

Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

## II. Docketed Proceeding(s)

1. *Docket No(s)*: CP2016-223; *Filing Title*: Notice of the United States Postal Service of Filing Modification to Global Expedited Package Services 3 Negotiated Service Agreement; *Filing Acceptance Date*: March 13, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Kenneth R. Moeller; *Comments Due*: March 21, 2017.

2. *Docket No(s)*: CP2017-130; *Filing Title*: Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, and Application for Non-Public Treatment of Materials; *Filing Acceptance Date*: March 13, 2017; *Filing Authority*: 39 CFR 3015.5; *Public*

*Representative*: Natalie R. Ward; *Comments Due*: March 21, 2017.

3. *Docket No(s)*: CP2017-131; *Filing Title*: Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, and Application for Non-Public Treatment of Materials; *Filing Acceptance Date*: March 13, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Natalie R. Ward; *Comments Due*: March 21, 2017.

This notice will be published in the **Federal Register**.

**Ruth Ann Abrams**,

*Acting Secretary*.

[FR Doc. 2017-05412 Filed 3-17-17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80244; File No. SR-Phlx-2017-24]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Pricing for NDX and MNX

March 14, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 9, 2017, 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 Section II, entitled "Multiply Listed Options Fees,"<sup>3</sup> to amend pricing related to options overlying NDX<sup>4</sup> and MNX.<sup>5</sup> The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

*com/*, 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend pricing related to NDX and MNX by adopting Options Transaction Charges for NDX and MNX and also eliminating the Marketing Fee for NDX and MNX.<sup>6</sup> The Exchange notes that both NDX and MNX are transitioning to be exclusively listed on the Exchange and its affiliated markets in 2017.<sup>7</sup>

Today, the Exchange assesses transactions in NDX and MNX the following Options Transaction Charges for non-Penny Pilot Options: A \$0.75 per contract for electronic Professional<sup>8</sup> transactions and \$0.25 per contract for floor Professional transactions; \$0.25 per contract for Specialist<sup>9</sup> and Market Maker<sup>10</sup> electronic transactions and

<sup>6</sup> The Exchange initially filed the proposed pricing change on February 28, 2017 (SR-Phlx-2017-20). On March 8, 2017, the Exchange withdrew that filing and submitted this filing.

<sup>7</sup> The Exchange will exclusively list NDX and MNX in the near future upon expiration of open expiries in these products on other markets.

<sup>8</sup> The term "Professional" applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(14).

<sup>9</sup> The term "Specialist" applies to transactions for the account of a Specialist (as defined in Exchange Rule 1020(a)).

<sup>10</sup> The term "Market Maker" describes fees and rebates applicable to Registered Options Traders ("ROT"), Streaming Quote Traders ("SQT") and Remote Streaming Quote Traders ("RSQT"). A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes SQTs and RSQTs as well as on and off-floor ROTs. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> These fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

<sup>4</sup> NDX represents options on the Nasdaq 100 Index traded under the symbol NDX ("NDX").

<sup>5</sup> MNX represents options on one-tenth the value of the Nasdaq 100 Index traded under the symbol MNX ("MNX").

\$0.35 per contract for Specialist and Market Maker floor transactions; \$0.75 per contract for Broker-Dealer<sup>11</sup> electronic transactions and \$0.25 per contract for floor Broker-Dealer transactions; and \$0.75 per contract for Firm<sup>12</sup> electronic transactions and \$0.25 per contract for Firm floor transactions. Today, Customers<sup>13</sup> are not assessed a non-Penny Options Transaction Charge for NDX and MNX transactions. Also, today, all Non-Customers<sup>14</sup> are assessed a \$0.25 per contract surcharge in NDX and MNX.

The Exchange proposes to indicate that the Options Transaction charges for non-Penny Pilot Options will not apply to NDX and MNX transactions and instead adopt new pricing for NDX and MNX. The Exchange proposes to adopt the following Options Transaction Charges for NDX and MNX. Customers will continue to not be assessed an Options Transaction Charge for NDX and MNX. Professionals will be assessed the same \$0.75 per contract electronic Options Transaction Charge and an increased floor Options Transaction Charge of \$0.75 per contract<sup>15</sup> for NDX and MNX transactions. A Specialist and Market Maker will be assessed an increased electronic Options Transaction Charge of \$0.75 per contract<sup>16</sup> and the same \$0.35 per contract floor Options Transaction Charge for NDX and MNX transactions. A Broker-Dealer will be assessed the same \$0.75 per contract electronic

is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or "RSQTO," which may also be referred to as a Remote Market Making Organization ("RMO"), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a).

