

exposures to its participants by establishing a risk-based margin system that, at a minimum, uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. As described above, NSCC believes implementing the proposed enhancements to the VaR Charge would improve the risk-based methodology that NSCC employs to measure market price risk and would better limit NSCC's credit exposures to Members, consistent with these requirements.

NSCC believes that the above described burden on competition that could be created by the proposed changes would be appropriate in furtherance of the Act because such changes have been appropriately designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, as described in detail above. By introducing additional calculations for arriving at a Member's final VaR Charge, each of which are designed to address the unique risks presented by Members' Net Unsettled Positions, as described above, the proposal would allow NSCC to produce margin levels commensurate with the risks and particular attributes of each Member's portfolio. Therefore, because the proposed changes were designed to provide NSCC with an appropriate measure of the risks presented by Members' Net Unsettled Positions, NSCC believes the proposals are appropriately designed to meet its risk management goals and its regulatory obligations.

NSCC believes that it has designed the proposed changes in a reasonable and appropriate way in order to meet compliance with its obligations under the Act. Specifically, implementing the proposed enhancements to the calculation of its VaR Charge would improve the risk-based margining methodology that NSCC employs to set margin requirements and better limit NSCC's credit exposures to its Members. Therefore, NSCC believes the proposed changes are necessary and appropriate in furtherance of NSCC's obligations under the Act, specifically Section 17A(b)(3)(F) of the Act<sup>42</sup> and Rules 17Ad-22(e)(4)(i) and Rule 17Ad-22(e)(6)(i) and (v) under the Act.<sup>43</sup>

Because the proposal to eliminate the MMD Charge would remove this charge from the margining methodology as applied to all Members, when applicable, NSCC does not believe the

proposed change to eliminate the MMD Charge would have any impact on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

While NSCC has not solicited or received any written comments relating to this proposal, NSCC has conducted outreach to Members in order to provide them with notice of the proposal. NSCC will notify the Commission of any written comments received by NSCC.

**III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the clearing agency consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

**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-NSCC-2017-020 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-NSCC-2017-020. 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 NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-NSCC-2017-020 and should be submitted on or before February 9, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>44</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2018-00851 Filed 1-18-18; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-82499; File No. SR-Phlx-2018-02]

**Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Pricing for NDXP**

January 12, 2018.

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 January 3, 2018, 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

<sup>44</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>42</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>43</sup> 17 CFR 240.17Ad-22(e)(4)(i) and (e)(6)(i) and (v).

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 to add pricing for P.M.-settled options on broad-based indexes with nonstandard expiration dates for a period of twelve months, which the Commission recently approved.<sup>3</sup>

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 4, 2018.

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

### **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 recently received approval to list P.M.-settled options on broad-based indexes with nonstandard expiration dates on a twelve month pilot basis, beginning on December 15, 2017.<sup>4</sup> This pilot permits both Weekly Expirations and End of Month expirations similar to those of the A.M.-settled broad-based index options, except that the exercise settlement value will be based on the index value derived from the closing prices of component stocks.<sup>5</sup> The Exchange proposes to list these aforementioned options,

commencing on January 4, 2017, with the symbol "NDXP."

Specifically, the Exchange proposes to adopt the current index pricing applicable to NDX<sup>6</sup> today to NDXP.

##### **Customer Rebate**

Today, Customer Rebates in Section B of the Pricing Schedule are not paid on NDX in any Category. However, NDX will count toward the volume requirement to qualify for a Customer<sup>7</sup> Rebate Tier. The Exchange proposes to apply the same pricing for NDXP as it relates to Customer Rebates. The Exchange believes that this will continue to encourage market participants to add Customer liquidity on Phlx.

##### **Transaction Charges in Section II**

Today, electronic and floor Options Transaction Charges for NDX are \$0.75 per contract for all Non-Customers. No transaction charge for NDX applies to Customers. A \$0.25 per contract<sup>8</sup> surcharge is assessed to Non-Customers in NDX. The Exchange proposes these options transaction charges for NDXP. Today, a \$0.10 per contract surcharge will be assessed to electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options (excluding NDX). This exclusion would apply likewise to NDXP.

Today, Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) Electronic Option Transaction Charges, excluding surcharges and excluding options overlying NDX; and (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)). NDXP would likewise be excluded.

Firms are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap"). Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary accounts. All dividend,

<sup>6</sup> NDX represents options on the Nasdaq 100<sup>®</sup> Index and is traded under the symbol NDX ("NDX").

