

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101822; File No. SR-Phlx-2024-67)

December 5, 2024

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change to Amend the Exchange's Fees for Top of PHLX Options (TOPO), PHLX Orders, and TOPO Plus Orders

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 November 27, 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 the Exchange's proprietary data fees for Top of PHLX Options ("TOPO"), PHLX Orders, and TOPO Plus Orders at Options 7, Section 10, as described further below.

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 proprietary data fees for Top of PHLX Options (“TOPO”),³ PHLX Orders,⁴ and TOPO Plus Orders at Options 7, Section 10.⁵

Top of PHLX Options (“TOPO”)

³ See Options 3, Section 23(a)(1) (“Top of PHLX Options (‘TOPO’) is a direct data feed product that includes the Exchange’s best bid and offer price, with aggregate size, based on displayable order and quoting interest on Phlx and last sale information for trades executed on Phlx. The data contained in the TOPO data feed is identical to the data simultaneously sent to the processor for the OPRA and subscribers of the data feed. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only.”).

⁴ See Options 3, Section 23(a)(1) (“PHLX Orders is a real-time full Limit Order book data feed that provides pricing information for orders on the PHLX Order book for displayed order types as well as market participant capacity. PHLX Orders is currently provided as part of the TOPO Plus Orders data product. PHLX Orders provides real-time information to enable users to keep track of the single and complex order book(s). The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, leg information on complex strategies and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. The feed also provides auction and exposure notifications and order imbalances on opening/reopening (size of matched contracts and size of the imbalance)”).

⁵ The proposed changes were initially filed on November 16, 2023, as SR-Phlx-2023-51. On December 5, 2023, SR-Phlx-2023-51 was withdrawn and replaced with SR-Phlx-2023-57. On January 29, 2024, SR-Phlx-2023-57 was withdrawn and replaced with SR-Phlx 2024-03. On March 20, 2024, SR-Phlx-2024-03 was withdrawn and replaced with SR-Phlx-2024-15. On May 16, 2024, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change. See Securities Exchange Act Release No. 100160 (May 16, 2024), 89 FR 45036 (May 22, 2024). On November 19, 2024, SR-Phlx-2024-15 was withdrawn and replaced with SR-Phlx-2024-60. On November 27, 2024, SR-Phlx-2024-60 was withdrawn and replaced with the instant filing.

TOPO is a direct data feed that provides subscribers with PHLX Best Bid and Offer (“BBO”)⁶ and last sale information.⁷ The data distributed on TOPO is identical to the data simultaneously sent to the Options Price Reporting Authority (“OPRA”).⁸ The TOPO feed also provides administrative information to facilitate trading on the Exchange such as, for example, the list of symbols trading on a particular day.⁹ TOPO reduces the transmission and processing latencies for top of book information relative to the OPRA feed by avoiding the latencies generated by the latter in consolidating data.

⁶ The Best Bid and Offer includes aggregate size information based on displayable order and quoting interest on the Exchange.

⁷ See PHLX, “Top of Phlx Options,” available at [https://www.nasdaqtrader.com/Micro.aspx?id=TOPO#:~:text=Top%20of%20PHLX%20Options%20\(TOP%20O,in%20the%20consolidated%20market%20feed.](https://www.nasdaqtrader.com/Micro.aspx?id=TOPO#:~:text=Top%20of%20PHLX%20Options%20(TOP%20O,in%20the%20consolidated%20market%20feed.)

⁸ See Options 3 (Options Trading Rules), Section 23(a)(1) (Data Feeds and Trade Information) (“The data contained in the TOPO data feed is identical to the data simultaneously sent to the processor for the OPRA and subscribers of the data feed.”).

⁹ See, e.g., Nasdaq, “Top of Phlx Options Interface Specifications, Version 3.4” Section 4.3 available at <https://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/topofphlx.pdf> (describing the start of day options directory message, which lists all symbols eligible for the auction process).

