

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101498; File No. SR-Phlx-2024-55)

November 1, 2024

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Section 9

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 October 18, 2024, 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 Options 7, Section 9.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2025.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposed rule change is to amend the Exchange's SQF Port Fee and SQF Purge Port Fee. Specifically, the Exchange proposes to raise its SQF Port Fee and SQF Purge Port Fee in Options 7, Section 9, B by 10%.

Today, Phlx assesses \$1,250 per port, per month up to a maximum of \$42,000 per month for an SQF Port that receives inbound quotes at any time within that month.³ With this proposal, Phlx would assess Market Makers \$1,375 per port, per month (a 10% increase from \$1,250) up to a maximum of \$46,200 per month (a 10% increase from \$42,000). Also, today, Phlx assesses \$500 per port, per month for each of the first 5 SQF Purge Ports and \$100 per port, per month for each port thereafter. With this proposal, Phlx would assess Market Makers \$550 per port, per month for each of the first 5 SQF Purge Ports (a 10% increase from \$500) and \$110 per port, per month for each port thereafter (a 10% increase from \$100).⁴

The proposed SQF Port Fee and SQF Purge Port Fee increases would enable the Exchange to maintain and improve its market technology and services to remain competitive with its peers. Over the years, customer demand for risk protections and capacity has increased.

³ An active port shall mean that the port was utilized to submit a quote to the System during a given month. See Options 7, Section 9, B. Today, Market Makers are not assessed an active SQF Port Fee for additional ports acquired for ten business days for the purpose of transitioning technology. The member organization is required to provide the Exchange with written notification of the transition and all additional ports, provided at no cost, will be removed at the end of the ten business days. See Options 7, Section 9, B.

⁴ Phlx proposes to add commas between per port and per month on the Pricing Schedule for the SQF Purge Port Fee.

The Exchange continues to invest in maintaining, improving, and enhancing its port protocols – for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware, upgrading risk protections and information security, and offering customers additional capacity. The Exchange has not increased Phlx’s SQF Port Fee since 2015,⁵ and has not increased its SQF Purge Port Fee since 2016⁶ where inflation has been between roughly 15% - 16%, as measured using the metric described below. Nevertheless, the Exchange proposes to increase its SQF Port Fee by 10%, only with respect to inflation that has occurred since 2015, and its SQF Purge Port Fee by 10%, only with respect to inflation that has occurred since 2016. Further, the Exchange also proposes to increase the maximum monthly fee that may be assessed for an SQF Port by 10% so as to align with the increase to the SQF Port Fee.

As discussed below, the Exchange proposes to adjust its fees by an industry- and product-specific inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at fees frozen at 2015 and 2016 levels, respectively, impacts the Exchange’s ability to enhance its offerings and the interests of market participants and investors.

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (“PPI”), which is a tailored measure of inflation.⁷ As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index

⁵ See Securities Exchange Act Release No. 74833 (April 29, 2015), 80 FR 25749 (May 5, 2015) (SR-Phlx-2015-36).

⁶ See Securities Exchange Act Release No. 77613 (April 13, 2016), 81 FR 23023 (April 19, 2016) (SR-Phlx-2016-45).

⁷ See <https://data.bls.gov/timeseries/PCU5182105182105>.

(“CPI”), that measure price change from the purchaser's perspective.⁸ About 10,000 PPIs for individual products and groups of products are tracked and released each month.⁹ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector’s output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Hosting, Activer Server Pages, and Other IT Infrastructure Provisioning Services (“Data PPI”) within the Data Processing and Related Services Industry, which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data Processing and Related Services industry was introduced to the PPI in January 2002 by the Bureau of Labor Statistics (“BLS”) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS - 518210 in the North American Industry Classification System.¹⁰ According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software— to process customers’ transactions and data. Companies that offer processing services collect, organize, and store a customer’s transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month,

⁸ See <https://www.bls.gov/ppi/overview.htm>.

⁹ See *Id.*

¹⁰ See <https://data.bls.gov/timeseries/PCU5182105182105>.

companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”¹¹

The Exchange believes the Data PPI is the most appropriate subset of the Data Processing and Related services industry to be considered in the context of the proposed rule change to modify the SQF Port Fee and the SQF Purge Port Fee because the Exchange uses its “proprietary software,” i.e., its own proprietary matching engine software, respectively, to receive options quotes on the Exchange’s proprietary trading platform.

