

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93729; File No. SR-Phlx-2021-71)

December 7, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Affiliated Entity Program and Relocate Certain Rules

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act"),² and Rule 19b-4 thereunder,³ notice is hereby given that on December 1, 2021, 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 Phlx's Pricing Schedule at Options 7, Section 1, General Provisions, and Section 2, Collection of Exchange Fees and Other Claims.

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

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Phlx proposes to amend its Pricing Schedule at Options 7, Section 1, General Provisions. Specifically, Phlx proposes to amend the way it administers its Affiliated Entity program.

The Exchange also proposes to relocate rule text within Options 7, Section 1 and Section 2, Collection of Exchange Fees and Other Claims. As a result of these rule text relocations, the Exchange also proposes to update citations within Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY; Options 7, Section 4, Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY); Options 7, Section 6, Other Transaction Fees; and Options 7, Section 7, Routing Fees. Each change will be described below.

Affiliated Entity

The Exchange proposes to amend the way Exchange member organizations indicate their participation in the Affiliated Entity Program. Specifically, the Exchange proposes to amend the description of “Affiliated Entity” within Options 7, Section 1, General Provisions. Currently, the term “Affiliated Entity” is described as,

a relationship between an Appointed MM and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers or Lead Market Makers, and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will terminate after a one (1) year period, unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Entity relationships must be renewed annually. Members and member organizations under Common Ownership may not qualify as a counterparty comprising an Affiliated Entity. Each member or member organization may qualify for only one (1) Affiliated Entity relationship at any given time.

Today, member organizations are required to annually renew their Affiliate Entity relationship at the end of one year if they desire to continue the relationship. The parties must both send an email to the Exchange to avoid termination of the relationship, provided the relationship was not terminated earlier in the year. The Exchange believes that this process is burdensome for member organizations that desire to remain in the program. The consequence of not renewing is termination. The Exchange desires to remove the administrative burden associated with the requirement to annually renew and instead provide that the Affiliated Entity relationship will automatically renew each month, unless otherwise terminated. The proposed new rule text would provide,

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. Market Makers or Lead Market Makers, and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either

party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Members and member organizations under Common Ownership may not qualify as a counterparty comprising an Affiliated Entity. Each member or member organization may qualify for only one (1) Affiliated Entity relationship at any given time.

As is the case today, parties to the Affiliated Entity relationship may decide to terminate the relationship during any month by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Cboe Exchange, Inc. (“Cboe”) has a similar automatic renewal process for its Appointed OFP and Appointed Market-Maker Program.⁴ The Exchange believes that this amendment will streamline the workflow for member organizations by not requiring member organizations to renew each year to continue the affiliated relationship.

Rule Text Relocations

The Exchange proposes to relocate rule text to reorganize the Options 7 rules. Specifically, the Exchange proposes to relocate rule text within current Options 7, Section 2, Collection of Exchange Fees and Other Claims, into Options 7, Section 1, General Provisions, without change. The Exchange proposes to add an “(e)” and the title “Collection of Fees and

⁴ See Cboe’s Fees Schedule at footnote 23 “A Market-Maker may designate an Order Flow Provider (“OFP”) as its “Appointed OFP” and an OFP may designate a Market-Maker to be its “Appointed Market-Maker” for purposes of qualifying for credits under AVP. In order to effectuate the appointment, the parties would need to submit the Appointed Affiliate Form to the Exchange by 3:00 p.m. CST on the first business day of the month in order to be eligible to qualify for credits under AVP for that month. The Exchange will recognize only one such designation for each party once every calendar month, which designation will automatically renew each month until or unless the Exchange receives an email from either party indicating that the appointment has been terminated. A Market-Maker that has both an Affiliate OFP and Appointed OFP will only qualify based upon the volume of its Appointed OFP. The volume of an OFP that has both an Affiliate Market-Maker and Appointed Market-Maker will only count towards qualifying the Appointed Market-Maker. Volume executed in open outcry is not eligible to receive a credit under AVP.”

Other Claims” before the relocated rule text.

Also, the Exchange proposes to add a “(c)” before the descriptions of market participants and a “(d)” before the Affiliate Entity program.⁵ The new lettering will make it easier to reference a specific section within Options 7, Section 1. The Exchange believes that the policy for the collection of fees should be within Options 7, Section 1 which describes other billing practices.

The Exchange proposes to delete Section A of Options 7, Section 1, which is currently reserved.