Monthly fees for TOPO are currently \$2,000 for Internal Distributors,¹⁰ \$2,500 for External Distributors,¹¹ \$1 for a Non-Professional Subscriber,¹² and \$40 for a Professional Subscriber.¹³ None of these fees have changed for over a decade, since January 2013.¹⁴

PHLX Orders

PHLX Orders is a real-time order book feed with pricing information for displayed orders on the PHLX order book.¹⁵ The data provided for each options series includes the symbols (series and underlying security), a put or call indicator, expiration date, and the strike price of the series. It also provides the real-time status of simple and complex orders¹⁶ on the order book, including new orders and changes to orders resting on the PHLX book for all PHLX-listed options.¹⁷ The PHLX Orders feed includes data on the opening imbalance, Price Improvement

¹⁰ See Options 7, Section 10 (Proprietary Data Feed Fees) (Top of PHLX Options) (“A ‘distributor’ of Nasdaq PHLX data is any entity that receives a feed or data file . . . directly from Nasdaq PHLX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors execute a Nasdaq PHLX distributor agreement.”).

¹¹ See id.

¹² See id. (“A Non-Professional Subscriber is a natural person who is neither: (i) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ‘investment adviser’ as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. A Non-Professional Subscriber may only use the data provided for personal purposes and not for any commercial purpose.”).

¹³ See id. (“A Professional Subscriber is any Subscriber that is not a Non-Professional Subscriber. If the Nasdaq Subscriber agreement is signed in the name of a business or commercial entity, such entity would be considered a Professional Subscriber.”).

¹⁴ See Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR-Phlx-2012-145).

¹⁵ See Options 3 (Options Trading Rules), Section 23(a)(2) (Data Feeds and Trade Information).

¹⁶ See Options 3 (Options Trading Rules), Section 23(a)(2) (Data Feeds and Trade Information); Section 14(a)(i) (“Complex Order. For purposes of the electronic trading of Complex Orders, a Complex Order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy.”).

¹⁷ See Nasdaq, “PHLX Orders,” available at <https://www.nasdaqtrader.com/Micro.aspx?id=PHLXOrders>.

XL (PIXL),¹⁸ and Complex Order Live Auction (COLA).¹⁹ A notification message is sent for symbols entering an auction.²⁰ PHLX Orders also furnishes an historical record of all simple and complex order message data from the PHLX Orders data feed. PHLX Orders information is not sent to OPRA.²¹

PHLX Orders is an alternative to PHLX Depth of Market. It is an optimized technical channel designed to lower technology costs, reduce processing time, and facilitate the ingestion of data while still providing customers insight beyond the top of book by viewing active buy and sell orders. PHLX Orders excludes quotations by market makers and other authorized entities that is included in PHLX Depth of Market.²²

What is the utility of an orders-only data feed? It provides customers with the opportunity to reduce bandwidth (and therefore data processing costs) by several orders of magnitude relative to the full depth of book feed, while retaining a view of market participant orders (setting aside symbols where participants have not placed orders).

¹⁸ See Options 3 (Options Trading Rules), Section 23(a)(2); Section 13 (Price Improvement XL) (“A member may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker-dealer, or any other entity (‘PIXL Order’) against principal interest or against any other order (except as provided in sub-paragraph (a)(6) below) it represents as agent (an ‘Initiating Order’) provided it submits the PIXL Order for electronic execution into the PIXL Auction (‘Auction’) pursuant to this Rule.”).

¹⁹ See Options 3, Section 14(e) (describing the process for the Complex Order Live Auction (“COLA”)).

²⁰ Nasdaq, “PHLX Orders Interface Specification,” (Version 1.92) available at <https://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/topoplusorders.pdf> (describing auction notification message).

²¹ See Limited Liability Company Agreement of Options Price Reporting Authority, LLC Article V, Section 5.2(c)(i) (January 1, 2010), available at https://assets.website-files.com/5ba40927ac854d8c97bc92d7/5d0bd57d87d3ccca102102d7_OPRA%20Plan%20with%20Update%20Exhibit%20A%20-%2006-19-2019.pdf (describing last sale and best bid and offer information disseminated by OPRA).

