



Joan C. Conley
Senior Vice President & Corporate Secretary
805 King Farm Boulevard
Rockville, MD 20850

P: [REDACTED]
F: [REDACTED]
E: [REDACTED]

December 22, 2017

Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Securities Exchange Act Release No. 81754 (September 28, 2017)
(SR-PHLX-2017-74)

Dear Mr. Fields:

NASDAQ PHLX LLC (“Phlx” or “Exchange”) appreciates the opportunity to address comments by the Securities Industry and Financial Markets Association (“SIFMA”)¹ regarding the proposed introduction of the Intellicator Analytic Tool (“Intellicator Tool” or “Tool”).² The Exchange proposed the Tool to promote a free and open market system by making sophisticated analytical techniques—now limited to only a few market participants—available to investors without the technology, staff or wherewithal to conduct a comparable analysis on their own.

SIFMA’s opposition is primarily based on confusion over the product and how it works. To address this confusion, the Exchange has embarked on a campaign to further educate market participants and potential customers about the functions and capabilities of the Tool, and to consult with interested firms about any concerns they may have, as well as possible modifications to the product. The Exchange expects this campaign to take longer than the time available for comments on SR-PHLX-2017-74, and therefore has decided to withdraw this filing in anticipation of re-submitting the Intellicator Tool, or an updated version of that Tool, for approval after consultations are complete.

¹ SIFMA is a trade group that represents securities firms, banks and asset management companies.

² Letter from Ellen Greene, Managing Director, to Brent J. Fields, Secretary, Securities and Exchange Commission, *Notice of Filing of a Proposed Rule Change to Introduce the Intellicator Analytical [sic] Tool (File No. SR-PHLX-2017-74)* (“SIFMA Letter”) (Nov. 8, 2017).

As part of its effort to educate and inform SIFMA, customers, and the public about the Intellicator Tool, the Exchange is providing a summary of its response to SIFMA below. Nasdaq may, of course, amplify these points in its subsequent filing.

A. Function and Purpose of the Intellicator Analytic Tool

The proposed Intellicator Tool is an optional market data product designed to distill options data into calculations and indicators that will help investors understand options market activity, providing actionable insights in changing market conditions. It is comprised of two separate levels of analysis to meet the different needs of investors: (i) Analytic Bundles, which calculate fundamental measures, or “factors,” of options market activity to ascertain insight from market information, and (ii) Intellicators, which use machine learning to summarize in a single rational number the information contained within the Analytic Bundles. Analytic Bundles are designed to provide investors with calculations to supplement their analyses of options activity; Intellicators are intended to provide a “barometer” of options trading activity designed to provide insight into the options market and help investors develop an informed opinion in order to independently assess the future performance of the price of an equity instrument.

B. The Intellicator Analytic Tool will make Options Market Information more Broadly Available.

SIFMA expressed concern that a minor byproduct of the Tool, in which customer category or location information³ may be discerned, will support market manipulation.

SIFMA’s concerns about market manipulation are not well-founded. Nothing in the Tool would allow anyone to obtain data identifying a particular client of a broker-dealer or that client’s trading strategy—it is simply not part of the underlying data.⁴ Nor can the Tool be used to identify specific market participants: only broad categories of participant – such as Customer, Professional Customer, Firm, Broker-Dealer, Market Maker, Joint Back Office, off-floor Broker-Dealer, and Non-Customer – are available. Indeed, the Exchange expects the Tool to have the opposite effect: the broader availability of information works to prevent manipulation.

³ Location information indicates whether the transaction was electronic or took place on the floor of the Exchange.

⁴ The Exchange noted in PHLX 2017-74 that certain information could be useful in identifying the investment strategies of “particular customer categories.” The term “customer categories” in that phrase refers to the customer categories identified in the filing: Customer, Professional Customer, Firm, Broker-Dealer, Market Maker, Joint Back Office, off-floor Broker-Dealer, and Non-Customer. Nothing in the product would identify an individual customer of a broker-dealer, or a particular broker-dealer, because such identifying information is not in the data underlying these calculations.