<sup>11</sup> The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

<sup>12</sup> 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.

<sup>13</sup> 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 which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).

<sup>14</sup> The term "Non-Customer" applies to transactions for the accounts of Specialists, Market Makers, Firms, Professionals, Broker-Dealers and Joint Back Office.

<sup>15</sup> Today, a Professional is assessed a \$0.25 per contract floor Options Transaction Charge when transacting NDX and MNX.

<sup>16</sup> Today, a Specialist and Market Maker are assessed a \$0.25 per contract floor Options Transaction Charge when transacting NDX and MNX.

Options Transaction Charge and an increased floor Options Transaction Charge of \$0.75 per contract<sup>17</sup> for NDX and MNX transactions. Finally, a Firm will be assessed the same \$0.75 per contract electronic Options Transaction Charge and an increased floor Options Transaction Charge of \$0.75 per contract<sup>18</sup> for NDX and MNX transactions. The Exchange will continue to assess Non-Customers an Options Surcharge for NDX and MNX of \$0.25 per contract as is the case today.<sup>19</sup> The Exchange is proposing to relocate the surcharge to a new note 5 within the Pricing Schedule instead of stating the pricing within the current table in Section II of the Pricing Schedule.

The Exchange is also proposing to note that a Marketing Fee<sup>20</sup> will not be assessed on NDX and MNX. Today, for trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange, Specialists, Market Makers and Directed ROTs are assessed certain fees on those trades when the Specialist unit or Directed ROT elects to participate in the marketing program. Specifically, the Exchange assesses options that are trading in the Penny Pilot Program \$0.25 per contract and the remaining equity options are assessed \$0.70 per contract (including NDX and MNX). No Marketing Fees are assessed on trades that are not delivered electronically. No Marketing Fees are assessed on Professional orders. Marketing Fees are assessed on transactions resulting from Customer orders and are available to be disbursed by the Exchange according to the

<sup>17</sup> Today, a Broker-Dealer is assessed a \$0.25 per contract floor Options Transaction Charge when transacting NDX and MNX.

<sup>18</sup> Today, a Firm is assessed a \$0.25 per contract floor Options Transaction Charge when transacting NDX and MNX.

<sup>19</sup> For clarity, the Exchange is amending the Customer charge from "N/A" to "\$0.00." The Exchange believes that \$0.00 is more appropriate to reflect no charge.

<sup>20</sup> The Exchange's Marketing Fee helps its Specialists and Directed Registered Options Traders ("Directed ROTs") establish payment arrangements with an order flow provider in exchange for that order flow provider directing some or all of its order flow to that Specialist or Directed ROT. This program is funded through fees paid by Registered Options Traders ("ROTs"), Specialists and Directed ROTs and assessed on transactions resulting from customer orders. A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii). A "Directed ROT" is an ROT who is a Directed Participant. The term "Directed Participant" applies to transactions for the account of a Specialist or ROT resulting from a customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

instructions of the Specialist units/ Specialists or Directed ROTs to order flow providers who are members or member organizations, who submit, as agent, Customer orders to the Exchange or non-members or non-member organizations who submit, as agent, Customer orders to the Exchange through a member or member organization who is acting as agent for those Customer orders.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>22</sup> 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 Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining 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."<sup>23</sup>

Likewise, in *NetCoalition v. Securities and Exchange Commission*<sup>24</sup> ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>25</sup> As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."<sup>26</sup>

Further, "[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-

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>23</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

<sup>24</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>25</sup> See *NetCoalition*, at 534–535.

<sup>26</sup> *Id.* at 537.

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'. . . .'<sup>27</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange's proposal to increase the floor Options Transaction Charges for Professionals, Firms and Broker-Dealers from \$0.25 to \$0.75 per contract for NDX and MNX is reasonable because the Exchange is assessing the same transaction fee whether the transaction occurred electronically or on the Exchange's trading floor for these market participants. The Exchange's increase for this proprietary product is competitive when compared with similar proprietary products.<sup>28</sup>

With respect to Specialists and Market Makers, the electronic Options Transaction Charge for NDX and MNX will be \$0.75 per contract, similar to other Non-Customer market participants. The Exchange believes that it is reasonable to assess Specialists and Market Makers the same electronic Options Transactions Charge in NDX and MNX as other market participants, except Customers. The Exchange's increase for this proprietary product is competitive when compared with similar proprietary products.<sup>29</sup> The Specialist and Market Maker floor Options Transaction Charge is not being amended and will remain at \$0.35 per contract. The Exchange will continue to assess a Specialist and Market Maker Options Transaction Charge of \$0.35 per contract for floor transactions in NDX and MNX because the Exchange desires to incentivize Specialists and Market Makers to continue to make markets in

the NDX and MNX products on the trading floor.