<sup>7</sup> The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") and which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

<sup>8</sup> The Exchange proposes to add the words "per contract" to note 5 in Section II of the Pricing Schedule to make clear that the surcharge is assessed on a per contract basis.

merger, and short stock interest strategy executions (as defined in this Section II) are excluded from the Monthly Firm Fee Cap. NDX Options Transactions are excluded from the Monthly Firm Fee Cap. NDXP will likewise be excluded.

The Firm Floor Options Transaction Charges will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary accounts (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represent both sides of a Firm transaction when such members are trading in their own proprietary accounts. In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur this charge for trading in their own proprietary accounts contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. NDX Options Transactions are excluded from each of the waivers set forth in the above paragraph. NDXP will likewise be excluded from the waivers.

##### **Marketing Fees**

No Marketing Fees are assessed on transactions in NDX. NDXP will likewise be excluded.

##### **PIXL Pricing**

Options overlying NDX are not subject to Section IV.A.—PIXL Pricing. NDX transactions in PIXL will be subject to Section II pricing. NDXP will not be subject to PIXL Pricing, similar to NDX, NDXP will be subject to the Section II pricing noted herein.

##### **FLEX Transaction Fees**

The Monthly Firm Fee Cap, Monthly Market Maker Cap, Strategy Caps and the Options Surcharge described in Section II of the Pricing Schedule apply to FLEX Transaction Fees for NDX and will likewise apply to NDXP in the same manner.

##### **Market Access and Routing Subsidy ("MARS")**

MARS Payment [sic] are made to Phlx members that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month,

<sup>3</sup> See Securities and Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (SR-Phlx-2017-79).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

which were executed on Phlx. Options overlying NDX are not considered Eligible Contracts. NDXP will not be considered Eligible Contracts.

The Exchange believes that the above-referenced pricing for NDX continues to be competitive and attract volume to Phlx. The Exchange believes that the proposed pricing is suitable because NDXP represent similar options on the same underlying, the Nasdaq 100® Index.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</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>11</sup>

Likewise, in *NetCoalition v. Securities and Exchange Commission*<sup>12</sup> (“NetCoalition”) the DC 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>13</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>14</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-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>15</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.

## Customer Rebate

The Exchange’s proposal to not pay the Customer Rebates in Section I of the Pricing Schedule on NDXP and count NDXP volume toward qualifying for a Customer Rebate Tier, similar to NDX, is reasonable because the Exchange desires to calculate and pay rebates on NDXP in a similar manner to NDX. NDX and NDXP represent similar options on the same underlying, the Nasdaq 100® Index. Further, it is reasonable to not pay Customer Rebates on NDXP in any Category (A, B or C) because this index will be exclusively listed on Nasdaq exchanges only.<sup>16</sup> The original intent of the Customer Rebate Program was to pay rebates on electronically-delivered Multiply-Listed Options. By definition, NDXP will not be a Multiply-Listed Option. The Exchange does not desire to pay rebates on NDXP because of its exclusivity. The Exchange believes it is reasonable to continue to count NDXP in the total volume to qualify a market participant for a Customer Rebate. However, market participants in NDXP will not be paid the Customer rebates in any Category because of the exclusivity of this option. Market participants would continue to benefit from NDXP options volume in terms of qualifying for Customer Rebate Tiers.

The Exchange’s proposal to not pay the Customer Rebates in Section I of the Pricing Schedule on NDXP and count NDXP volume toward qualifying for a Customer Rebate Tier, similar to NDX, is equitable and not unfairly discriminatory because the Exchange would apply its calculation to determine the eligibility and payment of Customer rebates in a uniform manner. Further, the Exchange would not pay Customer Rebates on any NDXP transaction to any market participant.

Also, any market participant is eligible to earn a Customer Rebate.

## Transaction Charges in Section II

The Exchange’s proposal to assess the same electronic and floor Options Transaction Charges for NDXP as it assesses for NDX<sup>17</sup> is reasonable because the Exchange’s transaction charges for its proprietary products are competitive when compared with similar proprietary products.<sup>18</sup> The Exchange’s proposal to assess the same electronic and floor Options Transaction Charges for NDXP and NDX is equitable and not unfairly discriminatory because the Exchange would assess the same options transaction charges to all Non-Customer market participants. The Exchange believes that assessing Customers no transaction fee for NDXP 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.

