SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95170; File No. SR–Phlx–2022–27]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Pricing for Options on a Nasdaq-100® Volatility Index

June 29, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 16, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 Options 7, Section 5, Index and Singly Listed Options (Includes options overlying FX Options, equities, ETFs, ETNs, and indexes not listed on another exchange), to adopt pricing for options on a Nasdaq-100® Volatility Index (''VOLQ'').[4]

Additionally, the proposal amends Options 7, Section 2, Customer Rebate Program; Options 7, Section 4, Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY); and Options 7, Section 6, Other Transaction Fees.

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 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 Exchange received approval to list index options on VOLQ.[5] The Exchange will commence listing VOLQ options on June 14, 2022. At this time, the Exchange proposes to amend its Pricing Schedule at Options 7, Section 5.A., Broad-Based Index Options, to adopt pricing for VOLQ Options for transactions executed electronically and on the floor.[6]

Additionally, the proposal amends Options 7, Section 2, Customer Rebate Program; Options 7, Section 4, Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY); and Options 7, Section 6, Other Transaction Fees. Each change is described below.

The Exchange proposes to assess Professionals,[7] Lead Market Makers,[8] Market Makers,[9] Broker-Dealers [10] and Firms [11] a $0.40 per contract fee to transact simple and complex VOLQ options electronically and on the floor. Customers [12] will not be assessed a transaction fee to transact VOLQ options electronically or on the floor.

Additionally, the Exchange will assess a surcharge [13] of $0.10 per contract to Non-Customers [14] who transact VOLQ options, in addition to the transaction fees.

The Exchange proposes to pay a rebate of $0.40 per contract to Lead Market Makers and Market Makers who add liquidity in VOLQ. The Exchange proposes to note within the rule text that, with respect to Section 5 of this Options 7 Pricing Schedule, the order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity.

The Exchange also proposes to amend various sections of the Pricing Schedule to make clear that pricing for broad-based index options symbols listed within Options 7, Section 5.A. is

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] VOLQ a new index that measures changes in 30-day implied volatility of the Nasdaq-100® Index. *See* Securities Exchange Act Release No. 91781 (May 5, 2021), 86 FR 25918 (May 11, 2021) (SR–Phlx–2020–41) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options on a Nasdaq-100 Volatility Index). *See also* Securities Exchange Act Release No. 93628 (November 19, 2021), 86 FR 67555 (November 26, 2021) (SR–Phlx–2021–56) (Order Approving a Proposed Rule Change To Amend Options 4A, Section 12 Regarding the Calculation of the Closing Volume Weighted Average Price for Options on the Nasdaq-100 Volatility Index in Certain Circumstances).

[5] *See* note 3 above.

[6] The term ''floor transaction'' is a transaction that is effected in open outcry on the Exchange's Trading Floor. *See* Options 7, Section 1(c).

[7] The term ''Professional'' applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) 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* Options 7, Section 1(c).

[8] The term ''Lead Market Maker'' applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. *See* Options 7, Section 1(c). The term ''Floor Lead Market Maker'' is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange's trading floor. *See* Options 8, Section 2(a)(3).

[9] 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). The term ''Floor Market Maker'' is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. *See* Options 8, Section 2(a)(4).

[10] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. *See* Options 7, Section 1(c).

[11] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. *See* Options 7, Section 1(c).

[12] The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of a broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(b)(45)). *See* Options 7, Section 1(c).

[13] The surcharge is assessed because VOLQ is a proprietary product and there is a license associated with this product.

[14] The term ''Non-Customer'' applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs. 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 Options 6D, Section 1. *See* Options 7, Section 1(c).

governed by the pricing within Options 7, Section 5.A. Today, the Pricing Schedule makes note where options symbols currently listed within Options 7, Section 5.A. (NDX, NDXP and XND) are excluded from pricing. For example, Options 7, Section 2 Customer Rebates are not paid on NDX, NDXP, or XND contracts. The Exchange proposes to also exclude VOLQ options from Customer Rebates, similar to NDX, NDXP, and XND. The pricing for certain broad-based proprietary index options, NDX, NDXP, and XND, and now VOLQ, is specified within Options 7, Section 5.A. and other pricing within Options 7 does not apply to these products. The Exchange specifically makes clear within Options 7, Sections 2, 4, and 6 that the pricing within Options 7, Section 5.A. will govern for NDX, NDXP, XND and now VOLQ.

