

have been previously filed with the Commission as consistent with the Act.

The quote re-pricing proposal in Options 3, Section 4(b)(6) and (7) will be functionally identical to BX quote re-pricing in Options 3, Section 4(b)(6).⁶⁵ The order re-pricing proposal in Options 3, Section 5(c) and (d) will be functionally identical to BX order re-pricing in BX Options 3, Section 5(c) and (d).⁶⁶ Also, the proposed ATR enhancement in Options 3, Section 15(a)(2)(A) will be functionally identical to BX ATR in BX Options 3, Section 15(b)(1).

The Exchange reiterates that the proposed rule change is being proposed in the context of the technology migration to enhanced Nasdaq functionality. As such, the Exchange believes that this proposed rule change is necessary to permit fair competition among options exchanges because the proposed rule changes will permit ISE to re-price orders and quotes similar to BX. Additionally, with this proposal, ISE would be able to offer its Members the same ATR functionality currently available to BX Participants. The Exchange further believes the proposed rule change will benefit Members by providing a more consistent technology offering, as well as consistent rules, for market participants on the Nasdaq affiliated options exchanges.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the majority of the proposed changes will apply to all Members. ATR allows Members to potentially receive better prices for their aggressive orders or quotes as they work through the ATR Threshold Prices and look to accumulate additional interest at each posted price during the Posting Periods. Re-pricing affords Members the ability to obtain the best price offered among the various options markets while continuing to be consistent with the Options Order Protection and Locked/Crossed Market Plan, as discussed above. The ability to leverage these mechanisms to achieve better prices for market participants will drive competition from Members to provide tighter markets and more liquidity in order to participate in the trading opportunities while still being bound by reasonable risk protections.

⁶⁵ See *supra* note 13.

⁶⁶ The re-pricing rule changes impact the following rule provisions: Options 2, Section 10; Options 3, Section 8(f)(6)(A); Options 3, Section 10(c)(1)(B), (C) and (D)(i)-(iii); Options 3, Section 11(b)(1) and (d)(1); and Options 3, Section 13(b)(1) and (2).

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁶⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁶⁸

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 necessary or appropriate in the public interest, for the protection of investors, or 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-ISE-2022-25 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-ISE-2022-25. This file

⁶⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 such 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-ISE-2022-25 and should be submitted on or before December 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁹

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96360; File No. SR-Phlx-2022-47]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend FINRA Fees

November 18, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 14, 2022, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities

⁶⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Phlx’s Pricing Schedule at Options 7, Section 9, Other Member Fees, to reflect adjustments to FINRA Registration Fees and Fingerprinting Fees.³

While the changes proposed herein are effective upon filing, the Exchange has designated the additional processing of each initial or amended Form U4, Form U5 or Form BD and electronic Fingerprint Processing Fees to become operative on January 2, 2023. Additionally, the Exchange designates that the FINRA Annual System Processing Fee Assessed only during Renewals become operative on January 2, 2024.⁴ The amendments to the paper Fingerprint Fees are immediately effective.

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.

³ This rule change impacts FINRA fees for members who trade equity and options products on Phlx. Equity 7, Section 4.B. indicates that a list of fees that will be collected and retained by FINRA via the Web CRD registration system for the registration of associated persons of Exchange members that are not also FINRA members is available within Options 7, Section 9C.

⁴ See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR-FINRA-2020-032) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adjust FINRA Fees To Provide Sustainable Funding for FINRA’s Regulatory Mission).

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

1. Purpose

This proposal amends Phlx’s Pricing Schedule at Options 7, Section 9, Other Member Fees, to reflect adjustments to FINRA Registration Fees and Fingerprinting Fees.⁵ The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of Phlx members and member organizations that are not FINRA members (“Non-FINRA members”). The Exchange is merely listing these fees on its Pricing Schedule at Phlx Options 7, Section 9C. The Exchange does not collect or retain these fees.

The Exchange proposes to amend: (1) the \$110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to \$155; (2) the \$45 FINRA Annual System Processing Fee Assessed only during Renewals to \$70; and (3) the \$15 Second Submission (Electronic) Fingerprint Processing Fee to \$20. Each of these fees are listed within Phlx Options 7, Section 9C. These amendments are being made in accordance with a FINRA rule change to adjust to its fees.⁶

The Exchange also proposes to amend the following Fingerprint Fees: (1) the \$29.50 Initial Submission (Electronic) fee to \$31.25;⁷ (2) the \$44.50 Initial Submission (Paper) fee to \$41.25;⁸ (3) the \$29.50 Third Submission (Electronic) fee to \$31.25;⁹ and (4) the \$44.50 Third Submission (Paper) fee to \$41.25.¹⁰ Specifically, today, the FBI

⁵ FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

⁶ See note 4. FINRA noted in its rule change that it was adjusting its fees to provide sustainable funding for FINRA’s regulatory mission.