The Exchange's proposal to increase the floor Options Transaction Charges for Professionals, Firms and Broker-Dealers from \$0.25 to \$0.75 per contract for NDX and MNX is equitable and not unfairly discriminatory because the Exchange will uniformly assess a \$0.75 per contract Options Transaction Charges for all market participants, except for Customers, Specialists and Market Makers transacting on the floor, regardless of whether the transaction is submitted electronically or on the floor. The Exchange believes that assessing Customers no transaction fee for NDX and MNX is equitable and not unfairly discriminatory because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and 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.

With respect to Specialists and Market Makers, the electronic Options Transaction Charge for NDX and MNX will be \$0.75 per contract, similar to other market participants. While this fee is increasing from \$0.25 to \$0.75 per contract, the Exchange, as proposed herein, will no longer assess a Marketing Fee for transactions in NDX and MNX, thereby effectively lowering the rate. For example, today, a Specialist or Market Maker transacting an electronic order in NDX or MNX will be assessed a \$0.25 per contract Options Transaction Charge in non-Penny Pilot Options, a \$0.25 per contract Options Surcharge and a \$0.70 per contract Marketing Fee for a total charge of \$1.20. With this proposal, a Specialist or Market Maker transacting an electronic order for NDX or MNX will be assessed a \$0.75 per contract Options Transaction Charge and a \$0.25 per contract Options Surcharge for a total charge of \$1.00. No Marketing Fee would be assessed. While all Non-Customer market participants would be assessed an electronic Options Transaction Charge of \$0.75 per contract for NDX or MNX, a Specialist or Market Maker will be assessed a lower total transaction charge as explained above, compared to today.

The Exchange believes that assessing Specialist and Market Makers a lower floor Options Transaction Charge of \$0.35 per contract for options overlying NDX and MNX and a higher electronic

Options Transaction Charge of \$0.75 per contract is equitable and not unfairly discriminatory. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.<sup>30</sup> They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. 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. Further, Specialists and Market Makers have a time and place advantage on the trading floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a floor broker to represent their trading interest on the trading floor as compared to a Specialist or Market Maker that could directly transact such orders on the trading floor. For these reasons, the Exchange is encouraging Specialists and Market Makers to transact NDX and MNX on the trading floor and recognizing the obligations of these market participants as compared to other market participants.

The Exchange notes that the proposed rule changes are reasonable, equitable and not unfairly discriminatory as NDX and MNX transition to exclusively listed products. Similar to other proprietary products, the Exchange seeks to recoup the operational costs<sup>31</sup> for listing proprietary products. 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.<sup>32</sup> Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact options overlying NDX and MNX or separately execute options

<sup>27</sup> *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

<sup>28</sup> See Chicago Board Options Exchange, Incorporated's ("CBOE") Fees Schedule. Russell 2000 Index ("RUT") options transactions on CBOE, except customers, are assessed a \$0.45 per contract surcharge. CBOE assesses Professionals and Broker-Dealers a manual and AIM transaction fee of \$0.25 per contract and a non-AIM transaction fee of \$0.65 per contract. CBOE assesses Clearing Trade Permit Holders a transaction fee of \$0.22 [sic] per contract, subject to a sliding scale.

<sup>29</sup> See CBOE's Fees Schedule. RUT transactions on CBOE, except customers, are assessed a \$0.45 per contract surcharge. CBOE assesses market makers a manual and AIM transaction fee of \$0.25 per contract for RUT transactions. CBOE assesses market makers a non-AIM electronic transaction fee of \$0.65 per contract for RUT transactions.

<sup>30</sup> See Phlx Rule 1014.

<sup>31</sup> 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.

<sup>32</sup> See pricing for RUT on CBOE's Fees Schedule.

overlying PowerShares QQQ Trust (“QQQ”).<sup>33</sup> Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact NDX and MNX.<sup>34</sup> When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

The Exchange’s proposal to eliminate the Marketing Fee for NDX and MNX is reasonable because in light of the transition of NDX and MNX to exclusively listed products and new pricing, the Exchange is increasing the Specialist and Market Maker electronic Options Transaction Charges for options overlying NDX and MNX. By removing the Marketing Fee, Specialists and Market Makers will avoid an increase in costs.

