SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100489; File No. SR-Phlx-2024-29)

July 10, 2024

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Section 9

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 July 1, 2024, 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 Options 7, Section 9.

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

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

[2]   17 CFR 240.19b-4.

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.   <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change</u>

        1.   <u>Purpose</u>

The Exchange proposes to amend Options 7, Section 9, B, Port Fees, to increase the SQF Port[3] Fee cap for certain Market Makers.[4] Today, Phlx assesses $1,250 per port, per month up to a maximum of $42,000 per month for an SQF Port that receives inbound quotes at any time within that month.[5] Today, Market Makers are not assessed an active SQF Port Fee for additional ports acquired for ten business days for the purpose of transitioning technology.[6] The Exchange proposes to add the words "active port" in parenthesis at the end of the description of SQF Port Fee to tie the definition of an active port to the description for the port.[7]

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

[4]   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. <u>See</u> 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. <u>See</u> Options 8, Section 2(a)(4).

[5]   An active port shall mean that the port was utilized to submit a quote to the System during a given month. <u>See</u> Options 7, Section 9, B.

[6]   The member organization is required to provide the Exchange with written notification of the transition and all additional ports, provided at no cost, will be removed at the end of the ten business days. <u>See</u> Options 7, Section 9, B.

[7]   The Exchange also proposes a technical amendment to add a comma between "per port" and "per month" for the SQF Port Fee in Options 7, Section 9, B.

At this time, the Exchange proposes to increase the monthly maximum SQF Port Fee Cap of $42,000 per month for certain Market Makers based on the size of the Market Maker on Phlx. The Exchange is determining the size of the Market Maker based on the amount of transactional volume executed on Phlx in a given month. The Exchange proposes to take each Market's Maker's electronic monthly transactional volume via SQF on Phlx and divide that number by the sum of all Market Maker electronic monthly transactional volume via SQF on Phlx ("Transactional Volume"). All SQF interest would be considered. Each Market Maker would then be classified on Phlx, for the purpose of the SQF Port Fee Cap, as a "small," "medium," or "large" Market Maker based on their Transactional Volume on Phlx to determine the applicable cap in a given month. Market Makers that qualify as "small" would continue to be subject to the current $42,000 per month cap on SQF Port Fees. Market Makers that qualify as "medium" would be subject to an increased monthly cap of $46,000 for SQF Port Fees. Finally, Market Makers that qualify as "large" would be subject to an increased monthly cap of $50,000 for SQF Port Fees.

As is the case today, the Exchange would not assess a Market Maker an SQF Port Fee beyond the monthly cap once the Market Maker has exceeded the monthly cap for the respective month. Despite increasing the maximum SQF Port Fees for Market Makers that qualify as "medium" and "large," the Exchange will continue to offer all Market Makers the opportunity to cap their SQF Port Fees to limit their costs as they would not be assessed an SQF Port Fee beyond the applicable cap each month.

A Phlx Market Maker requires only one SQF Port to submit quotes in its assigned options series into Phlx. A Phlx Market Maker may submit all quotes through one SQF Port. While a

Phlx Market Maker may elect to obtain multiple SQF Ports to organize its business,[8] only one

SQF Port is necessary for a Phlx Market Maker to fulfill its regulatory quoting obligations.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in

general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] 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 pricing change to increase the SQF Fee Cap for Market Makers that qualify

as "medium" from $42,000 to $46,000 per month for SQF Port Fees, and for Market Makers that

qualify as "large" from $42,000 to $50,000 per month for SQF Port Fees, is reasonable because

despite the increase in the maximum SQF Port Fee, the Exchange will continue to offer all

Market Makers the opportunity to cap their SQF Port Fees each month to limit their costs as they

would not be assessed an SQF Port Fee beyond the cap. The Exchange would not increase the

current SQF Port Fee Cap for a Market Maker that qualifies as "small."

A Phlx Market Maker requires only one SQF Port to submit quotes in its assigned options

series into Phlx. A Phlx Market Maker may submit all quotes through one SQF Port. While a

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[8]   For example, a Phlx Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that member organization.

