

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77613; File No. SR-Phlx-2016-45)

April 13, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Proposed Rule Change to Modify Chapter VII Section B of the Exchange's Pricing Schedule

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 April 1, 2016, 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 modify Section B of the NASDAQ PHLX LLC Pricing Schedule ("Pricing Schedule") in Chapter VII separately to identify streaming quote interface ("SQF") Purge Ports and to set the fees applicable to SQF Purge Ports. The Exchange also is making technical, non-substantive modifications to the certain existing provisions in Chapter VII, Section B

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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

The purpose of the proposal is to modify Chapter VII, Section B of the Exchange's Pricing Schedule separately to identify SQF Purge Ports and to set the fees applicable to SQF Purge Ports. Active SQF Ports today allow purging, however the Exchange does not separately identify such ports or assess a fee for SQF Purge Ports.

The SQF Port (known as "Active SQF Port")³ is an interface that enables Specialists,⁴ Streaming Quote Traders ("SQTs")⁵ and Remote Streaming Quote Traders ("RSQTs")⁶ (together known as "Market Makers") to connect and send quotes into the Exchange's trading system and

³ Current SQF Ports are known as "Active SQF Ports" in the Pricing Schedule to signify that such ports are fee liable when they receive inbound quotes at any time within that month (\$1,250 per port per month up to a maximum of \$42,000 per month).

⁴ A Specialist is an Exchange member who is registered as an options specialist. See Phlx Rule 1020(a).

⁵ An SQT is defined in Exchange Rule 1014(b)(ii)(A) as a Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

⁶ An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

receive certain information.⁷ Market Makers rely on data available through Active SQF Ports to provide them the necessary information for risk control and risk management so that they can perform market making activities in a swift and meaningful way. Active SQF Ports allow Market Makers to access information such as execution reports, execution report messages, auction notifications, and administrative data through a single feed. Other data that is available includes: (1) Options Auction Notifications (e.g., opening imbalance, market exhaust, PIXL or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (e.g., start of messages, start of system hours, start of quoting, start of opening); (4) Complex Order Strategy Auction Notifications (COLA); (5) Complex Order Strategy messages; (6) Option Trading Action Messages (e.g., trading halts, resumption of trading); and (7) Complex Strategy Trading Action Messages (e.g., trading halts, resumption of trading). In addition to Active SQF Ports being used to send quotes and to receive information needed for market making activities, Active SQF Ports now can be also used for purging quotes. Such Active SQF Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner.

An Active Purge Port currently can be configured as a “Purge-only” port utilized for the sole purpose of purging option interest from the Exchange’s system and allowing entry of underlying-level purges for a specified range of options.⁸ Such dedicated ports reduce the amount of data flowing through Active SQF Ports. A purge of options quoted on the SQF

⁷ See Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR-Phlx-2010-124).

⁸ If a Market Maker wants to re-enter an option contract after it was purged, the Market Maker is required to specify a re-entry indicator on the first quote following a purge.

interface is reported via a “Purge Notification” message that identifies who submitted the purge and the underlying symbols.⁹

The proposed SQF Purge Ports are, similar to the Active SQF Ports, designed to assist Market Makers in the management of, and risk control over, their quotes, particularly if the Market Makers are dealing with large numbers of options. For example, if a Market Maker detects market indications that may influence the direction or bias of his quotes the Market Maker may use the proposed SQF Purge Port(s) to reduce uncertainty and to manage risk by purging all quotes in a number of options seamlessly to avoid unintended executions, while continuing to evaluate the direction of the market.

The Exchange proposes to amend Chapter VII, Section B of the Exchange’s Pricing Schedule to distinguish SQF Purge Ports from Active SQF Ports and to add a new monthly SQF Purge Port fee. The Exchange is also making technical, non-substantive changes to Chapter VII, Section B to enhance clarity and readability. These changes are described in detail below.

Change 1 – SQF Purge Port Fees

The Exchange proposes new subsection 4 of Chapter VII, Section B to institute an SQF Purge Port Fee. The proposed fee will be \$500 per port per month for each of the first five SQF Purge Ports, and will be \$100 per port per month for each port thereafter. The SQF Purge Port Fee will be applicable to all Market Makers who elect to use SQF Purge Ports on the Exchange. The structure of the proposed SQF Purge Port Fee is similar to that of the current CTI¹⁰ Port Fee,

⁹ For additional information regarding SQF Purge Ports, as well as SQF generally, see <http://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/sqfnom2.0.pdf>. This document applies to the Exchange, to the Nasdaq Options Market, and to the BX Options Market, all of which are options exchanges of Nasdaq, Inc.

