

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82250; File No. SR-Phlx-2017-102)

December 8, 2017

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Exclude Options Overlying NDX from Several Pricing Programs

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 December 1, 2017, 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 Pricing Schedule at Section II, “Multiply Listed Options Fees,”³ and Section IV, entitled “Other Transaction Fees.” Specifically, the Exchange proposes to exclude options overlying NDX⁴ from several pricing programs.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ This includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

⁴ NDX represents options on the Nasdaq 100 Index traded under the symbol NDX (“NDX”).

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Phlx proposes to exclude options overlying NDX from the Monthly Market Maker Cap, the Market Access and Routing Subsidy or “MARS,” and Phlx’s Price Improvement XL (“PIXL”) pricing. Each of the proposals are discussed in more detail below. The Exchange seeks to differentiate pricing for this exclusively-listed product from other multiply listed product pricing.

Monthly Market Maker Cap

Today, Phlx Specialists⁵ and Market Makers⁶ are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges; and (ii)

⁵ The term “Specialist” applies to transactions for the account of a Specialist (as defined in Exchange Rule 1020(a)). A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501. See Preface to Phlx’s Pricing Schedule.

⁶ The term “Registered Options Trader” or “ROT”, “Streaming Quote Trader” or “SQT” and “Remote Streaming Quote Trader” or “RSQT” applies to transactions for the accounts of ROTs, SQTs, and RSQTs. For purposes of the Pricing Schedule, the term “Market Maker” will be utilized to describe fees and rebates applicable to ROTs, SQTs and RSQTs. See Preface to Phlx’s Pricing Schedule.

Qualified Contingent Cross (“QCC”) Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)).⁷ All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II of the Pricing Schedule) will be excluded from the Monthly Market Maker Cap. Specialists or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows: \$0.05 per contract Fee for Adding Liquidity in Penny Pilot Options, \$0.18 per contract Fee for Removing Liquidity in Penny Pilot Options and \$0.18 per contract in Non-Penny Pilot Options.

The Exchange proposes to amend the Monthly Market Maker Cap to exclude options overlying NDX from electronic Options Transaction Charges as subject to the Monthly Market Maker Cap. Transactions in NDX will not be subject to the the Monthly Market Maker Cap.

PIXL

Today, the Exchange assess a \$0.07 per contract PIXL Initiating Order Fee. However, if the member or member organization qualifies for the Tier 3, 4 or 5 Customer Rebate in Section B the member or member organization is assessed \$0.05 per contract. If the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month, the member or member organization is assessed no fee for Complex PIXL Orders. Any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier 4 or 5 in Section B, or executes equal to or greater than

⁷ The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations.

3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month receives one of the PIXL Initiating Order discounts as described above. Members or member organizations that qualify for Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap⁸ are eligible for a rebate of \$0.12 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts, provided the member executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.

Further, the Exchange has pricing noted for PIXL Order Executions in Section II Multiply Listed Options. When the PIXL Order is contra to the Initiating Order a Customer PIXL Order is assessed no fee and Non-Customer PIXL Orders will be assessed \$0.30 per contract. When a PIXL Order is contra to a PIXL Auction Responder, a Customer PIXL Order is assessed no fee, other Non-Customer PIXL Orders are assessed \$0.30 per contract in Penny Pilot Options or \$0.38 per contract in Non- Penny Pilot Options. A Responder that is a Specialist or a Market Maker is assessed \$0.25 per contract in Penny Pilot Options or \$0.40 per contract in Non- Penny Pilot Options. Other Non-Customer Responders are assessed \$0.48 per contract in Penny Pilot Options or \$0.70 per contract in Non-Penny Pilot Options when contra to a PIXL Order. A Responder that is a Customer is assessed \$0.00 per contract in Penny Pilot Options and Non-Penny Pilot Options. Finally, when a PIXL Order is contra to a resting order or quote a Customer PIXL Order is assessed no fee, other Non-Customers are assessed \$0.30 per contract and the resting order or quote is assessed the appropriate Options Transaction Charge in Section II. All other fees discussed in Section II, including Marketing Fees and surcharges, apply as appropriate.

⁸ Firms are subject to a maximum fee of \$75,000 (“Monthly Firm Fee Cap”). Additional details on the Monthly Firm Fee Cap are at Section II of the Pricing Schedule.

The Exchange proposes to exclude options overlying NDX from the PIXL Pricing in Section IV, Part A. NDX would be subject to Section II pricing, specifically the Options Transactions Charges in NDX as noted.

MARS

Today, MARS, pays a subsidy to Phlx members that provide certain order routing functionalities to other Phlx members and/or use such functionalities themselves. Generally, under MARS, Phlx pays participating Phlx members to subsidize their costs of providing routing services to route orders to Phlx. To qualify for MARS, a Phlx member's order routing functionality would be required to meet certain criteria.⁹ With respect to Complex Orders, the Exchange would not require Complex Orders to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. Any Phlx member may apply for MARS, provided the requirements are met, including a robust and reliable System. The member is solely responsible for implementing and operating its System. The Exchange is not proposing to amend this eligibility standards.

⁹ Specifically, a Phlx member's routing system (hereinafter "System") would be required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx's API to access current Phlx match engine functionality. Further, the member's System would also need to cause Phlx to be the one of the top five default destination exchanges for individually executed marketable orders if Phlx is at the national best bid or offer ("NBBO"), regardless of size or time, but allow any user to manually override Phlx as a default destination on an order-by-order basis. Notwithstanding the above, with respect to Complex Orders a Phlx member's routing system would not be required to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. Any Phlx member would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies Phlx that it appears to be robust and reliable. The member remains solely responsible for implementing and operating its system.