[9]   Phlx Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, Phlx Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on Phlx and only Market Makers may utilize SQF Ports.

[10]   15 U.S.C. 78f(b).

[11]   15 U.S.C. 78f(b)(4) and (5).

Phlx Market Maker may elect to obtain multiple SQF Ports to organize its business,[12] only one SQF Port is necessary for a Phlx Market Maker to fulfill its regulatory quoting obligations.[13] Member organizations may choose a greater number of SQF Ports beyond one port, depending on that member organization's particular business model. Additionally, the Exchange believes that the caps are reasonable for two reasons.

First, SQF Ports are a secure method for Market Makers to submit quotes into the Exchange's match engine and for the Exchange to send messages related to those quotes to Market Makers. Phlx must manage the security and message traffic, among other things, for each port. Utilizing the various caps based on the "size" of the Market Maker as determined by Transactional Volume, provides every Market Maker the ability to manage cost. Additionally, the Exchange would have the ability to manage the quantity of SQF Ports issued on Phlx. The various SQF Port Fee Caps were determined based on the level of Transactional Volume on Phlx in 2024 for Market Makers. The Exchange assessed each level of Market Maker an increased cap of $4,000 based on size, as reflected by Transactional Volume, to reflect the various sizes of Market Makers present on Phlx at this time. By capping the SQF Ports at different levels based on "size," the Exchange is considering the message traffic and message rates generated by the various "sizes" of Market Makers and the Exchange's ability to process messages from all SQF Ports. The SQF Port Fee Caps would allow the Exchange to scale its needs with respect to processing messages in an efficient manner. The Exchange notes that Cboe Exchange, Inc.

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[13]   Phlx Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, Phlx Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on Phlx and only Market Makers may utilize SQF Ports.

("Cboe") limits usage on each port and assesses fees for incremental usage.[14]

Second, the Exchange notes that multiple SQF Ports are not necessary, however, to the extent that some Market Makers elect to obtain multiple SQF Ports, the Exchange is offering to cap their total port cost. Phlx believes that the existence of a cap based on "size" of the Market Maker will level the playing field. The Exchange believes that this approach enables various types of Market Makers to effectively limit costs based on their executed Transactional Volume on Phlx. Further, the existence of an SQF Port Fee Cap allows for efficiencies and permits Market Makers to increase their number of ports beyond the cap. The cap levels the playing field by allowing various types of Market Makers that want to obtain a larger number of ports to do so with the certainty of a fee cap. Without the SQF Fee Cap, Phlx Market Makers may pay more to obtain multiple SQF Ports on Phlx. Other market tier port fees. BOX Exchange LLC ("BOX") assesses $1,000 per month for all SAIL Ports for Market Making and $500 per month per port up to 5 ports for order entry and $150 per month for each additional port.[15] Miami International Securities Exchange, LLC's ("MIAX") MIAX Express Interface ("MEI") Fee levels are based on a tiered fee structure based on the Market Maker's total monthly executed volume during the relevant month.[16]

The proposed pricing change to increase the SQF Fee Cap for Market Makers that qualify

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[14]   Each Cboe Binary Order Entry ("BOE") or FIX Logical Port incur the logical port fee indicated when used to enter up to 70,000 orders per trading day per logical port as measured on average in a single month. For each incremental usage of up to 70,000 per day per logical port will incur an additional logical port fee of $800 per month. BOE or FIX Logical Ports provide users the ability to enter order/quotes. See Cboe's Fees Schedule.

[15]   See BOX's Fee Schedule.