Also, today, a member's transacted options volume for broad-based options symbols currently listed within Options 7, Section 5.A. (NDX, NDXP, and XND) may count toward certain volume requirements despite these symbols not being eligible for corresponding rebates. For example, NDX, NDXP, and XND contracts count toward the volume requirement to qualify for a Customer Rebate Tier within Options 7, Section 2, and continue to not be eligible for Customer rebates. VOLQ will also count toward the volume requirement to qualify for a Customer Rebate Tier within Options 7, Section 2, and not be eligible for Customer rebates.

The Exchange is replacing rule text within Options 7 concerning NDX, NDXP, and XND with rule text that instead refers to ''broad-based index options symbols within Options 7, Section 5.A.'' which exclusively includes NDX, NDXP, XND and now VOLQ. Within Options 7, Section 4, the Exchange proposes to amend the title of the rule to state that broad-based index options symbols listed within Options 7, Section 5.A are excluded in place of noting the exclusion by symbol within the table in that section. Additionally, the Exchange proposes to note that broad-based index options symbols listed within Options 7, Section 5.A are excluded from the $0.12 per contract surcharge assessed to Non-Customer electronic Complex Orders that remove liquidity from the Complex Order Book and auctions within Options 7, Section 4. The surcharges for NDX, NDXP, XND, and VOLQ are noted within Options 7, Section 5.A. Likewise, broad-based index options symbols listed within Options 7, Section 5.A are excluded from the Monthly Market Maker Cap, Monthly Firm Fee Cap, Firm Floor Options Transaction Charge and Broker-Dealer Floor Options Transaction Charge waivers, Monthly Strategy Cap, and Marketing Fees within Options 7, Section 4 and the PIXL Pricing, FLEX Transaction Fees and MARS pricing within Options 7, Section 6. Making clear which section of the Options 7 Pricing Schedule governs for particular products will provide members and member organizations easy references to how Phlx's pricing will be applied.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[16] 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 proposed changes to the pricing schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''[17]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[18]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' ''[19] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.''[20] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.''[21]

Proposed Pricing Is Reasonable

The Exchange believes that it is reasonable to assess Professionals, Lead Market Makers, Market Makers, Broker-Dealers and Firms a $0.40 per contract fee to transact simple and complex VOLQ options electronically and on the floor while assessing Customers no such fee. Additionally, the Exchange believes that it is reasonable to assess a surcharge of $0.10 per contract to Non-Customers who transact VOLQ options, in addition to transaction fees. Finally, the Exchange believes that it is reasonable to offer a rebate of $0.40 per contract to Lead Market Makers and Market Makers who add liquidity in VOLQ. The proposed pricing is reasonably designed because it is intended to incentivize market participants to transact VOLQ index options on the Exchange, which enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants.

VOLQ is subject to significant substitution-based competitive forces; market participants can substitute options on VOLQ for products offered by other exchanges, for example, the options on the Cboe Volatility Index®

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

[17] *See NetCoalition,* 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[18] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[19] *See NetCoalition,* 615 F.3d at 534–35; *see also* H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[20] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[21] *Id.*

(''VIX'')[22] and options on the SPIKES Volatility Index (''SPIKES®'').[23] The proposed fees and rebates are in line with those of other options markets for similar products. The Exchange notes that if the fees are not within the range of fees offered by competitors, the proposed pricing may cause market participants to select other substitutes to Phlx's VOLQ product, so the most efficient price-setting strategy is to set prices at the same level as competing products.

Today, Cboe Exchange, Inc. (''Cboe'') assesses Customers VIX simple order fees based on tiered premium price which ranges from $0.10 to $0.45 per contract and complex order fees based on tiered premium price which ranges from $0.05 to $0.45 per contract.[24] A Clearing Trading Permit Holder Proprietary is assessed a VIX fee based on a VIX sliding scale which ranges from $0.25 to $0.01 per contract.[25] A Cboe Options Market-Maker/DPM/LMM are assessed fees based on tiered premium price which ranges from $0.05 to $0.23 per contract.[26] Joint Back Office, Non-Trading Permit Holder Market Makers, and Professionals are assessed a VIX $0.40 per contract fee.[27] VIX transactions are assessed a Surcharge Fee/Index License of $0.10 ($0.00 for capacity codes F and L for VIX transactions where the VIX Premium is ≤$0.10 and the related series has an expiration of seven (7) calendar days or less).[28]