The Exchange notes that the proposed transaction charges are reasonable, equitable and not unfairly discriminatory as NDXP will be an exclusively listed product. Similar to NDX, the Exchange seeks to recoup the operational costs<sup>19</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

<sup>17</sup> Today, electronic and floor Options Transaction Charges for options overlying NDX are \$0.75 per contract for all Non-Customers. No transaction charge for NDX applies to Customers. A \$0.25 per contract surcharge is assessed to Non-Customers in NDX. Also, a \$0.10 per contract surcharge is assessed to electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PXL, in Non-Penny Pilot Options (excluding NDX).

<sup>18</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 per contract, subject to a sliding scale.

<sup>19</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>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>12</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>13</sup> See *NetCoalition*, at 534—535.

<sup>14</sup> *Id.* at 537.

<sup>15</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>16</sup> Nasdaq intends to list NDXP on other Nasdaq-owned self-regulatory organizations in addition to Phlx at a later date.

exchange for execution in particular products. Other options exchanges price by symbol.<sup>20</sup> Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact NDXP or separately execute options overlying PowerShares QQQ Trust (“QQQ”).<sup>21</sup> Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100® Index.<sup>22</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 add the words “per contract” to note 5 in Section II of the Pricing Schedule to make clear the surcharge is per contract is reasonable, equitable and not unfairly discriminatory because it will conform the language to the remainder of the transaction charges in Section II of the Pricing Schedule.

The Exchange’s proposal to exclude NDXP from the Monthly Market Maker Cap and the Monthly Firm Fee Cap is reasonable because NDX, another proprietary product is likewise excluded today. Market Makers will continue to be able to utilize the cap to reduce electronic Option Transaction Charges, excluding surcharges, QCC transaction fees and Floor QCC Orders, NDX and now NDXP despite the exclusions.

The Exchange’s proposal to exclude NDXP from the Monthly Market Maker Cap and the Monthly Firm Fee Cap is equitable and not unfairly discriminatory because no market participant would be eligible to count NDXP toward either the Monthly Market Maker Cap or the Monthly Firm Fee Cap.

The Exchange’s proposal to exclude NDXP from the Firm Floor Options Transaction waivers for members executing facilitation orders pursuant to Exchange Rule 1064,<sup>23</sup> from the buy side of a transaction, if the same member or its affiliates under Common

Ownership represent both sides of a Firm transaction when such members are trading in their own proprietary account, and from the waiver for the Broker-Dealer Floor Options Transaction Charge for members executing facilitation orders pursuant to Exchange Rule 1064,<sup>24</sup> is reasonable because NDX, another proprietary product is likewise excluded today.

The Exchange’s proposal to exclude NDXP from the Firm Floor Options Transaction waivers for members executing facilitation orders pursuant to Exchange Rule 1064,<sup>25</sup> from the buy side of a transaction, if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account, and from the waiver for the Broker-Dealer Floor Options Transaction Charge for members executing facilitation orders pursuant to Exchange Rule 1064,<sup>26</sup> is equitable and not unfairly discriminatory because no market participant would be eligible to count NDXP toward these waivers.

#### Marketing Fee

The Exchange’s proposal to exclude NDXP from the Marketing Fee is reasonable because NDXP is an exclusively listed product, similar to NDX, which is also excluded from the Marketing Fee. The Exchange notes that Specialists and Market Makers transaction fees will remain in line with other market participants for NDXP.

The Exchange’s proposal to exclude NDXP from the Marketing Fee is equitable and not unfairly discriminatory because the Exchange will assess uniform transaction fees for all Non-Customers because the transaction charges, as proposed above, would otherwise be uniform for all market participants. The Exchange believes that assessing Customers no transaction fee for NDXP 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.

#### PIXL Pricing

The Exchange’s proposal to exclude NDXP from Section IV.A.—PIXL Pricing and instead assess NDXP transactions in PIXL the Section II pricing, similar to NDX, is reasonable because the Exchange believes that the PIXL pricing continues to be competitive despite the exclusion of NDXP. The Exchange’s proposal to exclude NDXP from the PIXL Pricing in Section IV, Part A and instead assess NDXP transactions in PIXL the Section II pricing is equitable and not unfairly discriminatory because the Exchange will uniformly exclude NDXP from PIXL pricing.

#### FLEX Transaction Fees

The Exchange’s proposal to assess NDXP the same FLEX Transaction Fees as are assessed for NDX today is reasonable because the Exchange desires to assess the same fees for index products. The Exchange’s proposal to assess NDXP the same FLEX Transaction Fees as are assessed for NDX today is equitable and not unfairly discriminatory because the Exchange will uniformly assess FLEX fees for NDXP in a uniform manner for all market participants.