The Exchange proposes to relocate Section B, Customer Rebate Program, to Options 7, Section 2 with the title, “Customer Rebate Program,” without change. The Exchange believes that the Customer Rebates should be relocated to their own section for easy reference. As a result of that relocation, the Exchange proposes to update references to the Customer Rebate Program from “Section B” to “Options 7, Section 2” within Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY; Options 7, Section 4, Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY); Options 7, Section 6, Other Transaction Fees; and Options 7, Section 7, Routing Fees.

The amendments to relocate rule text are non-substantive amendments that are intended solely to reorganize the current rule text.

⁵ The Exchange also proposes to re-letter and re-number the subparagraphs in new “(d)” to align with other lettering and numbering.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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.

Affiliated Entity

The Exchange's proposal to amend the way Exchange member organizations indicate their participation in the Affiliated Entity Program is reasonable. Today, member organizations are required to annually renew their Affiliated Entity relationship at the end of one year if they desire to continue the relationship. The parties must both send an email to the Exchange to avoid termination of the relationship, provided the relationship was not terminated earlier in the year. The Exchange believes that this process is burdensome for member organizations that desire to remain in the program. The consequence of not renewing is termination of their participation in the program. The Exchange desires to remove the administrative burden associated with the requirement to annually renew and instead provide that the Affiliated Entity relationship will automatically renew each month, unless otherwise terminated. As is the case today, parties to the Affiliated Entity relationship may decide to terminate the relationship during any month by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Also, Cboe has a similar automatic renewal process for its

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

Appointed OFP and Appointed Market-Maker Program.⁸ The Exchange believes that this amendment will streamline the workflow for member organizations by not requiring member organizations to renew each year to continue the affiliated relationship.

The Exchange's proposal to amend the way Exchange member organizations indicate their participation in the Affiliated Entity Program is equitable and not unfairly discriminatory. Today, any member organization may participate in the Affiliated Entity Program. The proposed changes would impact all member organizations that voluntarily elect to participate in the Affiliated Entity Program in a uniform manner.

Rule Text Relocations

The Exchange's proposal to relocate rule text to reorganize the Options 7 rules is reasonable. The relocation of rule text within current Options 7, Section 2, Collection of Exchange Fees and Other Claims, into Options 7, Section 1, General Provisions, without change, and the re-lettering of rule text does not substantively amend the current rules. Also, the proposal to delete Section A of Options 7, Section 1 is non-substantive as the section is currently reserved. Finally, the proposal to relocate Section B, Customer Rebate Program, to Options 7,

⁸ See Cboe's Fees Schedule at footnote 23 "A Market-Maker may designate an Order Flow Provider ("OFP") as its "Appointed OFP" and an OFP may designate a Market-Maker to be its "Appointed Market-Maker" for purposes of qualifying for credits under AVP. In order to effectuate the appointment, the parties would need to submit the Appointed Affiliate Form to the Exchange by 3:00 p.m. CST on the first business day of the month in order to be eligible to qualify for credits under AVP for that month. The Exchange will recognize only one such designation for each party once every calendar month, which designation will automatically renew each month until or unless the Exchange receives an email from either party indicating that the appointment has been terminated. A Market-Maker that has both an Affiliate OFP and Appointed OFP will only qualify based upon the volume of its Appointed OFP. The volume of an OFP that has both an Affiliate Market-Maker and Appointed Market-Maker will only count towards qualifying the Appointed Market-Maker. Volume executed in open outcry is not eligible to receive a credit under AVP."

Section 2, without change, does not substantively amend the current rules. These relocations and updates to citations will make the current rules easier to reference.

The Exchange's proposal to relocate rule text to reorganize the Options 7 rules is equitable and not unfairly discriminatory as the amendments are non-substantive and are intended solely to reorganize the current rule text for easy reference.

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.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. Cboe has a similar automatic renewal process for its Appointed OFP and Appointed Market-Maker Program⁹ as proposed herein for the Affiliated Entity Program. Also, the rule relocation amendments are non-substantive.

Intra-market Competition

The Exchange's proposal to amend the way Exchange member organizations indicate their participation in the Affiliated Entity Program does not impose an undue burden on competition. Today, any member organization may participate in an Affiliated Entity relationship. The proposed changes would impact all member organizations that voluntarily elect to participate in the Affiliated Entity Program in a uniform manner.

The Exchange's proposal to relocate rule text to reorganize the Options 7 rules does not impose an undue burden on competition as the amendments are non-substantive and are intended solely to reorganize the current rule text for easy reference.

⁹ Id.

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.¹⁰

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 e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2021-71 on the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2021-71. This file number should be included on the subject line if e-mail 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-2021-71, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).