²² See Options 3 (Options Trading Rules), Section 23(a)(3) (Data Feeds and Trade Information) (“PHLX Depth of Market is a data product that provides: (i) order *and quotation* information for *individual quotes* and orders on the order book . . .”) (emphasis added); Section 4(b) (Entry and display of Quotes) (identifying the market participants authorized to submit quotes to the Exchange).

The December 2023 bandwidth report shows that the PHLX Depth of Market feed transmitted a maximum of 14.3 billion messages per day during the month of December,²³ while the PHLX Orders feed transmitted a maximum of 53.6 million messages over the same period (41.5 million messages for simple orders, and 12.1 million messages for complex orders). The Exchange's full depth of book feed requires the customer to process over 200 times more messages than the orders feed over the course of a day; replacing a depth of book feed with an orders feed allows a customer to reduce the maximum number of daily messages it receives by 99.6%.

To cite another example, the 1millisecond bandwidth peak for PHLX Depth of Market was 13.96 million messages; the comparable number of messages for orders was 1.45 million (891 thousand for simple and 561 thousand for complex orders). Replacing depth of book with orders can therefore reduce the number of messages processed at peak at the 1 millisecond bandwidth by nearly 90%.

Approximately 56% of customers who take any data feed at all from the PHLX exchange take an orders feed (either Orders only or TOPO Plus Orders) without depth of book. Another 38% of customers take both orders and depth feeds. The remaining 6% take either top of book or depth of book alone.

What type of customer takes an orders feed in lieu of depth? In general, firms that only need information on actively trading options do so. There are a great number of use cases that fit this broad description, but, for purposes of illustration, the Exchange is aware of at least two such types of customers.

²³ See Nasdaq, "December 2023 Bandwidth Report," available at <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.nasdaqtrader.com%2Fcontent%2Ftechnicalsupport%2Fspecifications%2Fdataproduts%2Fbandwidthreport.xls&wdOrigin=BROWSELINK>

The first is the market participant that does not engage in order routing. These are broker dealers that use third parties to route orders, either because the originating broker-dealer is not a member of the exchange or to save costs. Without the need for additional information to inform routing decisions, such customers often focus on active trading alone, and therefore purchase the orders feed.

A second category of customers are those that use options data to analyze trends in other markets. One example of this type of customer is the equity trader that analyzes equity-based options orders to gauge market sentiment in the underlying equity. For such customers, there is relatively little utility in the full depth feed.

As noted above, there are some customers that purchase both orders and depth. Vendors are one example of this type of customer. They purchase market data solely for resale, not for trading on behalf of themselves or others. Another example is the firm that uses orders for analysis and depth for order routing. As noted above, the orders feed can be useful for assessing sentiment in equity markets, while depth is often used in order routing decisions. Firms that engage in both functions can lower overall processing requirements by using orders for analytics and depth for routing.

Customers can obtain all of the data contained in PHLX Orders from PHLX Depth of Market feed and may purchase the latter if they do not realize the cost savings offered by PHLX Orders.

PHLX Orders is a derivative product designed as a lower-cost alternative to a depth of book feed. It is not a complement to any other product offered by the Exchange or any of its competitors. Customers are free to purchase PHLX Orders or not, and can reject the feed for any reason, including the fee charged.

Current monthly fees for PHLX Orders are \$3,000 for Internal Distributors, \$3,500 for External Distributors, \$1 for a Non-Professional Subscriber, and \$40 for a Professional Subscriber. None of these fees have changes for over a decade, since January 2013.²⁴

TOPO Plus Orders

TOPO Plus is a direct market data product that offers subscribers both TOPO and PHLX Orders for a consolidated fee that is less than the combined fee of the two products.²⁵

Monthly fees for TOPO Plus Orders are currently \$4,500 for Internal Distributors, \$5,000 for External Distributors, \$1 for a Non-Professional Subscriber, and \$40 for a Professional Subscriber.

