

1. Text of the Proposed Rule Change

(a) Nasdaq Phlx LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to increase the Exchange’s port pricing in Options 7, Section 9 for the Specialized Quote Feed (“SQF”)³ Ports and SQF Purge Ports.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2025.⁴

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ “Specialized Quote Feed” or “SQF” is an interface that allows Lead Market Makers, Streaming Quote Traders (“SQTs”) and Remote Streaming Quote Traders (“RSQTs”) to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying and complex instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Lead Market Maker, SQT or RSQT. Lead Market Makers, SQTs and RSQTs may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, the Market Order Spread Protection, or Size Limitation in Options 3, Section 15(a)(1), (a)(2) and (b)(2), respectively. See Options 3, Section 7(a)(i)(B).

⁴ The Exchange initially filed this fee proposal as SR-Phlx-2024-55 on October 18, 2024. On December 3, 2024, the Exchange withdrew SR-Phlx-2024-55 and replaced it with SR-Phlx-2024-69. On December 20, 2024, the Exchange withdrew SR-Phlx-2024-69 and filed this rule change.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

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3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of the proposed rule change is to amend Options 7, Section 9, B to increase the Exchange’s SQF Port Fee, SQF Purge Port Fee and SQF Fee Cap (as defined below) by 10%.

Options 7, Section 9, B includes the Exchange’s fees that relate to the SQF Ports, SQF Purge Ports, and the SQF Fee Cap (as defined below) that Market Makers⁵ use to connect to the Exchange to send quotes. 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 (“SQF Fee Cap”).⁶ Also, today, Phlx assesses \$500 per port,

⁵ The term “Market Maker” is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers. See Options 7, Section 1(c).

⁶ 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.

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 \$1,375 per port, per month (a 10% increase from \$1,250) with an SQF Fee Cap of \$46,200 per month (a 10% increase from \$42,000). 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).⁷

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. The Exchange continues to invest in maintaining, improving, and enhancing its port protocols like SQF Ports and SQF Purge Ports – 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. Nevertheless, the Exchange has not increased Phlx’s SQF Port Fee since 2015,⁸ has not increased its SQF Purge Port Fee since 2016,⁹ and has not increased its SQF Fee Cap since 2014,¹⁰ where inflation has been roughly 12.10%, 10.40% and 12.40%, respectively, as measured using the metric described below. As such, the Exchange proposes to increase its SQF Port Fee by 10%, with respect to inflation that has occurred

⁷ Phlx proposes to add commas between per port and per month on the Pricing Schedule for the SQF Purge Port Fee.

⁸ See Securities Exchange Act Release No. 74833 (April 29, 2015), 80 FR 25749 (May 5, 2015) (SR-Phlx-2015-36).

⁹ See Securities Exchange Act Release No. 77613 (April 13, 2016), 81 FR 23023 (April 19, 2016) (SR-Phlx-2016-45).

¹⁰ See Securities Exchange Act Release No. 73687 (November 25, 2014), 79 FR 71485 (December 2, 2014) (SR-Phlx-2014-73).

since 2015, its SQF Purge Port Fee by 10%, with respect to inflation that has occurred since 2016, and its SQF Fee Cap by 10%, with respect to inflation that has occurred since 2014, so as to align with the foregoing fee increases.

As discussed below, the Exchange proposes to adjust its pricing 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 pricing. Continuing to operate at pricing frozen at 2014, 2015 and 2016 levels, respectively, impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

The pricing increases the Exchange proposes are based on an industry-specific Producer Price Index ("PPI"), which is a tailored measure of inflation.¹¹ 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 ("CPI"), that measure price change from the purchaser's perspective.¹² About 10,000 PPIs for individual products and groups of products are tracked and released each month.¹³ 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.

¹¹ See <https://fred.stlouisfed.org/seriesBeta/PCU51825182#0>.

¹² See <https://www.bls.gov/ppi/overview.htm>.

¹³ See *id.*

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI (“Data PPI”), 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 PPI industry was introduced 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.¹⁴ 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, 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.”¹⁵

¹⁴ NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

¹⁵ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed pricing changes because the Exchange uses its “own computer systems” and “proprietary software,” i.e., its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers’ transactions in U.S. options securities on the Exchange’s proprietary trading platform. In other words, the Exchange is in the business of data processing and related services via its data center and proprietary matching engine software.

