

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 amend certain fees based on the rate of inflation, as described further below.

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

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 attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

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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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 adjust market data fees for inflation, to be operative on January 1, 2025.

Many market data fees have not changed for years. As such, the fees have fallen substantially in real terms. The Exchange proposes to restore fees to the real amount intended in the original filings in a one-time inflationary adjustment. This adjustment will become operative in three parts: 45 percent in 2025; 30 percent in 2026; and the final 25 percent in 2027. The Exchange believes that it is necessary to spread the impact of this one-time adjustment for past inflation to prevent any undue impact that execution in a single tranche may have on our customers.³

The proposed fee increases will apply to the Non-Display Enterprise License and PHLX Depth Data. A detailed list of fee adjustments is set forth below. The Exchange is not proposing to adjust fees for non-professional usage, administrative fees, extranet fees, or certain categories of Non-Display usage. The Exchange plans to use this inflationary adjustment to support continued investment in innovative, high-quality data products.

Investments in Nasdaq Data Products

The Exchange has continuously invested in its products in the period after the current fees were first instituted to accommodate the increasing amount of information processed and the changes in technology over time. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees.

³ This proposal will adjust for inflation up to August 2024. Depending on inflation thereafter, further adjustments may, or may not, be necessary.

Continuing to operate at fees frozen in time impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

These investments have been necessary in part because of increases in the amount of information processed, coupled with the need to maintain infrastructure in a high fixed cost environment. The following message rate metrics for depth of book data illustrate changes in system demand over time:

- Peak Rate by Millisecond: up approximately 40%
- Average Rate per Millisecond: up approximately 37%
- Peak Rate per Second: up approximately 109%
- Average Rate per Second: up approximately 113%
- Peak Total Messages: up approximately 477%
- Average Total Messages: up approximately 626%
- Average Daily Volume: up approximately 18%
- Maximum Message Count: up approximately 477%

With this increase in message traffic and need to maintain infrastructure, the Exchange expended significant resources to improve its market data products to meet customer expectations, including continued investment in all aspects of the technology ecosystem (e.g., software, hardware, and network), and the Exchange continues to invest in enhancing its technology for the benefit and often at the behest of its customers. Yet the Exchange has not adjusted any of the fees included in this proposal for many years (as set forth below), to even partially offset the costs of maintaining and enhancing its market data offerings.

Inflationary Index

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (PPI), which is a tailored measure of inflation.⁴ 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, measuring 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.⁵

About 10,000 PPIs for individual products and groups of products are tracked and released each month.⁶ 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 Data Processing and Related Services PPI (“Data Processing 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 Processing PPI 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

⁴ See <https://fred.stlouisfed.org/series/PCU51825182#0>.

⁵ See <https://www.bls.gov/ppi/overview.htm>.

⁶ See <https://www.bls.gov/ppi/overview.htm>.

identified as NAICS - 518210 in the North American Industry Classification System.⁷

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.”⁸

The Exchange believes the Data Processing PPI is an adequate measure to for adjusting fees for its proprietary market data products 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. equity securities.⁹

⁷ NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

⁸ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

⁹ The Exchange notes that the Bureau of Labor Statistics uses a number of measures of inflation that may apply to Exchange market data. For example, there is also an inflation measure related to PPI industry data for data processing, hosting and related services: Hosting, ASP, and other IT infrastructure provisioning services. This other measure has been used by other SROs in determining price changes and may provide an alternative point of reference.

The Exchange furthermore notes that the Data Processing PPI is a stable metric with limited volatility, unlike other consumer-side inflation metrics. The Data Processing PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data Processing PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was 0.62%, with a cumulative increase of 15.67% over this 21-year period.

The Exchange notes that other exchanges have filed for increases in certain fees, based in part on the rate of inflation.¹⁰

Calculation and Proposed Fee Changes

The proposed inflationary adjustments are based on a comparison of the Data Processing PPI index on the last date that the relevant fee was adjusted with the level of the Data Processing PPI index on August 1, 2024. For example, for a fee that was last changed on September 1, 2010, the Exchange divided the difference between the Data Processing PPI index on August 2024 (116.022) and the Data Processing PPI index in September 2010 (101.7) by the Data Processing PPI index in September 2010 (101.7), to calculate a total inflationary adjustment of 14 percent to obtain the percentage increase. That percentage increase was then applied to the prior fee to determine the proposed fee, and then rounding the result.¹¹ This calculation was repeated for each market data fee.