Miami International Securities Exchange, LLC (''MIAX'') assesses SPIKE fees as follows: Priority Customers are assessed no fees; Market Makers are assessed a $0.20 per contract simple/complex taker fee and a $0.15 per contract simple opening fee; Non-MIAX Market Makers are assessed a $0.10 per contract simple/complex maker fee, a $0.25 per contract simple/complex taker fee and a $0.15 per contract simple opening fee; Broker-Dealers are assessed a $0.10 per contract simple/complex maker fee, a $0.25 per contract simple/complex taker fee and a $0.15 per contract simple opening fee; Firm Proprietary are assessed a $0.00 per contract simple/complex maker fee, a $0.20 per contract simple/complex taker fee[29] and a $0.15 per contract simple opening fee; and Public Customer that is not a Priority Customer are assessed a $0.10 per contract simple/complex maker fee, a $0.25 per contract simple/complex taker fee and a $0.15 per contract simple opening fee.[30] MIAX also offers a SPIKES Market Maker Incentive Program wherein Market Makers that satisfy the quote width requirement, 70% time in market requirement, and average quote size of 25 contracts are entitled to receive Incentive 1 for that particular month ($10,000 per Market Maker).[31]

Unlike Cboe's Customer fees for VIX, VOLQ will assess no fees to Customers. Today, Customers are not assessed fees for NDX, NDXP or XND. The $0.40 per contract fee proposed for Professionals, Lead Market Makers, Market Makers, Broker-Dealers and Firms to transact VOLQ simple and complex options electronically and on the floor is within the range of fees assessed by Cboe for VIX. Also, Phlx currently assesses a $0.75 per contract fee to Non-Customers for options transacted in NDX, a broad-based index. VOLQ is similarly a broad-based index. Because VOLQ is a new index, the Exchange proposes a lower fee as compared to NDX, a more mature product ($0.40 per contract for VOLQ vs. $0.75 per contract for NDX).

The $0.10 per contract surcharge proposed for Non-Customers who transact VOLQ options is within the range of the VIX surcharge. Customers would not pay a VOLQ surcharge as is the case today for all index option surcharges assessed by Phlx. Today, the Exchange assesses a $0.25 per contract surcharge for options transactions in NDX. The proposed VOLQ options surcharge is less than half the surcharge for NDX. The Exchange believes this surcharge is appropriate for options transactions on this new broad based index.

Finally, today MIAX offers a SPIKES Market Maker Incentive Program. The Exchange proposes offering Lead Market Makers and Market Makers a $0.40 per contract rebate when adding liquidity in VOLQ to offset the proposed transaction fee.[32] The Exchange believes that this rebate would incentivize Lead Market Makers and Market Makers to add liquidity to the Exchange in VOLQ.

The Exchange believes that there are many factors that may cause a market participant to decide to become a member of a particular exchange. Among various factors, the Exchange believes market participants consider when deciding to become a member are product offerings. Introducing new and innovative products to the marketplace designed to meet customer demands may attract market participants to become a member of a particular options venue. New products in the options industry may allow market participants greater trading and hedging opportunities, as well as new avenues to manage risks. The listing of new options products enhances competition among market participants by providing investors with additional investment vehicles, as well as competitive alternatives, to existing investment products. An exchange's proprietary product offering may attract order flow to a particular exchange to trade a particular options product and generally make that exchange a more desirable venue to transaction options, thereby attracting membership to that exchange.

Specifically, VOLQ introduces a cash-settled options contract focused on equity exposure using options on the NDX, which are actively traded equity option products, into the marketplace. The Exchange believes that VOLQ's novel structure will enhance competition among market participants, to the benefit of investors and the marketplace. The introduction of VOLQ is intended to attract market

[22] The VIX Index is a financial benchmark designed to be an up-to-the-minute market estimate of expected volatility of the S&P 500 Index, and is calculated by using the midpoint of real-time S&P 500® Index (SPX) option bid/ask quotes.

[23] The SPIKES Volatility Index is a measure of the expected 30-day volatility in the SPDR S&P 500 ETF.

[24] *See* Cboe's Fee Schedule. Transactions fees will be waived for Customer orders executed in VIX options during GTH through December 31, 2022.

[25] *See* Cboe's Fee Schedule.

[26] *See* Cboe's Fee Schedule.

[27] *See* Cboe's Fee Schedule.