Today, a MARS Payment would be made to Phlx members that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month, which were executed on Phlx. For the purpose of qualifying for the MARS Payment, Eligible Contracts include Firm,¹⁰ Broker-Dealer,¹¹ Joint Back Office or “JBO”¹² or Professional¹³ equity option orders that are electronically delivered and executed. Eligible Contracts do not include floor-based orders, qualified contingent cross or “QCC” orders,¹⁴ price improvement or “PIXL” orders,¹⁵ Mini-Option orders¹⁶ or Singly-Listed Options¹⁷ orders. The Eligible Contracts requirements are not being amended.

¹⁰ The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

¹¹ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

¹² The term “Joint Back Office” or “JBO” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (“JBO Broker”) subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Exchange Rule 703.

¹³ The term “professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

¹⁴ A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the NBBO and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the Exchange’s match engine. See Rule 1080(o).

¹⁵ PIXL is the Exchange’s price improvement mechanism known as Price Improvement XL or (PIXLSM). See Rule 1080(n).

¹⁶ Mini Options are further specified in Phlx Rule 1012, Commentary .13.

¹⁷ Singly Listed Options are options overlying currencies, equities, ETFs, ETNs treasury securities and indexes not listed on another exchange.

Phlx members that have System Eligibility and have executed the requisite number of Eligible Contracts in a month are paid the following per contract rebates:¹⁸

Tiers	Average Daily Volume ("ADV")	MARS Payment	
		Non-SPY	SPY
1	1,000	\$0.01	\$0.01
2	30,000	\$0.10	\$0.10
3	40,000	\$0.12	\$0.12
4	52,500	\$0.14	\$0.12
5	65,000	\$0.18	\$0.12
6	75,000	\$0.20	\$0.12

The Exchange proposes to exclude options overlying NDX from Eligible Contracts for purposes of qualifying for a MARS Payment. Only Eligible Contracts are paid rebates, therefore no MARS Payment would be paid on options overlying NDX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²⁰ 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.

The Exchange believes that the proposed pricing changes to exclude options overlying

¹⁸ The specified MARS Payment are paid on all executed Eligible Contracts which are routed to Phlx through a participating Phlx member's System and meet the requisite Eligible Contracts ADV. No payment are made with respect to orders that are routed to Phlx, but not executed.

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4) and (5).

NDX from the Monthly Market Maker Cap, MARS and PIXL pricing for NDX are reasonable, equitable and not unfairly discriminatory. NDX transitioned in 2017 to an exclusively-listed product. Similar to other proprietary products, the Exchange seeks to recoup the operational costs for listing proprietary products.²¹ Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.²² Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact options overlying NDX or separately execute options overlying PowerShares QQQ Trust (“QQQ”).²³ Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact NDX.²⁴ When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

Monthly Market Maker Cap

The Exchange’s proposal to exclude electronic Options Transaction Charges for options overlying NDX from the Monthly Market Maker Cap is reasonable because Market Makers will continue to be able to utilize the cap to reduce electronic Option Transaction Charges, excluding surcharges, QCC transaction fees and Floor QCC Orders, despite the exclusion of NDX transactions. The Exchange’s proposal to exclude electronic Options Transaction Charges for

²¹ By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

²² See pricing for Russell 2000 Index (“RUT”) on Cboe Exchange, Inc.’s Fees Schedule.

²³ QQQ is an exchange-traded fund based on the Nasdaq-100 Index®.

²⁴ By comparison, a market participant may trade options overlying RUT or separately the market participant has the choice of trading iShares Russell 2000 Index Fund (“IWM”) Exchange-Traded Fund Shares options, which are also multiply listed.

options overlying NDX from the Monthly Market Maker Cap is equitable and not unfairly discriminatory because the Exchange will uniformly exclude electronic options overlying NDX from the Monthly Market Maker Cap.

PIXL

The Exchange's proposal to exclude options overlying NDX from the PIXL Pricing in Section IV, Part A is reasonable because the Exchange believes that the PIXL pricing continues to be competitive despite the exclusion of NDX. The Exchange's proposal to exclude options overlying NDX from the PIXL Pricing in Section IV, Part A is equitable and not unfairly discriminatory because the Exchange will uniformly exclude options overlying NDX from PIXL pricing.

MARS

The Exchange's proposal to exclude options overlying NDX from Eligible Contracts for purposes of qualifying for a MARS Payment is reasonable because the Exchange believes that despite the exclusion of NDX, MARS remains a competitive offering. The Exchange's proposal to exclude options overlying NDX from Eligible Contracts for purposes of qualifying for a MARS Payment is equitable and not unfairly discriminatory because the Exchange will uniformly exclude options overlying NDX from MARS.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable.

The Exchange's proposal to exclude electronic Options Transaction Charges for options overlying NDX from the Monthly Market Maker Cap does not impose an undue burden on intra-market competition because the Exchange will uniformly exclude electronic options overlying NDX from the Monthly Market Maker Cap. The Exchange's proposal to exclude options overlying NDX from the PIXL Pricing in Section IV, Part A does not impose an undue burden on intra-market competition because the Exchange will uniformly exclude options overlying NDX from PIXL pricing. The Exchange's proposal to exclude options overlying NDX from Eligible Contracts for purposes of qualifying for a MARS Payment does not impose an undue burden on intra-market competition because the Exchange will uniformly exclude options overlying NDX from MARS.

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.²⁵

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.

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2017-102 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2017-102. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the

principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2017-102 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Eduardo A. Aleman
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).