

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94044; File No. SR-PHLX-2022-02)

January 24, 2022

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend References to FINRA Continuing Education Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 12, 2022, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx’s Pricing Schedule at Options 7, Section 9, Other Member Fees, to reflect adjustments to FINRA Continuing Education Fees.

The Exchange also proposes technical amendments to Phlx Options 7, Section 1, General Provisions.

While the changes proposed herein are effective upon filing, the Exchange has designated the new Maintaining Qualifications Program (“MQP”) Fee, elimination of the \$100 Continuing Education Session Fee, and technical amendments to become operative on January 31, 2022.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Additionally, the Exchange designates an \$18 Continuing Education Regulatory Element Session Fee to become operative on January 1, 2023.³

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.

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

This proposal amends Phlx’s Pricing Schedule at Options 7, Section 9C, FINRA Fees, to reflect adjustments to FINRA Continuing Education Fees.⁴ The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of Phlx members and member organizations that are not FINRA members (“Non-FINRA members”). The Exchange is merely listing these fees on its Pricing Schedule. The Exchange does not collect or retain these fees.

³ See Securities Exchange Act Release No. 93928 (January 7, 2022) (SR-FINRA-2021-034).

⁴ FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

Today, Phlx Options 7, Section 9C, provides a list of FINRA Web CRD Fees, Fingerprint Processing Fees, and Continuing Education Fees. The Exchange proposes to amend the Continuing Education Fees within Options 7, Section 9C on behalf of the Exchange. The fees listed within Options 7, Section 9C reflect fees set by FINRA.

Specifically, the Exchange proposes to decrease the \$55 Continuing Education Web-based Fee to \$18. This amendment is made in accordance with a recent FINRA rule change to adjust to its fees.⁵ FINRA currently charges a fee of \$55 to each individual who completes the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. In conjunction with the amendments to transition to an annual Regulatory Element requirement, FINRA amended the Continuing Education Regulatory Element Session Fee from \$55 to \$18.⁶ FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the \$18 Continuing Education Regulatory Element Session Fee as of January 1,

⁵ See note 3 above. On September 21, 2021, the SEC approved amendments to FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements) to, among other things, require registered persons to complete the Regulatory Element of CE annually by December 31 of each year, rather than every three years, and to complete Regulatory Element content for each representative or principal registration category that they hold. See Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR-FINRA-2021-015). The Regulatory Element is administered by FINRA and focuses on regulatory requirements and industry standards. The proposed rule change also included amendments to the Firm Element training, which is provided by each firm annually to its registered persons and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

⁶ FINRA notes that the proposed \$18 annual fee is comparable to the current \$55 fee over a three-year period. Moreover, the proposed fee for the annual Regulatory Element would be the same for all registered persons, regardless of the amount of annual content that they would be required to complete (that is, an individual who holds multiple registrations would be subject to the same proposed \$18 annual fee as an individual who holds a single registration). See note 3 above.

2023 to coincide with the effective date of the transition to an annual Regulatory Element requirement.⁷

The Exchange proposes to eliminate the \$100.00 continuing education fee for each individual who is required to complete the S101 or S201. This fee applied to continuing education programs administered at test centers. In 2015, FINRA filed to end test center delivery of the Regulatory Element.⁸ Effective October 1, 2015, Web-based delivery has been available for the Regulatory Element. The revised fee of \$18 is a Web-based delivery. The Exchange proposes to remove the outdated continuing education fee of \$100 from its Pricing Schedule related to test center delivery

The Exchange also proposes to adopt a new Maintaining Qualifications Program (“MQP”) Fee of \$100 fee for each individual electing to participate in the continuing education program, following the termination of a registration category, under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the MQP within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed annual fee would be assessed at the time an eligible individual elects to participate in the continuing education program under FINRA Rule 1240(c) and thereafter annually each year that the individual continues in the program. This fee

⁷ The Exchange would file to remove the rule text concerning the \$55 fee once the \$18 fee becomes operative.

⁸ See Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (SR-FINRA-2015-015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements). FINRA phased out the test center delivery as of July 1, 2016. See FINRA Information Notice dated May 16, 2016 (<https://www.finra.org/rules-guidance/notices/information-notice-051616>).

is paid directly to FINRA. FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the \$100 MQP fee as of January 31, 2022.

With respect to the rule text, the Exchange proposes to relocate the Continuing Education fees to the end of Options 7, Section 9C. The current \$55 Continuing Education Fee is being reworded to reflect the elimination of the \$100 fee and renamed the “Continuing Education Regulatory Element Session Fee.” The \$55 will remain in effect until January 1, 2023 so it is being retained in the Pricing Scheduled with a note that “This fee will be amended on January 1, 2023 as noted below.” Finally, the title “Continuing Education Fees” is proposed to be amended to “Continuing Education Fee:”.

The FINRA Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

Technical Amendments

Options 7, Section 9C

The Exchange proposes to relocate the title “General Registration Fees” directly above those fees.

The Exchange also proposes to make a technical amendment within the FINRA Web CRD Fees to the following sentence, “\$110-For the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment or certification of one of more disclosure events or proceedings.” The Exchange proposes to change the word “of” to “or.”

Options 7, Section 1

The Exchange proposes to alphabetize the terms currently within Options 7, Section 1(c). The Exchange proposes to remove “A” before the term “floor transaction” and instead add “The term,” to conform that term to the others, the Exchange is not otherwise amending any of the current rule text.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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 Exchange believes it is reasonable to decrease the \$55 Continuing Education Regulatory Element Session Fee for all Registrations to \$18 in accordance with an adjustment to FINRA’s fees.¹¹ The Exchange’s rule text will reflect the current rates for continuing education that will be assessed by FINRA as of January 1, 2023. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

The Exchange believes eliminating the outdated \$100 fee for continuing education is reasonable as test center delivery of the Regulatory Element was phased out in 2016 and the

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ See note 3 above.

continuing education programs are no longer offered at testing centers.¹²

The Exchange believes that it is reasonable to adopt a new MQP Fee of \$100 for each individual electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the program within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make technical amendments within Options 7, Section 1 and Section 9C is reasonable, equitable and not unfairly discriminatory as the proposed changes are non-substantive amendment. The amendments will bring greater clarity to the rule text.

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. The Exchange does not believe that this proposal creates an unnecessary or inappropriate inter-market burden on competition as FINRA's fees apply to all market participants. Specifically, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition as the decreased Continuing Education Regulatory Element

¹² See note 8 above.

Session Fee for all Registrations of \$18 will be assessed by FINRA to all Members who are required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. Likewise, with respect to the \$100 MQP Fee, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition because the fee will be assessed by FINRA to all individuals electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Finally, eliminating the outdated \$100 fee for continuing education does not create an unnecessary or inappropriate intra-market burden on competition as test center delivery of the Regulatory Element was phased out and the continuing education programs are no longer offered at testing centers.¹³ Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make technical amendments within Options 7, Section 1 and Section 9C does not impose an undue burden on competition as the proposed changes are non-substantive amendment. The amendments will bring greater clarity to the rule text.

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.

¹³ See note 8 above.

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.¹⁴

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-2022-02 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-2022-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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-2022-02 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.¹⁵

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).