[16]   MEI is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. MIAX caps its MEI Ports. For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level. See MIAX's Fee Schedule.

as "medium" from $42,000 to $46,000 per month for SQF Port Fees, and for Market Makers that qualify as "large" from $42,000 to $50,000 per month for SQF Port Fees, is equitable and not unfairly discriminatory because the Exchange is offering different sizes of Market Makers, based on Transactional Volume executed on Phlx, the ability to cap their costs at different levels and potentially obtain some SQF Ports at no cost. The proposal recognizes that some Market Makers may be deemed "small" and may not be able to achieve the same cap as other Market Makers. To this end, the Exchange proposes not to increase SQF Port Fees for Market Makers that qualify as "small" in a given month. To the extent that a Market Maker qualifies in a given month as a "medium" Market Maker the Exchange proposes to increase the cap from $42,000 to $46,000 per month. This fee presumes to place a Market Maker that qualifies as "medium" on equal footing with a Market Maker that qualifies as a "small" Market Maker in terms of the cap, by setting different fee caps for each group. The proposal presumes that based on Transactional Volume, these Market Makers that qualify as "medium" have a greater ability to obtain a greater amount of SQF Ports as compared to Market Makers that qualify as "small." Finally, to the extent that a Market Maker qualifies in a given month as a "large" Market Maker the Exchange proposes to increase the cap from $42,000 to $50,000 per month. This fee presumes to place a Market Maker that qualifies as "large" on equal footing with a Market Maker that qualifies as a "small" Market Maker and a Market Maker that qualifies as "medium" in terms of the cap, by setting different fee caps for each group. The proposal presumes that based on Transactional Volume these Market Makers that qualify as "large" have the ability to obtain the largest amount of SQF Ports. The Exchange would uniformly apply the appropriate Market Maker cap to each Market Maker group based on the same volume calculation. Also, Market Makers who exceed their applicable cap would uniformly not be assessed any fee for SQF Ports beyond the

applicable maximum amount.

Market Makers are the only market participants that are assessed SQF Port Fees because they are the only market participants that are permitted to quote on the Exchange. SQF Ports are only utilized in the Market Maker's assigned options series. Unlike other market participants, Market Makers are subject to market making and quoting obligations.[17] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to Phlx on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.[18] Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate permit fees,[19] and Streaming Quote Trader Fees,[20] in addition to other fees paid by other market participants. Providing all Market Makers a means to cap their cost related to quoting at a rate that reflects their "size" and enabling all Market Makers to acquire SQF Ports at no cost beyond the applicable cap enables these market participants to provide the necessary liquidity to Phlx at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Port Fee Cap is designed to continue to incent all Market Makers to quote on Phlx, thereby promoting liquidity, quote competition, and trading opportunities.

In 2022, NYSE Arca, Inc. ("NYSE Arca") proposed to restructure fees relating to OTPs

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[17]   See Options 2, Sections 4 and 5.

[18]   See Options 3, Section 8.

[19]   See Options 7, Section 8, A.

[20]   See Options 7, Section 8, B.

for Market Makers.[21] In that rule change,[22] NYSE Arca argued that,

> Market Makers serve a unique and important function on the Exchange (and other options exchanges) given the quote-driven nature of options markets. Because options exchanges rely on actively quoting Market Makers to facilitate a robust marketplace that attracts order flow, options exchanges must attract and retain Market Makers, including by setting competitive Market Maker permit fees. Stated otherwise, changes to Market Maker permit fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange also believes that the number of options exchanges on which Market Makers can effect option transactions also ensures competition in the marketplace and constrains the ability of exchanges to charge supracompetitive fees for access to its market by Market Makers.

Further, NYSE ARCA noted that,[23]

> The Exchange further believes that its ability to set Market Maker permit fees is constrained by competitive forces based on the fact that Market Makers can, and have, chosen to terminate their status as a Market Maker if they deem Market Maker permit fees to be unreasonable or excessive. Specifically, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's Market Maker permit fees. The Exchange has also observed that another options exchange group experienced decreases in market share following its proposed modifications of its access fees (including Market Maker trading permit fees), suggesting that market participants (including Market Makers) are sensitive to changes in exchanges' access fees and may respond by shifting their order flow elsewhere if they deem the fees to be unreasonable or excessive.
>
> There is no requirement, regulatory or otherwise, that any Market Maker connect to and access any (or all of) the available options exchanges. The Exchange also is not aware of any reason why a Market Maker could not cease being a permit holder in response to unreasonable price increases. The Exchange does not assess any termination fee for a Market Maker to drop its OTP, nor is the Exchange aware of any other costs that would be incurred by a Market Maker to do so.