Internal Distributor fees for TOPO Plus Orders were modified in January 2018, over five years ago,²⁶ but the other TOPO Plus Orders fees have not changed since January 2013.²⁷

Usage of TOPO, PHLX Orders, and TOPO Plus Orders

Different types of market participants purchase TOPO, PHLX Orders and TOPO Plus Orders, including market makers, vendors, banks, proprietary traders, agency brokers (brokers that route trades on behalf of other market participants), hedge funds, index providers and other firms.

In characterizing market participants, we must be clear that firms use data feeds for multiple tasks. A market maker, for example, may use market data for order routing, or for risk analysis

²⁴ See Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR-Phlx-2012-145).

²⁵ See PHLX, TOPO Plus PHLX Orders, available at <https://www.nasdaqtrader.com/Micro.aspx?id=TOPOPlusOrders>.

²⁶ See Securities Exchange Act Release No. 82495 (January 12, 2018), 83 FR 2839 (January 19, 2018) (SR-Phlx-2018-08).

²⁷ See Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR-Phlx-2012-145).

used in quoting in their assigned option series. Banks may use market data for prime brokerage services, proprietary trading, or risk management. Market data vendors do not directly use the data at all, but rather disseminate data to market participants that use the data for a multiplicity of purposes. Other firms purchase options data to assess the value of equity securities.²⁸

Characterizing firms based on what we understand to be their primary market activity, and understanding that firms play multiple roles, we estimate that approximately half of the customers that take top of book data in any form, in combination with other products or alone, are market makers, and the remaining half are market data vendors, banks, proprietary traders, agency brokers, hedge funds, index providers, and others. Roughly the same distribution applies to customers that purchase PHLX Orders, whether alone or in combination with other products. Although the distributions are roughly similar, different customers are purchasing different products in different combinations.

As explained above, firms generally purchase PHLX Orders rather than depth of book data to lower technology costs and reduce processing time, while still providing customers insight into open executable orders that could impact the BBO.

A more specific explanation of how TOPO, PHLX Orders and TOPO Plus Orders is used will vary based on use case, with many firms employing multiple use cases. Market makers, banks, hedge funds, and proprietary traders often use top of book and orders feeds for trading, order routing and analysis. Banks may use market data for prime brokerage services, proprietary trading, or risk management. The clients of market data vendors will utilize the data for many

²⁸ We do not include “High Frequency Trading Firm” as a distinct category because many market participant may engage in low latency trading strategies to some degree, but the Exchange does not have sufficient information to be able to characterize any particular firm as a high frequency trader.

different purposes. We do not have sufficient visibility into our customers' businesses and proprietary processes to be able to determine precise data usage by customer category.

Proposed Changes

For TOPO, the Exchange proposes to increase the monthly charge for Internal Distributors from \$2,000 to \$2,500, and the monthly charge for External Distributors from \$2,500 to \$3,000. No changes are proposed for Non-Professional and Professional Subscriber fees.

For PHLX Orders, the Exchange proposes to increase the monthly charge for Internal Distributors from \$3,000 to \$3,500, and the monthly charge for External Distributors from \$3,500 to \$4,000. No changes are proposed for Non-Professional and Professional Subscriber fees.

For TOPO Plus Orders, the Exchange proposes to increase the monthly charge for Internal Distributors from \$4,500 to \$5,500, and the monthly charge for External Distributors from \$5,000 to \$6,000. No changes are proposed for Non-Professional and Professional Subscriber fees.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³⁰ 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.

²⁹ 15 U.S.C. 78f(b).

³⁰ 15 U.S.C. 78f(b)(4) and (5).

The proposal provides for the equitable allocation of reasonable dues, fees and other charges because the proposed fees are comparable to, and in some cases less than, those of similarly situated exchanges.

The proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because: (i) it is not unfair discrimination to charge external distributors more for the product because external distributors receive additional value not available to internal distributors by disseminating information externally and typically charging for the service; and (ii) the market data feeds subject to the proposed fee will be available to customers on a non-discriminatory basis.

Equitable Allocation of Reasonable Dues, Fees and Other Charges

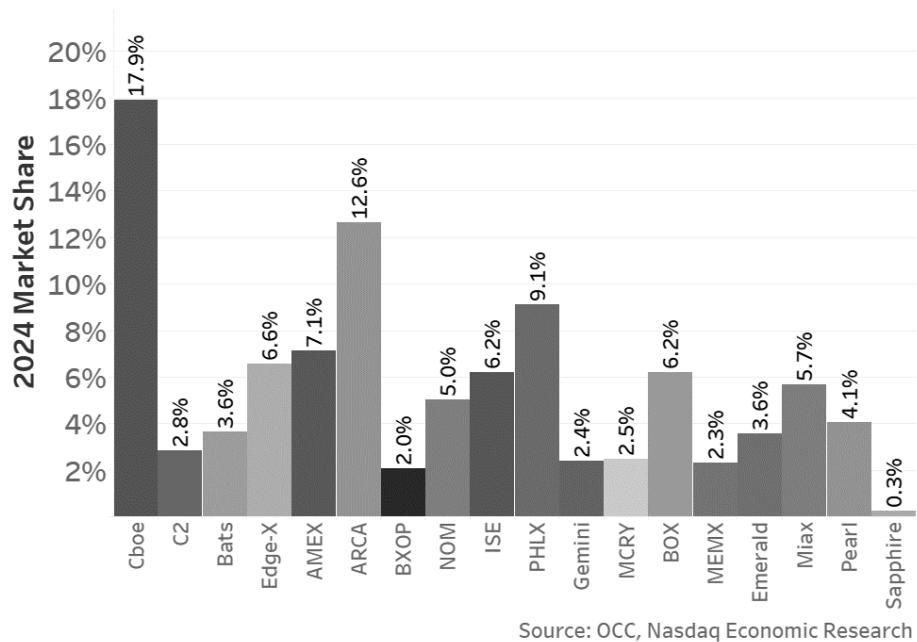
The Exchange assesses the market share for each of the eighteen options markets utilizing total options contracts traded in 2024 through October 28, 2024, as set forth in the following graph:³¹

³¹ Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and ports. Total contracts include both multi-list options and proprietary options products. Proprietary options products are products with intellectual property rights that are not multi-listed. BX does not list proprietary products.

Figure 1

US Options Market Share

Data using total options contracts traded from start of 2024 - October 28, 2024



Source: OCC, Nasdaq Economic Research

Top of PHLX Options (TOPO)

The proposed fees for Top of PHLX Options are comparable to those charged by Miami International Securities Exchange, LLC (“MIAX”), MIAX Emerald (for both internal and external distribution) and Cboe Exchange, Inc. (“Cboe”) (for external distribution), as summarized in Table 1:

Table 1

Exchange	Market Share	Monthly Fees (Top of Book)	
		<u>Internal Distribution</u>	<u>External Distribution</u>
PHLX	9.1%	\$2,500	\$3,000
MIAX	5.7%	\$4,000 (\$2,000 for simple orders; \$2,000 for complex orders)	\$6,000 (\$3,000 for simple orders; \$3,000 for complex orders)

MIAX Emerald	3.6%	\$2,500 (\$1,250 for simple orders; \$1,250 for complex orders)	\$3,500 (\$1,750 for simple orders; \$1,750 for complex orders)
Cboe	17.9%	N/A (fee is part of a package of multiple products)	\$8,000 (\$5,000 for simple orders; \$3,000 for complex orders)

A more detailed discussion of the comparison follows.

MIAX

MIAX, with a market share of approximately 5.7%, provides less information in its top of book feeds than PHLX, yet charges more for those feeds than the PHLX proposal.