C. The Intellicator Analytic Tool will be Subject to Open Market Competition.

SIFMA expressed a concern that the Intellicator Analytic Tool will be a “monopolistic product that firms could be required to ingest as part of their best execution obligations.”⁵ In fact, the Tool will be subject to vigorous competition as: (i) part of the competition for order routing and (ii) from possible competitor products that could be introduced by other exchanges and broker-dealers.

First, the Intellicator Analytic Tool, if successful, will become just one aspect of the competition among exchanges for order routing.⁶ Order routing decisions are based on the total costs and benefits of interacting with an exchange, and market data is an integral part of that analysis. In fact, discussions concerning market data products are a common aspect of the continuous dialogue between the Exchange and market participants concerning order routing.

Second, the Tool will be subject to competition from other products that may be introduced either by other exchanges or broker-dealers. Any options exchange has the ability to invest in their technology to make data on market activity available, and therefore those other exchanges will be capable of introducing a product capable of competing with the Intellicator Tool.

The Intellicator Tool will also be subject to competition from broker-dealers. Broker-dealers may have a broader view of market activity than any single exchange, providing them with the information necessary to build a tool to measure options market movements capable of competing with the Intellicator Tool. SIFMA acknowledged this point when criticizing the Exchange for entering the “broker-dealer space.”

In conjunction with its concerns about market competition, SIFMA comments that broker-dealers could be required to purchase the Tool “as part of their best execution obligations.”⁷ This concern is misplaced. The Tool provides no information about the terms offered by competing markets for order execution, and, indeed, was not even designed for use by options exchange participants, but rather for retail investors and equity market participants seeking to better understand options market activity, and for firms without options market experience

⁵ SIFMA Letter at 3.

⁶ See NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (“No one disputes that competition for order flow is ‘fierce.’”) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)) *see also* Securities Industry and Financial Markets Association, Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 at *21 (A.L.J. June 1, 2016) (noting that “[t]here is fierce competition for trading services (or ‘order flow’)”). This order was ratified by the Administrative Law Judge on December 21, 2017. See Admin. Proc. Rulings Release No. 5414 (December 21, 2017), available at <https://www.sec.gov/alj/aljorders/2017/ap-5414.pdf>.

⁷ SIFMA Letter at 2.

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interested in obtaining more information. As such, the Exchange does not believe that the Tool will be required to support best execution obligations.

D. The Intellicator Tool Will Further the Purposes of the Exchange Act

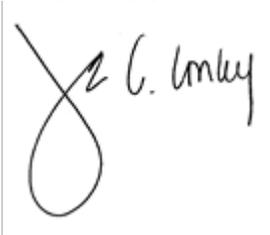
SIFMA observed, as a potential disadvantage of the product, that the Intellicator Tool will result in more competition for its members.

The Exchange concurs that the Tool will result in greater competition, but understands this not to be a disadvantage, but rather a feature of the product that will further the purposes of the Securities Exchange Act of 1934 (the "Act"). Section 6(b)(5) of the Act states that the rules of an exchange shall "remove impediments to and perfect the mechanism of a free and open market and a national market system...." The Tool is designed to promote a free and open market system by making sophisticated analytical techniques available to investors without the technology, staff or wherewithal to conduct a comparable analysis on their own. The Exchange expects the Tool to promote competition by directly injecting information into the market, and also to act as a catalyst for the dissemination of further information from other exchanges and broker-dealers as they seek to compete with the Tool. As such, the Exchange expects that the Tool will further the purposes of the Act.

In summary, the Exchange has embarked on a campaign to educate firms about the Tool, address industry concerns, and evaluate possible modifications to the product. Because this campaign will take more time than is available for the Commission's consideration of filing, the Exchange has decided to withdraw SR-PHLX-2017-74 in anticipation of re-submitting the Intellicator Tool, or an updated version of that Tool, for approval after consultations are complete.

If you have any questions regarding these comments, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "G. Linsky". The signature is written in a cursive style with a large loop at the end. It is positioned above a horizontal line that spans the width of the signature area.