The Exchange’s proposal to eliminate the Marketing Fee for NDX and MNX is equitable and not unfairly discriminatory because in light of the transition of NDX and MNX to exclusively listed products and new pricing, the elimination of this fee will cause Specialists and Market Makers to continue to be assessed a lower total charge for the transaction as compared to other 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. 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. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to 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. 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. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets or will impose any inter-market burden on competition for the reasons stated above.

The Exchange’s proposal to increase the floor Options Transaction Charges for Professionals, Firms and Broker-Dealers from \$0.25 to \$0.75 per contract for NDX and MNX does not impose an undue burden on intra-market competition because the Exchange will uniformly assess a \$0.75 per contract Options Transaction Charge for all market participants, except for Customers and Specialists and Markets transacting on the floor, regardless of whether the transaction is submitted electronically or on the floor. The Exchange believes that assessing Customers no transaction fee for NDX and MNX does not impose an undue burden on intra-market competition because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and 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. It is also important to note that despite the fee increases with respect to NDX, members may continue to separately execute options overlying PowerShares QQQ Trust (“QQQ”).<sup>35</sup>

With respect to Specialists and Market Makers, increasing the electronic Options Transaction Charge for NDX and MNX from \$0.25 to \$0.75 per contract, the Exchange, as proposed herein, does not impose an undue burden on intra-market competition as the Exchange will no longer assess a Marketing Fee for on NDX and MNX, thereby effectively lowering the rate. The Exchange believes that assessing Specialists and Market Makers a lower floor Options Transaction Charge of \$0.35 per contract for NDX and MNX and a higher electronic Options Transaction Charge of \$0.75 per contract does not impose an undue burden on

intra-market competition. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.<sup>36</sup> They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. 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. Further, Specialists and Market Makers have a time and place advantage on the trading floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a floor broker to represent their trading interest on the trading floor as compared to a Specialist or Market Maker that could directly transact such orders on the trading floor. For these reasons, the Exchange is encouraging Specialists and Market Makers to transact NDX and MNX on the trading floor and recognizing the obligations of these market participants as compared to other market participants.

The Exchange’s proposal to eliminate the Marketing Fee for NDX and MNX does not impose an undue burden on intra-market competition because the elimination of this fee will cause Specialists and Market Makers to continue to be assessed a lower total charge for the transaction as compared to other market participants.

#### *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.<sup>37</sup>

At any time within 60 days of the filing of the proposed rule change, the

<sup>33</sup> QQQ is an exchange-traded fund based on the Nasdaq-100 Index®.

<sup>34</sup> 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.

<sup>35</sup> 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.

<sup>36</sup> See note 28.

<sup>37</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-24 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-2017-24. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-Phlx-2017-24, and should be submitted on or before April 10, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80243; File No. SR-Phlx-2017-23]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Address of the Exchange and Its Shareholder

March 14, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 3, 2017, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 addresses for Phlx and its shareholder, Nasdaq, Inc.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqphlx.cchwallstreet.com/>, 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

Phlx is planning to relocate from its current location at 1900 Market Street in Philadelphia, Pennsylvania to a new location at FMC Tower, 2929 Walnut Street in Philadelphia, Pennsylvania. The relocation is currently scheduled to occur in April 2017.

The purpose of this rule change is to amend the Second Amended Limited Liability Company Agreement of NASDAQ PHLX LLC as well as Rule 60, entitled "Sanctions for Breach of Regulations" to amend the addresses referenced therein for Phlx. In addition, the Second Amended Limited Liability Company Agreement lists the address of Phlx's shareholder, Nasdaq, Inc. The Exchange proposes to amend that address as well. The description for each change is below.

##### Change to 1900 Market Street Address

As noted above, Phlx will relocate in April 2017 to a new address at FMC Tower, 2929 Walnut Street in Philadelphia, Pennsylvania. The Second Amended Limited Liability Company Agreement and Rule 60 currently contain references to Phlx's current address at 1900 Market Street. The Exchange proposes to amend the Phlx address as of April 1, 2017 to the new address at FMC Tower, 2929 Walnut Street in Philadelphia, Pennsylvania.

##### Change to Nasdaq, Inc. Address

Nasdaq, Inc., the sole shareholder of Phlx, is currently listed in the Second Amended Limited Liability Company Agreement with an address of 1900 Market Street, Philadelphia, Pennsylvania. At this time the Exchange proposes to list the address of its shareholder at One Liberty Plaza, New York, NY 10006. This address is the headquarters of Nasdaq, Inc.

The Exchange proposes that the Phlx address rule change will become operative on April 1, 2017.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>4</sup>

<sup>38</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).