For purposes of this proposed rule change, with respect to the SQF Port Fee, the Exchange examined the Data PPI value for the period from April 2015 to August 2024. The Data PPI had a starting value of 101.0 in April 2015 and an ending value of 116.445 in August 2024, a 15.29% increase. For purposes of this proposed rule change, with respect to the SQF Purge Port Fee, the Exchange examined the Data PPI value for the period from April 2016 to August 2024. The Data PPI had a starting value of 100.4 in April 2016 and an ending value of 116.445 in August 2024, a 15.98% increase. This data indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 15.29% and 15.98%, respectively, during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase of only 10%, which reflects an increase covering roughly the entire period since the last price adjustment to the SQF Port Fee and the SQF Purge Port Fee was made. Additionally, the

¹¹ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

Exchange proposes to increase the maximum monthly fee that may be assessed for an SQF Port by 10% so as to align with the increase to the SQF Port Fee.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.¹²

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.¹³

As a technical amendment, the Exchange proposes to add the words “active port” in parenthesis at the end of the description of the SQF Port Fee to tie the definition of an active port to the description for the port.

¹² See <https://www.usinflationcalculator.com/>.

¹³ See supra discussion of SQF Port and SQF Purge Port enhancements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See, e.g., Securities Exchange Act Release Nos. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-CboeBYX-2024-012); and 34-100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR-BOX-2024-16)l; Securities Exchange Act Release No. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ 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.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the SQF Ports and SQF Purge Ports, as the SQF Port Fee and SQF Purge Port Fee has been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the risk protections and capacity of SQF Ports and SQF Purge Ports has increased the performance of these ports.

The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in the proposal since 2015 and 2016, respectively. However, in the years following the last fee increases, the Exchange has made significant investments in upgrades to its SQF Ports and SQF Purge Ports, enhancing the quality of its services, as measured by, among other things, increased capacity. In other words, Exchange customers have greatly benefitted, while the Exchange's ability to recoup its investments has been hampered. Between 2015 and 2024, the inflation rate is 3.22% per year, on average, producing a cumulative inflation rate of 33.03%.¹⁶ Also, between 2016 and 2024, the inflation rate is 3.47% per year, on average, producing a cumulative inflation rate of

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ See <https://www.officialdata.org/us/inflation/2015?amount=1>.

31.37%.¹⁷ Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 15.29% between 2015 and 2024, and 15.98% between 2016 and 2024. The Exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry, which based on the definition adopted by BLS would include the Exchange's port protocols.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees at all for over eight and nine years, respectively, for the subject services. The proposed SQF Port Fee and SQF Purge Port Fee represent a modest increase from the current SQF Port Fee and SQF Purge Port Fee. Further, the proposed increase to the maximum monthly fee for an SQF Port aligns with the increase to the SQF Port Fee. The Exchange believes the proposed SQF Port Fee and SQF Purge Port Fee increases are reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its port products – for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing several aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products. The goal of the enhancements discussed above, among other things, is to provide more modern connectivity to the match engine. Accordingly, the Exchange continues to expend resources to innovate and modernize its technology so that it may benefit its members in offering SQF Ports and SQF Purge Ports.

The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory

The Exchange also believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply to all Market Makers uniformly. Market

¹⁷ See <https://www.officialdata.org/us/inflation/2015?amount=1>.

Makers are the only market participants that are assessed the SQF Port Fee and SQF Purge Port Fee because they are the only market participants that are permitted to quote on the Exchange.¹⁸ These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to the Exchange on a continuous basis. SQF Ports and SQF Purge Ports are only utilized in a Market Maker's assigned options series. The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply uniformly to all Market Makers that subscribe to SQF Ports and SQF Purge Ports to quote on the Exchange. The Exchange also believes that the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms during the relevant period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange believes that the proposed fees do not impose an undue burden on intramarket competition because they would apply to all Market Makers uniformly. Market Makers are the only market participants that are assessed an SQF Port Fee and an SQF Purge Port Fee because they are the only market participants that are permitted to quote on the Exchange.¹⁹ These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to the Exchange on a continuous basis. SQF Ports and

¹⁸ Unlike other market participants, Market Makers are subject to market making and quoting obligations. See Options 2, Sections 4 and 5.

¹⁹ Unlike other market participants, Market Makers are subject to market making and quoting obligations. See Options 2, Sections 4 and 5.

SQF Purge Ports are only utilized in a Market Maker's assigned options series. The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply uniformly to all Market Makers that subscribe to SQF Ports and SQF Purge Ports to quote on the Exchange.

Intermarket Competition

The Exchange believes that the proposed fees do not impose an undue burden on intermarket competition or on other SROs that is not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in SQF Ports and SQF Purge Ports. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase the SQF Port Fee and SQF Purge Port Fee to recoup the Exchange's investment in maintaining and enhancing SQF Ports and SQF Purge Ports does not impose a burden on competition.

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.²⁰

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

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

(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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2024-55 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-2024-55. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2024-55 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Vanessa A. Countryman,
Secretary.

²¹ 17 CFR 200.30-3(a)(12).