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

¹¹ The Exchange rounded fees as follows: fee values over \$999.99 were rounded to the nearest \$10; fees between \$99.99 and \$999.99 were rounded to the nearest dollar; fees between \$9.99 and \$99.99 were rounded to the nearest \$0.50; fees less than \$9.99 were rounded to the nearest \$0.10. Where rounding would have caused the proposed fee to exceed the rate of inflation, the Exchange rounded downward.

As noted above, the Exchange proposes to adjust fees through a one-time inflationary adjustment to be executed in three tranches: one in 2025 that will cover 45 percent of the adjustment, another in 2026 to cover an additional 30 percent, and a final tranche in 2027 for the final 25 percent of the adjustment.

Table 1 below shows the proposed changes for 2025, 2026 and 2027, the date of the last fee change, and the overall adjustment:

Table 1: Proposed Inflationary Adjustment

Product	Current	2025	2026	2027	Last Change	Overall Percent Change
Non-Display Enterprise License						
Enterprise License Fee	\$10,000	\$10,579	\$11,029	\$11,286	1/1/2013 ¹²	12.9%
PHLX Depth Data						
Internal Distributor	\$4,000	\$4,232	\$4,412	\$4,514	1/1/2013 ¹³	12.9%
External Distributor	\$4,500	\$4,760	\$4,963	\$5,078	1/1/2013 ¹⁴	12.8% ¹⁵
Professional Subscriber	\$40	\$42.30	\$44.10	\$45.10	1/1/2013 ¹⁶	12.8% ¹⁷

¹² Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR-Phlx-2012-145).

¹³ See Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR-Phlx-2012-145).

¹⁴ See id.

¹⁵ The change as calculated by the Data Processing PPI index is 12.9%. The actual change is 12.8% due to rounding of the fee.

¹⁶ Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR-Phlx-2012-145).

¹⁷ The change as calculated by the Data Processing PPI index is 12.9%. The actual change is 12.8% due to rounding of the fee.

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 fees do not properly reflect the quality of the services and products, as fees for the services and products in question 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 capacity of Exchange systems have increased the performance of the services and products notwithstanding fees having remained static in nominal terms.

Equitable Allocation of Reasonable Dues, Fees and Other Charges

The proposed changes are an equitable allocation of reasonable dues, fees and other charges because, as noted above, the Exchange has not increased any of the fees included in the proposal since the dates indicated in Table 1. In the years following the last fee increase, the Exchange has made significant investments in upgrades to Exchange systems and enhancing the quality of its services as measured by, among other things, increased throughput. As such, Exchange customers have benefitted while the Exchange's ability to recoup its investments has been hampered, and Exchange fees have fallen in real terms during the relevant period.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

Between 2018 and 2023, for example, the overall inflation rate was an average of 3.93% per year, producing a cumulative inflation rate of 21.28%.²⁰ Using the more targeted inflation number of Data Processing PPI, the cumulative inflation rate was 8.07%.²¹ The Exchange believes the Data Processing PPI is a reasonable metric for this fee increase 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 market data products. Notwithstanding this inflation, the Exchange has not increased its fees for the subject services for the period of time indicated in Table 1, and therefore the proposed fee changes represent a reasonable increase from the current fees.

The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. The Exchange continues to invest in maintaining and enhancing its market data products for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products. The goal of these enhancements, among other things, is to provide faster and more consistent market data products. The Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its market data products.

²⁰ See <https://www.officialdata.org/us/inflation/2019?endYear=2023&amount=1>

²¹ See <https://data.bls.gov/timeseries/PCU518210518210>.

The Proposal Does Not Permit Unfair Discrimination

The proposed fee increases are not unfairly discriminatory because they would apply to all data recipients that choose to purchase the market data products identified above. Any person that chooses to purchase any of these products would be subject to the same fee schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Additionally, the fee increase would be applied uniformly to subscribers without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities.

The proposed changes are also not unfairly discriminatory because the fees would be assessed uniformly across all market participants that purchase these products in the same manner they are today, and all products will remain available for purchase by all market participants.

4. 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.

Intramarket Competition

The proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all customers of the market data products identified above in the same manner as it does today, albeit at inflation-adjusted rates for certain fees, and customers may choose whether to subscribe to the feed at all. The Exchange also believes that the level of the proposed fees neither favors nor penalizes any one or more categories of market participants in a manner that would impose an undue burden on competition.

Intermarket Competition

The proposed fees do not impose a burden on competition or on other Self Regulatory Organizations that is not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data Processing PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing the market data products identified above. The Exchange believes utilizing Data Processing PPI, a tailored measure of inflation, to increase certain market data fees to recoup the Exchange's investment in maintaining and enhancing its market data products would not impose a burden on 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.

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,²² 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

²² 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

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.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.