¹⁰ CTI offers real-time clearing trade updates. A real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade

except that the SQF Purge Port Fee is lower for the first five ports.¹¹ The following is an example of the proposed new SQF Purge Port Fee: A Participant that has three SQF Purge Ports would, on a monthly basis, be fee liable for \$1,500 (\$500 x 3). And a Participant that has seven SQF Purge Ports would, on a monthly basis, be fee liable for \$2,700 (\$500 x 5 and \$100 x 2).

Change 2 – Technical Modifications

The Exchange is also taking the opportunity to enhance the clarity and readability of Chapter VII, Section B of the Pricing Schedule. First, the Exchange is numbering each port fee in a separate subsection. Second, the Exchange is moving text from a footnote to the body of the current Active SQF Port Fee provision. Third, the Exchange is adding missing words to clarify that the current CTI Port Fee is per month. Fourth, the Exchange is deleting extraneous trademark language from the Pricing Schedule. None of these changes modifies the application of any existing fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and with Section 6(b)(4) and 6(b)(5) of the Act,¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism

details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation.

¹¹ Whereas the proposed SQF Purge Port Fee is \$500 per port, per month for each of the first five ports and \$100 per port per month for each port thereafter, the CTI Port Fee is \$650 per port, per month for the first five ports and \$100 per port per month thereafter. See Phlx Pricing Schedule at Chapter VII, Section B.

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4) and (5).

of a free and open market and a national market system. The Exchange also believes that the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine pricing because national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁴ Likewise, in NetCoalition v. Securities and Exchange Commission¹⁵ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁶ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁷

Further, “[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-

¹⁴ Securities Exchange Act Release No. 51808 at 37499 (“Regulation NMS Adopting Release” at Securities Exchange Release No. 34-51808 (June 29, 2005), 70 FR 37496 (File No. S7-10-04)).

¹⁵ NetCoalition v. Securities and Exchange Commission, No. 09-1042 (D.C. Cir. 2010).

¹⁶ See id. at 534-535.

¹⁷ See id. at 537.

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’”¹⁸ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering Market Makers designated SQF Purge Ports would enhance Market Makers' ability to manage quotes, quote traffic, and their quoting obligations,¹⁹ which would, in turn, improve their risk controls to the benefit of all market participants. The Exchange believes that the SQF Purge Ports would foster cooperation and coordination with persons engaged in facilitating transactions in securities because designating SQF Purge Ports for purges only, and making it clear in the Pricing Schedule that such ports are available,²⁰ may encourage better use of such dedicated ports. This may, concurrent with the Active SQF Ports that carry quote and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Market Makers' resources. Because SQF Purge Ports, as the name suggests, are only available for purging and not for activities such as order or quote entry, the SQF Purge Ports are not designed to permit unfair discrimination but rather are designed to

¹⁸ See *id.* at 539 (quoting Securities Exchange Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) at 73 FR at 74782-74783).

¹⁹ See Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

²⁰ As discussed, SQF Purge Ports will be fee liable on a monthly basis (and not only when such ports are active), which will help the Exchange to recoup the cost of these ports.

enable Market Makers to manage their quoting risk and meet their heightened quoting obligations that other market participants are not subject to, which, in turn, benefits all market participants.

The Exchange believes that its proposal should facilitate the ability of the Exchange to recoup some costs associated with SQF Purge Ports as well as provide, maintain, and improve SQF Purge Ports. The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons.