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 October 2024 (when the subject pricing was adopted). The Data PPI had a starting value of 103.800 in April 2015 and an ending value of 115.902 in October 2024, a 12.10% 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 October 2024 (when the subject pricing was adopted). The Data PPI had a starting value of 105.500 in April 2016 and an ending value of 115.902 in October 2024, a 10.40% increase. For purposes of this proposed rule change, with respect to the SQF Fee Cap, the Exchange examined the Data PPI value for the period from November 2014 to October 2024 (when the subject pricing was adopted). The Data PPI had a starting value of 103.500 in November 2014 and an ending value of 115.902 in October 2024, a 12.40% 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 12.10%, 10.40% and 12.40%, respectively, during the periods noted above. 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 adjustments were made to the SQF Port Fee, the SQF Purge Port Fee, and the related SQF Fee Cap.

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.¹⁶

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed pricing increases.¹⁷

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.

¹⁶ See <https://www.usinflationcalculator.com/>.

¹⁷ 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. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79); and 34-101519 (November 5, 2024), 89 FR 89071 (November 12, 2024) (SR-CboeBYX-2024-039).

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁹ 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 pricing does not properly reflect the quality of the SQF Ports and SQF Purge Ports, as pricing for these port offerings have 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 port offerings.

The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in the proposal since 2014, 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 2014 and 2024, the inflation rate is 2.92% per year, on average, producing a cumulative inflation rate of 33.34%.²⁰ Between 2015 and 2024, the inflation rate is

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

²⁰ See <https://www.officialdata.org/us/inflation/2015?amount=1>.

3.24% per year, on average, producing a cumulative inflation rate of 33.18%.²¹ Also, between 2016 and 2024, the inflation rate is 3.48% per year, on average, producing a cumulative inflation rate of 31.52%.²² Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 12.40% between 2014 and 2024, 12.10% between 2015 and 2024, and 10.40% 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.

Notwithstanding inflation, as noted above, the Exchange has not increased its pricing of these port fees for over eight, nine, and ten years, respectively, for the SQF Port, the SQF Purge Port, or the corresponding SQF Fee Cap. 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 SQF Fee Cap aligns with the increase to the port offerings. The Exchange believes the proposed SQF Port Fee, SQF Purge Port Fee, and SQF Fee Cap 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

²¹ See <https://www.officialdata.org/us/inflation/2015?amount=1>.

²² See <https://www.officialdata.org/us/inflation/2015?amount=1>.

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 believes that the proposal represents an equitable allocation of reasonable dues, fees and other charges because they would apply uniformly to all Market Makers that subscribe to the SQF Ports and SQF Purge Ports to quote on the Exchange. Market Makers are the only market participants that are assessed the SQF Port Fee and SQF Purge Port Fee (and subject to the related SQF Fee Cap) because they are the only market participants that are permitted to quote on the Exchange.²³ 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.

4. **Self-Regulatory Organization's Statement on Burden on Competition**

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

Intra-market Competition

The Exchange believes that the proposed pricing does not put any market participants at a relative disadvantage compared to other market participants. As noted above, the Exchange would apply the proposed 10% increase to the SQF Port, the SQF Purge Port fee (and related SQF Fee Cap) to all Market Makers uniformly. Market Makers are the only market participants that are assessed an SQF Port Fee and an SQF

²³ Unlike other market participants, Market Makers are subject to market making and quoting obligations. See Options 2, Sections 4 and 5.

Purge Port Fee (and subject to the related SQF Fee Cap) because they are the only market participants that are permitted to quote on the Exchange.²⁴ 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.

Intermarket Competition

The Exchange believes that the proposed pricing does not impose an undue burden on intermarket competition or on other SROs that is not necessary or appropriate. In determining the proposed pricing, 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 maintaining and enhancing its port offerings such as the SQF Ports and SQF Purge Ports. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase the fees for the SQF Port and the SQF Purge Port (and the related SQF Fee Cap) to recoup the Exchange's investment in maintaining and enhancing such offerings does not impose a burden on intermarket competition.

5. **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.

6. **Extension of Time Period for Commission Action**

Not applicable.

²⁴ Unlike other market participants, Market Makers are subject to market making and quoting obligations. See Options 2, Sections 4 and 5.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁵ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposal has similarities to a proposal filed with the Commission by NYSE Arca.²⁶

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁶ See, Securities Exchange Act Release No. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79).

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.