MIAX charges different fees for internal distribution of its simple and complex top of book feeds: \$2,000 for its Top of Market feed, and another \$2,000 for its complex Top of Market feed, for a total of \$4,000.³² PHLX TOPO includes both simple and complex orders in a single feed, and therefore the proposed fee of \$2,500 for internal distribution is much less than the \$4,000 charged by MIAX for less information.

For external distribution, MIAX charges \$3,000 for Top of Market feed, and another \$3,000 for its complex top of market feed,³³ for a total of \$6,000. The proposed fees of \$3,000 for the PHLX TOPO feed, which includes both simple and complex orders, is far less than the fees charged by MIAX for less information.

MIAX Emerald

³² See MIAX Options Exchange Fee Schedule (October 1, 2024), available at https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_10012024.pdf

³³ See id.

The same analysis applies to MIAX Emerald, with a market share of 3.6%. Similar to MIAX, MIAX Emerald charges different fees for simple and complex top of book feeds: \$1,250 for internal distribution of its Top of Market feed, and another \$1,250 for internal distribution of its Complex Top of Market feed, for a total of \$2,500.³⁴ This is the same amount proposed for TOPO internal distribution, for less information.

MIAX Emerald charges \$1,750 for external distribution of its Top of Market feed, and another \$1,750 for external distribution of its complex Top of Market feed, for a total of \$3,500.³⁵ MIAX Emerald therefore charges more than PHLX's proposed monthly charges of \$3,000 for external distribution of TOPO, notwithstanding the fact that MIAX Emerald provides less market information.

This supports the proposition that the proposed PHLX fees are comparable to those of other exchanges and therefore reasonable.

Cboe

Cboe has an approximately 17.9% market share, nearly twice the PHLX market share of 9.1%.³⁶

The Cboe fee for external distribution of the top of book feed is \$5,000 per month.³⁷ If a customer also wants Cboe's Complex Order Book ("COB"), the customer would pay an additional \$3,000.³⁸ These fees are comparable to the proposed PHLX fee of \$3,000 per month

³⁴ See MIAX Emerald Options Schedule (December 8, 2022), available at https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_12082022c.pdf

³⁵ See id.

³⁶ See Nasdaq, Options Market Statistics (Last updated November 3, 2023), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

³⁷ See id.

³⁸ As explained in note 32, Cboe waives its Complex Order Book feed for internal distribution of top of book and depth, but not for external distribution of top of book.

for external distribution of a combined simple and complex orders feed because the higher fee for Cboe reflects the higher market share of the Cboe exchange.

PHLX Orders

The proposed fees for PHLX Orders are comparable to the fees charged by MIAX, MIAX Emerald, and Nasdaq ISE, LLC (“ISE”), an affiliate of PHLX, as set forth in Table 2 below.

Table 2

Exchange	Market Share	Monthly Fees (Orders)	
		<u>Internal Distribution</u>	<u>External Distribution</u>
PHLX	9.1%	\$3,500	\$4,000
MIAX	5.7%	\$3,000	\$3,500
MIAX Emerald	3.6%	\$3,000	\$3,500
ISE	6.2%	\$3,000	\$3,000 per month plus \$20 per month per controlled device

MIAX

MIAX has a market share of approximately 5.7%, somewhat more than half of PHLX’s market share of 9.1%.

MIAX charges \$3,000 for internal distribution of its orders feed.³⁹ PHLX, with a market share over 50 percent more than MIAX, proposes to charge \$3,500 for the same service. The PHLX fee is only about 17% more than the MIAX fee.

³⁹ See MIAX Options Exchange Fee Schedule (October 1, 2024), available at https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_10012024.pdf

MIAX charges \$3,500 for external distribution of its orders feed.⁴⁰ PHLX, with a market share over 50 percent more than MIAX, proposes to charge \$4,000 for the same service. The PHLX fee is only about 14% more than the MIAX fee.