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[21] See Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR-NYSEArca-2022-36). NYSE Arca proposed to increase both the monthly fee per Market Maker OTP and the number of issues covered by each additional OTP because, among other reasons, the number of issues traded on the Exchange has increased significantly in recent years.

[22] Id at 38788.

[23] Id at 38790.

The Exchange likewise believes that its ability to cap SQF Ports Fees is constrained by competitive forces and that its proposed modifications to the SQF Port Fee cap is reasonably designed in consideration of the competitive environment in which the Exchange operates, by balancing the value of the enhanced benefits available to all Market Makers, based on their transactional volume and presumed "size." At the same time, the Exchange believes the proposed fees will incent Market Makers to support increased liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all market participants.

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.

Intermarket Competition

The proposal does not impose an undue burden on intermarket 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. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

The proposed pricing change to increase the SQF Fee Cap for Market Makers that qualify as "medium" from $42,000 to $46,000 per month for SQF Port Fees, and for Market Makers that qualify as "large" from $42,000 to $50,000 per month for SQF Port Fees does not impose an undue burden on competition because the Exchange is offering different sizes of Market Makers,

based on Transactional Volume executed on Phlx, the ability to cap their costs at different levels and potentially obtain some SQF Ports at no cost. The proposal recognizes that some Market Makers may be deemed "small" and may not be able to achieve the same cap as other Market Makers. To the extent that a Market Maker qualifies in a given month as a "medium" Market Maker the Exchange proposes to increase the cap from $42,000 to $46,000 per month. This fee presumes to place a Market Maker that qualifies as "medium" on equal footing with a Market Maker that qualifies as a "small" Market Maker in terms of the cap, by setting different fee caps for each group. The proposal presumes that based on Transactional Volume these Market Makers that qualify as "medium" have a greater ability to obtain a greater amount of SQF Ports as compared to Market Makers that qualify as "small." Finally, to the extent that a Market Maker qualifies in a given month as a "large" Market Maker the Exchange proposes to increase the cap from $42,000 to $50,000 per month. This fee presumes to place a Market Maker that qualifies as "large" on equal footing with a Market Maker that qualifies as a "small" Market Maker and a Market Maker that qualifies as "medium" in terms of the cap, by setting different fee caps for each group. The proposal presumes that based on Transactional Volume these Market Makers that qualify as "large" have the ability to obtain the largest amount of SQF Ports. The Exchange would uniformly apply the appropriate Market Maker cap to each Market Maker group based on the same volume calculation. Also, Market Makers who exceed their applicable cap would uniformly not be assessed any fee for SQF Ports beyond the applicable maximum amount.

Market Makers are the only market participants that are assessed SQF Port Fees because they are the only market participants that are permitted to quote on the Exchange. SQF Ports are only utilized in the Market Maker's assigned options series. Unlike other market participants,

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Makers are required to submit quotes in the Opening Process to open an options series.[25] Market

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beyond the applicable cap, enables these market participants to provide the necessary liquidity to

Phlx at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are

the only market participant required to submit quotes as part of their obligations to operate on the

Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF

Port Fee Cap is designed to continue to incent all Market Makers to quote on Phlx, thereby

promoting liquidity, quote competition, and trading opportunities.

> 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.[28]

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[24]   See Options 2, Sections 4 and 5.

[25]   See Options 3, Section 8.

[26]   See Options 7, Section 8, A.

[27]   See Options 7, Section 8, B.

[28]   15 U.S.C. 78s(b)(3)(A)(ii).

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 (https://www.sec.gov/rules/sro.shtml); or

- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2024-29 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-2024-29. 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 (https://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 a.m. and 3

p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. Do not include personal identifiable information in submissions; you should

submit only information that you wish to make available publicly. We may redact in part or

withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-Phlx-2024-29 and should be

submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE

FEDERAL REGISTER].

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

authority.[29]

Vanessa A. Countryman,

Secretary.

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[29]   17 CFR 200.30-3(a)(12).