change its ORF assessment methodology, as well as the identical proposals from Nasdaq's other options exchanges, as they represent an improvement over the current ORF methodologies used by Nasdaq and the other options exchanges. SIFMA includes certain recommendations below regarding the implementation of the new Nasdaq ORF model that we believe are critical to its success. One of these recommendations is for the Commission, prior to any implementation of the Phlx model, to take steps to ensure that all of the options exchanges move to this Phlx model while it conducts a review of the ongoing necessity of the ORF in today's options market structure

As discussed above, SIFMA has long been concerned about the three different ORF assessment methodologies used by the options exchanges, as they allow the exchanges to charge for off-exchange trading activity as well as charge non-members in the case of the Cboe and Nasdaq models. These features of the ORF appear to make it problematic under the standards governing exchanges and exchange fees in the Exchange Act. Under the Exchange Act, exchanges' regulatory authority is limited to its members and typically to on-exchange activity. By allowing exchanges to assess a charge on off-exchange trading activity as well as on non-members, the ORF funding structure seems to contravene this regulatory scheme. In addition, Section 6(b) of the Exchange Act requires exchange fees to be reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition. These standards seem challenging for the options exchanges to demonstrate for the ORF given its assessment on off-exchange trading activity and non-members in the case of the Cboe and Nasdaq models.

SIFMA believes that Phlx's Proposal to assess an ORF only for on-exchange Customer transactions is an improvement over the three current ORF assessment methodologies. In this regard, it should address the Exchange Act concerns with the options exchanges' ability under the current assessment methods to charge an ORF for off-exchange trading activity (although non-members would continue to be assessed an ORF for on-exchange transactions they clear). Under the new model, the Nasdaq options exchanges will assess ORF charges for on-exchange trading activity only. This is a much fairer approach than allowing options exchanges to subsidize their regulatory costs through ORF charges for off-exchange trading.

Because this is a new model, SIFMA calls upon Nasdaq and the Commission to ensure that market participants have adequate time to implement it. While SIFMA has previously supported the concept of only charging an ORF for on-exchange trading activity, it was only this year that Nasdaq and Cboe announced that they would actually be moving to such a model.[22]

[22] <u>See</u> Release No. 34-102883 (Apr. 17, 2025), 90 FR 17099 (Apr. 23, 2025) (In this filing, Cboe stated that "it anticipates moving to a modified ORF model in which ORF would only be assessed to on-exchange transactions.

This has led SIFMA members to more closely evaluate the operational aspects of implementing the model, and members have learned that the operational considerations are not insubstantial. For example, under the three existing ORF assessment models, because the options exchanges assess an ORF on both on- and off-exchange transactions and rely on OCC data (including CMTA data) to determine which firm ultimately clears the trade, the models effectively allowed the ORF to be assessed on the end clearing firm, which in turn can pass along the charge to its client should it decide to do so.

Under the new model proposed by Phlx and Nasdaq's other options exchanges, the ORF charges will now be assessed at the point of execution, and execution and clearing firms assessed an ORF under this model will have to determine how to pass these charges along to the ultimate client if they choose to do so. This is different than the current ORF assessment methodologies in which ORF charges are effectively automatically passed along to the end clearing firm/client. Therefore, for the new Phlx model to be operationalized by firms, clearing firms must be able to identify the original execution venue for every trade with accuracy on trade date. This information must be readily available to both broker and client, and current industry infrastructure and reporting do not provide this level of precision. Further dialogue among options exchanges, market participants, and regulators is necessary to solve these operational questions and issues to ensure the new proposed ORF model is workable.

Nasdaq's planned implementation date of January 2, 2026 is too soon, especially given the uncertainty as to whether the other options exchanges will adopt the same model. Accordingly, we call on Phlx, the other Nasdaq exchanges, and any other exchanges that move to this model to develop an appropriate plan and timeline, working with market participants, that allows firms sufficient time to make systems and other changes to conform to this new ORF assessment model. Firms will need significant time along with substantial operations and technology resources to build and test a solution. Rushing to implement a new ORF model could result in operational errors and client confusion.

In addition, to the extent the ORF is in place, it is critically important that all the options exchanges move to this new, common model at the same time. It would be unfair for an options exchange that moves to the Phlx ORF model if there are other options exchanges that are allowed to retain their existing ORF models and subsidize their regulatory costs based on off-exchange trading activity. As discussed, ORF is intended to be a regulatory fee and should not be a competitive issue among options exchanges. Taking different approaches to ORF going forward, particularly regarding assessing ORF for on- vs. off-exchange transactions, would allow exchanges relying on one of the three existing ORF assessment methodologies to have a much lower ORF rate than Phlx because such exchanges would be assessing the ORF on all customer options volume as opposed to limiting the ORF to volume occurring on their own exchange. Such a scenario would create an unlevel playing field among the options exchanges, and SIFMA

And at this [this] time, Cboe Options expects to continue assessing ORF to on-exchange transactions that clear in the customer range at OCC.").

therefore calls on the Commission as the regulator of the options exchanges to take steps to ensure that all of the options exchanges move to the proposed Phlx model on the same timeline. Further, firms need absolute certainty that Phlx and the other exchanges will move to this new model before firms spend money on technology builds and processing changes to implement it.

In addition to the unlevel playing field among exchanges, such a scenario would create tremendous operational complexity for SIFMA members. In essence, they would be required to maintain two sets of ORF billing systems – one for the three current ORF assessment methodologies and one for the new Phlx methodology. This task will be made even more complicated by the lack of information on trade date for clearing firms of the exchange on which a trade is executed. This is yet another reason why Nasdaq and the Commission should delay the January 2, 2026 implementation date and take steps to ensure that all of the options exchanges move to the Phlx model on the same timeline while it conducts a review of the ongoing necessity of the ORF in today's options market structure.

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As described above, SIFMA believes that the ORF should be eliminated and calls on the SEC to review its continuing place in today's options market. While the Commission undertakes such a review, SIFMA supports the move to the proposed Phlx model but recommends that the options exchanges and the SEC take the actions noted above to ensure that the Phlx model is appropriately implemented by all options exchanges. If you have any questions or need any additional information, please contact Joseph Corcoran at (202) 962-7383, Gerald O'Hara at (202) 962-7343, or Katie Kolchin at (212) 313-1239.

Sincerely,

Katie Kolchin

Katie Kolchin, CFA
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Joseph P. Corcoran

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