MIAX Emerald

MIAX Emerald also has a market share of 3.6%, less than half of PHLX's market share of 9.1%.

Like MIAX, MIAX Emerald charges \$3,000 for internal distribution of its orders feed.⁴¹ PHLX, with a market share over twice that of MIAX Emerald, proposes to charge \$3,500 for the same service. The PHLX fee is only about 17% more than the MIAX fee.

MIAX Emerald also charges \$3,500 for external distribution of its orders feed.⁴² PHLX, with a market share over twice that of MIAX Emerald, proposes to charge \$4,000 for the same service. The PHLX fee is only about 14% more than the MIAX Emerald fee.

ISE

ISE has a market share of approximately 6.2%, below PHLX's market share of 9.1%.

ISE charges \$3,000 for internal distribution of its Order Feed.⁴³ This is comparable to the proposed PHLX Orders feed for internal distribution of \$3,500 because PHLX has a larger share and the ISE feed does not include information on complex orders.

⁴⁰ See id.

⁴¹ See MIAX Emerald Options Schedule (December 8, 2022), available at https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_12082022c.pdf

⁴² See id.

⁴³ See Nasdaq ISE, LLC Rules, Options 7, Section 10(G) (Nasdaq ISE Order Feed). The ISE Order feed differs from the PHLX Orders feed in that it provides information only on simple orders, whereas the PHLX Orders feed provides information on both simple and complex orders.

For external distribution, ISE charges \$3000 per month, plus an additional \$20 per month for each controlled device, up to a maximum fee of \$5,000 per month.⁴⁴ This is comparable to the proposed PHLX fee of \$4,000 (the ISE fee may be above or below the PHLX fee, depending on the number of controlled devices) and the proposed fee is reasonable given PHLX's larger market share.

TOPO Plus Orders

The separate fees for TOPO and PHLX Orders are each reasonable because, as shown above, they are comparable to other SRO fees. The TOPO Plus Orders product offers a discount for the purchase of these two separate feeds together. A discount from fees that have already been shown to be reasonable is reasonable and consistent with the Exchange Act.

In summary, (i) the proposed fees for Top of PHLX Options are comparable to those of MIAX, MIAX Emerald and Cboe; (ii) the proposed fees for PHLX Orders are comparable to those of MIAX, MIAX Emerald, and ISE; and (iii) the proposed PHLX TOPO Plus Orders fees offer a discount from the amount the customer would pay for TOPO and Orders separately, and, because these separate fees are comparable to those charged by other exchanges, the proposed discount for TOPO Plus Orders is reasonable.

No Unfair Discrimination Between Customers, Issuers, Brokers, or Dealers

The proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because: (i) external distributors receive additional value not available to internal distributors; and (ii) these market data feeds will be available on a non-discriminatory basis.

External Distributors receive additional value not available to Internal Distributors by

⁴⁴ See id.

disseminating information externally and typically charging for the service. This additional value supports higher fees for external distribution for TOPO, PHLX Orders, and TOPO Plus Orders. Higher fees for external distribution of data are common throughout the industry, and nearly universal among exchanges. The difference in value between internal and external distribution is also reflected in the current fee schedule, which has previously been shown to be consistent with the Exchange Act.

The three market data feeds at issue here—TOPO, PHLX Orders, and TOPO Plus Orders—are used by a variety of market participants for a variety of purposes. Users include regulators, market makers, competing exchanges, media, retail, academics, portfolio managers. Market data feeds will be available to members of all of these groups on a non-discriminatory basis.

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.

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the Proposal does not impose any burden on the ability of other options exchanges to compete. PHLX fees are comparable to, and in some cases less than, those of other exchanges, as discussed above.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because PHLX market data is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase PHLX market data can do so on a non-discriminatory basis.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-2024-67 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-2024-67. 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-2024-67 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.⁴⁵

Sherry R. Haywood,
Assistant Secretary.

⁴⁵ 17 CFR 200.30-3(a)(12).