[28] *See* Cboe's Fee Schedule. The Surcharge Fees apply to all non-public customer transactions (*i.e.,* Cboe Options and non-Trading Permit Holder market-maker, Clearing Trading Permit Holder, JBO participant, and broker-dealer), including professionals.

[29] Taker fees for options with a premium price of $0.10 or less will be charged $0.05 per contract. *See* MIAX's Options Exchange Fee Schedule.

[30] *See* MIAX's Options Exchange Fee Schedule.

[31] The compensation pool for Incentive 1 is capped at a total of $40,000 per month. If more than four (4) Market Makers satisfy the requirements for Incentive 1, each Market Maker will receive a pro-rata share of the compensation pool based on the total number of Market Makers that qualify in that particular month. Each Market Maker that meets or exceeds all the requirements of Incentive 1, (''qualifying Market Maker''), may earn an additional rebate each month. Each qualifying Market Maker's spread width for eligible ITM and OTM SPIKES options is calculated and ranked relative to each other qualifying Market Maker. Market Makers with the highest quality width spread (*i.e.,* the tightest spread) are eligible for compensation under Incentive 2. Each qualifying Market Maker receives a rebate, capped at $25,000 per Member per month, based on their relative ranking to each other qualifying Market Maker, with the top performer receiving the largest rebate amount and the bottom performer receiving the smallest rebate amount. The compensation pool size for Incentive 2 is generated by the market quality that is created by qualifying Market Makers, where $5,000 per basis point improvement over the market quality baseline, as established by MIAX, is contributed to fund Incentive Pool 2, which is capped at $100,000 per month.

[32] The order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity.

participants to Phlx in order to transact this solely listed product.

The Exchange's proposal to amend Options 7, Sections 2, 4, and 6 to make clear that the pricing within Options 7, Section 5.A. will govern for NDX, NDXP, XND and now VOLQ is reasonable, equitable and not unfairly discriminatory. Also, making clear within Options 7, Section 2, where VOLQ options volume would count toward the volume requirement to qualify for a Customer Rebate Tier within Options 7, Section 2, and not be eligible for Customer rebates, is reasonable, equitable and not unfairly discriminatory. The proposed rule text will make clear to members and member organizations how Phlx's pricing will be applied. Also, applying VOLQ options volume in the Customer Rebate Tiers is consistent with the manner in which other index options currently listed on Phlx are treated. The Exchange believes that excluding the broad-based index options symbols within Options 7, Section 5.A from other multiply-listed options pricing [33] on the Exchange is reasonable, equitable, and not unfairly discriminatory because multiply-listed options pricing assesses fees, pays rebates, waives pricing or discounts pricing for most multiply-listed option symbols generally, regardless of symbol.[34] In contrast, pricing for proprietary broad-based index options is specific to the product. It is not novel to assess different pricing for multiply-listed options as compared to proprietary singly-listed options.[35]

Finally, 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.[36] Finally, it is reasonable, equitable and not unfairly discriminatory to assess the proposed fees and rebates for both simple and complex executions in VOLQ options, as is the case for other index options currently listed on Phlx.

Proposed Pricing Is Equitable and Not Unfairly Discriminatory

The Exchange believes that it is equitable and not unfairly discriminatory to assess Professionals, Lead Market Makers, Market Makers, Broker-Dealers and Firms a $0.40 per contract fee to transact simple and complex VOLQ options electronically and on the floor, and a $0.10 per contract surcharge, while assessing Customers no such transaction fee or surcharge. Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Customer liquidity provides more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The proposed pricing for Customer orders in VOLQ is intended to attract Customer trading volume to the Exchange. In addition, the proposed VOLQ pricing for Customers will apply equally to all Customer orders. Non-Customers (Professionals, Lead Market Makers, Market Makers, Broker-Dealers and Firms) would be uniformly assessed a $0.40 per contract fee to transact simple and complex VOLQ options electronically and on the floor and a $0.10 per contract surcharge in VOLQ. All Non-Customers may transact VOLQ options and would be assessed the same fees.