Change 1 – SQF Purge Port Fees

The Exchange believes that its proposal to institute a \$500 per port per month fee for each of the first 5 SQF Purge Ports and \$100 per port per month for each port thereafter is reasonable because it would allow the Exchange to recoup technology costs. The proposed SQF Purge Port Fee reflects the desire of the Exchange to recoup the costs of maintaining ports. The SQF Purge Port Fee is reasonable because it enables the Exchange to offset, in part, its costs associated with making such ports available, including costs based on software and hardware enhancements and resources dedicated to development, quality assurance, and support. The structure of the Exchange’s SQF Purge Port Fee is similar to that of the current CTI Port Fee, except that the SQF Purge Port Fee is lower for the first five ports.²¹ In addition, the SQF Purge Port Fee is in line with costs for ports at other options exchanges.²² The SQF Purge Port Fee is

²¹ Whereas the proposed SQF Purge Port Fee is \$500 per port per month for each of the first five ports and \$100 per port per month for each port thereafter, the Phlx CTI Port Fee is \$650 per port per month for the first five ports and \$100 per port per month thereafter. NOM and BX Options CTI Port Fees are simply \$650 and \$200, respectively. See NOM Chapter XV, Section 3(b) and BX Chapter XV, Section 3(b).

²² See NOM Pricing Schedule (port fees \$650 or \$750 per port). See also C2 Options Exchange, Incorporated (“C2”) (generally assesses port fees \$500 to \$1,000 depending on connectivity levels); and NYSE AMEX Options (“AMEX”) fees (assesses a Quote

also reasonable because it reflects a structure that is not novel in the options markets but rather, as a graduated fee, is similar to that of other options exchanges and competitive with what is offered by other exchanges.

Moreover, SQF Purge Ports allow Market Makers to better rely on data available through Active SQF Ports to provide them the necessary information for risk control and risk management so that they can perform market making activities in a swift and meaningful way. The Exchange believes that the progressive nature of the proposed new SQF Purge Port Fees for Market Makers is reasonable. While the proposed SQF Purge Port Fees will be assessed at \$500 for the first five SQF Purge Ports, for more than five ports the fees will be assessed at only \$100 per SQF Purge Port per month.²³ Market Makers on the Exchange are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants because Market Makers add value through continuous quoting²⁴ and the commitment of capital. Market Makers provide a critical liquidity function across thousands of individual option put and call series, a function no other market participants are obligated to perform.

The Exchange believes that establishing the proposed SQF Purge Port Fee is equitable and not unfairly discriminatory in that it will apply uniformly to all similarly situated market participants. All Market Makers that use SQF Purge Ports will be assessed the SQF Purge Port

Takedown Port of \$450 per port per month in excess of the number of order/quote entry ports utilized.)

²³ Upon effectiveness of this proposal, a Market Maker that has three SQF Purge Ports would, on a monthly basis, be fee liable for \$1,500 (\$500 x 3). And a Participant that has seven SQF Purge Ports would, on a monthly basis, be fee liable for \$2,700 (\$500 x 5 plus \$100 x 2).

²⁴ See Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

Fee in the same way. Market Makers who do not wish to acquire a dedicated SQF Purge Port can continue to use their Active SQF Port for purging their quotes without requiring a new SQF Purge Port. Having the SQF Purge Port to purge gives Market Makers choices in their preferred technical configuration with the exchange.

Change 2 – Technical Modifications.

The Exchange believes that the proposed technical modifications are fair and reasonable in that they do not impact the application of existing fees but simply enhance clarity and readability. Nor are the proposed technical modifications discriminatory in any respect.

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. Specifically, the Exchange does not believe that its proposal to make changes to Chapter VII, Section B to add new SQF Purge Port Fees will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because it enables the Exchange to propose offering dedicated purge ports, SQF Purge Ports, to the benefit of Market Makers.

The Exchange does not believe that the proposed rule change will impose any undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In

terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues 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 to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Moreover, in terms of intra-market competition, the Exchange notes that the proposed assessment of an SQF Purge Port Fee will be applied uniformly to all Market Makers that use such ports but should have no undue burden on any particular group of users. The proposal is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup for certain of its connectivity costs, while continuing to offer competitive rates to participants.

Furthermore, in this instance the proposed SQF Purge Port Fee does not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share and revenue as participants choose to abandon ports. 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. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁵ and Rule 19b-4(f)(6) thereunder.²⁶ The Exchange believes the rule change qualifies for immediate effectiveness as a “non-controversial” rule change under Rule 19b-4(f)(6) of the Act.

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

²⁵ 15 U.S.C. 78s(b)(3)(a)(iii).

²⁶ 17 CFR 240.19b-4(f)(6).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2016-45 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-2016-45. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-Phlx-2016-45 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.²⁷

Robert W. Errett
Deputy Secretary

²⁷ 17 CFR 200.30-3(a)(12).