⁷ This fee includes a \$20.00 FINRA fee and \$11.25 FBI fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

⁸ This fee includes a \$30 FINRA Fee and a \$11.25 FBI Fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

⁹ This fee includes a \$20.00 FINRA fee and \$11.25 FBI fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

¹⁰ This fee includes a \$30 FINRA Fee and a \$11.25 FBI Fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

fingerprint charge is \$11.25¹¹ and the FINRA electronic Fingerprint Fee will increase from \$15 to \$20 in 2023.¹² While FINRA did not amend the paper Fingerprint Fee, previously the FBI Fee was reduced from \$14.50 to \$11.25.¹³ The paper Fingerprint Fees are not currently reflecting the amount assessed by FINRA. The amendment to the paper Fingerprint Fees will conform these fees with those of FINRA.

The FINRA Web CRD Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,¹⁴ in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ 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 it is reasonable to increase: (1) the \$110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to \$155; (2) the \$45 FINRA Annual System Processing Fee Assessed only during Renewals to \$70; and (3) the electronic Fingerprint Fees from \$15 to \$20 in accordance with an adjustment to FINRA’s fees¹⁶ because the proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons.

These costs are borne by FINRA when a Non-FINRA member uses Web CRD. The Exchange’s rule text will reflect the current registration and electronic fingerprint rates that will be assessed by

¹¹ See Securities Exchange Act Release No. 67247 (June 25, 2012) 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Sections 4 and 6 of Schedule A to the FINRA By-Laws Regarding Fees Relating to the Central Registration Depository) (“2012 Rule Change”)

¹² See note 4.

¹³ See 2012 Rule Change at note 6. The FBI does not charge its fee on a second fingerprint transaction when it identifies the first set of fingerprints as illegible for the same individual.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ The \$20 FINRA Fee is in addition to the \$11.25 FBI Fee except for the second fingerprint transaction.

FINRA as of January 2, 2023 for the additional processing of each initial or amended Form U4, Form U5 or Form BD and Second Submission (Electronic) Fingerprint Processing Fee and the registration rates that will be assessed by FINRA as of January 2, 2024 for the FINRA Annual System Processing Fee Assessed only during Renewals.¹⁷

The Exchange believes it is reasonable to correct the paper Fingerprint Fees to reflect the reduced FBI Fee of \$11.25.¹⁸ The amendments to the paper Fingerprint Fees will provide all Phlx members and member organizations with the correct Fingerprint Fees.

The Exchange believes it is equitable and not unfairly discriminatory to increase: (1) the \$110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to \$155; (2) the \$45 FINRA Annual System Processing Fee Assessed only during Renewals to \$70; and (3) the electronic Fingerprint Fees from \$15 to \$20 in accordance with an adjustment to FINRA's fees¹⁹ because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner. Similarly, the Exchange believes it is equitable and not unfairly discriminatory to correct the paper Fingerprint Fees to reflect the reduced FBI Fee of \$11.25²⁰ because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

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.

The Exchange believes that its proposal to increase: (1) the \$110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or

more disclosure events or proceedings to \$155; (2) the \$45 FINRA Annual System Processing Fee Assessed only during Renewals to \$70; and (3) the electronic Fingerprint Fees from \$15 to \$20 in accordance with an adjustment to FINRA's fees²¹ does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner. The proposal will reflect the fees that will be assessed by FINRA to all members who register or require fingerprints as of January 2, 2023 and January 2, 2024, respectively.

Similarly, the Exchange believes it does not impose an undue burden on competition to correct the paper Fingerprint Fees to reflect the reduced FBI Fee of \$11.25 because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

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.²²

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-2022-47 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-2022-47. 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-2022-47 and should be submitted on or before December 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Sherry R. Haywood,

Assistant Secretary.

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¹⁷ See note 4.

¹⁸ See 2012 Rule Change at note 6. The FBI does not charge its fee on a second fingerprint transaction when it identifies the first set of fingerprints as illegible for the same individual.

¹⁹ The \$20 FINRA Fee is in addition to the \$11.25 FBI Fee except for the second fingerprint transaction.

²⁰ See 2012 Rule Change at note 6. The FBI does not charge its fee on a second fingerprint transaction when it identifies the first set of fingerprints as illegible for the same individual.

²¹ The \$20 FINRA Fee is in addition to the \$11.25 FBI Fee except for the second fingerprint transaction.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 200.30-3(a)(12).