The Exchange believes that it is equitable and not unfairly discriminatory to pay Lead Market Makers and Market Makers a $0.40 per contract rebate when adding liquidity in VOLQ. Maker Makers take on a number of obligations,[37] including quoting obligations,[38] unlike other market participants. Further, the proposed pricing for Lead Market Makers and Market Makers in VOLQ is intended to incentivize them to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. As noted above, the $0.40 per contract rebate when adding liquidity in VOLQ is intended to offset the $0.40 per contract VOLQ transaction fee. The Exchange believes the proposed pricing will incentivize Lead Market Makers and Market Makers to provide liquidity in the new product. Additionally, the proposed VOLQ rebate will be applied equally to all Lead Market Makers and Market Makers.

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 believes its proposal remains competitive with other options markets that offer similar substitute products, and will offer market participants with another choice of venue to transact options. While VOLQ options are singly-listed on Phlx, 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 notes that there are other volatility products available today on other options markets, such as VIX and SPIKES, which allow investors to gauge volatility. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result.

In terms of intra-market competition, the Exchange believes that the proposed pricing does not impose an undue burden on competition. Assessing no transaction fees or surcharge fees to Customer orders in VOLQ does not impose an undue burden on competition because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Customer liquidity provides more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The proposed pricing for Customer orders in VOLQ is intended to attract Customer trading volume to the Exchange. In addition, the proposed VOLQ pricing for Customers will apply equally to all Customer orders. Further, uniformly assessing Non-Customers (Professionals, Lead Market Makers, Market Makers, Broker-Dealers and Firms) a $0.40 per contract fee to transact simple and complex VOLQ options electronically and on the floor and a $0.10 per contract surcharge in VOLQ does not impose an undue burden on competition. All Non-Customers may transact VOLQ options and would be assessed the same fees. Finally, paying Lead Market Makers and

[33] Broad-based index options symbols within Options 7, Section 5.A are excluded from Customer Rebates within Options 7, Section 2, the $0.12 per contract surcharge assessed to Non-Customer electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, Monthly Market Maker Cap, Monthly Firm Fee Cap, Firm Floor Options Transaction Charge and Broker-Dealer Floor Options Transaction Charge waivers, Monthly Strategy Cap, and Marketing Fees within Options 7, Section 4 and the PIXL Pricing, FLEX Transaction Fees and MARS pricing within Options 7, Section 6.

[34] Today, Phlx prices options in SPY differently than other multiply-listed options symbols.

[35] Today, Cboe, MIAX and Phlx assess different pricing for singly-listed options and multiply-listed options.

[36] *See* pricing NQX on Nasdaq ISE, LLC.

[37] *See* Options 2, Section 4.

[38] *See* Options 2, Section 5 and Options 3, Section 8.

Market Makers a $0.40 per contract rebate when adding liquidity in VOLQ does not impose an undue burden on competition. Maker Makers take on a number of obligations,[39] including quoting obligations,[40] unlike other market participants. Further, the proposed pricing for Lead Market Makers and Market Makers in VOLQ is intended to incentivize them to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. As noted above, the $0.40 per contract rebate when adding liquidity in VOLQ is intended to offset the $0.40 per contract VOLQ transaction fee. The Exchange believes the proposed pricing will incentivize Lead Market Makers and Market Makers to provide liquidity in the new product. Additionally, the proposed VOLQ rebate will be applied equally to all Lead Market Makers and Market Makers.

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.[41]

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.

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 email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2022–27 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–2022–27. 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 (*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–2022–27, and should be submitted on or before July 27, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Jill M. Peterson,

Assistant Secretary.

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[39] *See* Options 2, Section 4.

[40] *See* Options 2, Section 5 and Options 3, Section 8.

[41] 15 U.S.C. 78s(b)(3)(A)(ii).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95180; File No. SR–NYSEArca–2021–90]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of Grayscale Bitcoin Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

June 29, 2022.

I. Introduction

On October 19, 2021, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of Grayscale Bitcoin Trust (''Trust'') under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on November 8, 2021.[3]

On December 15, 2021, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On February 4, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On April 21, 2022, the Exchange filed Amendment No. 1, which replaced and superseded the proposed rule change in its entirety, and on May 4, 2022, the Commission provided notice of Amendment No. 1 to the proposed rule change and designated a longer period for Commission action on the proposed rule change, as modified by Amendment No. 1.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93504 (Nov. 2, 2021), 86 FR 61804. Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93788, 86 FR 72291 (Dec. 21, 2021).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 94151, 87 FR 7889 (Feb. 10, 2022).

[8] *See* Securities Exchange Act Release No. 94844, 87 FR 28043 (May 10, 2022) (''Amendment No. 1''). Amendment No. 1 to the proposed rule change can

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