#### Market Access and Routing Subsidy (“MARS”)

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

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. The Exchange notes that with its products, market participants are offered an opportunity to either transact NDXP or separately execute options overlying PowerShares QQQ Trust (“QQQ”). Offering products such as QQQ provides

<sup>20</sup> See pricing for RUT on CBOE’s Fees Schedule.

<sup>21</sup> QQQ is an exchange-traded fund based on the Nasdaq-100 Index®.

<sup>22</sup> QQQ options overlies[sic] the same Index as NDX, namely the Nasdaq 100® Index. This relationship between QQQ options and NDX options is similar to the relationship between RUT, the iShares Russell 2000 Index, and IWM which is the ETF on RUT.

<sup>23</sup> This waiver applies when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

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

market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100 Index.<sup>27</sup>

#### Customer Rebate

The Exchange's proposal to not pay the Customer Rebates in Section I of the Pricing Schedule on NDXP and count NDXP volume toward qualifying for a Customer Rebate Tier, similar to NDX, does not impose an undue burden on competition because the Exchange would apply its calculation to determine the eligibility and payment of Customer rebates in a uniform manner. The Exchange's proposal to not pay Customer Rebates on NDXP in any Category is equitable and not unfairly discriminatory because the Exchange would not pay Customer Rebates on any transaction with NDXP to any market participant. Also, any market participant is eligible to earn a Customer Rebate.

#### Transaction Charges in Section II

The Exchange's proposal to assess for the same electronic and floor Options Transaction Charges for NDXP and NDX does not impose an undue burden on competition because the Exchange would assess the same options transaction charges to all Non-Customer market participants. The Exchange believes that assessing Customers no transaction fee for NDXP does not impose an undue burden on 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 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.

The Exchange's proposal to add the words "per contract" to note 5 in Section II of the Pricing Schedule to make clear the surcharge is per contract does not impose an undue burden on competition because it will conform the language to the remainder of the transaction charges in Section II of the Pricing Schedule.

The Exchange's proposal to exclude NDXP from the Monthly Market Maker Cap and the Monthly Firm Fee Cap does not impose an undue burden on competition because no market participant would be eligible to count NDXP toward either the Monthly

Market Maker Cap or the Monthly Firm Fee Cap.

The Exchange's proposal to exclude NDXP from the Firm Floor Options Transaction waivers for members executing facilitation orders pursuant to Exchange Rule 1064, from the buy side of a transaction, if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account, and from the waiver for the Broker-Dealer Floor Options Transaction Charge for members executing facilitation orders pursuant to Exchange Rule 1064, does not impose an undue burden on competition because no market participant would be eligible to count NDXP toward these waivers.

#### Marketing Fee

The Exchange's proposal to exclude NDXP from the Marketing Fee does not impose an undue burden on competition because the Exchange will assess uniform transaction fees for all Non-Customers because the transaction charges, as proposed above, would otherwise be uniform for all market participants. The Exchange believes that assessing Customers no transaction fee for NDXP does not impose an undue burden on 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 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.

#### PIXL Pricing

The Exchange's proposal to exclude NDXP from the PIXL Pricing in Section IV, Part A and instead assess NDXP transactions in PIXL the Section II pricing does not impose an undue burden on competition because the Exchange will uniformly exclude NDXP from PIXL pricing.

#### FLEX Transaction Fees

The Exchange's proposal to assess NDXP the same FLEX Transaction Fees as are assessed for NDX today does not impose an undue burden on competition because the Exchange will uniformly assess FLEX fees for NDXP in a uniform manner for all market participants.

#### MARS Subsidy

The Exchange's proposal to exclude NDXP from Eligible Contracts for purposes of qualifying for a MARS Payment does not impose an undue burden on competition because the Exchange will uniformly exclude NDXP from MARS.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>28</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2018-02 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-2018-02. 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/>

<sup>27</sup> See note 22 above.

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

*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; 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-2018-02 and should be submitted on or before February 9, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82495; File No. SR-Phlx-2018-08]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Fee Schedule at Chapter IX

January 12, 2018.

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 January 9, 2018, 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 fee schedule at Chapter IX (Proprietary Data Feed Fees) to change the Internal Distributor fee for Top of PHLX Options Plus Orders to reflect substantial enhancements to the product since the current Distributor fees were set in 2010, as described further below.

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

#### 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 purpose of the proposed rule change is to amend the Exchange's fee schedule at Chapter IX (Proprietary Data Feed Fees) to change the Internal Distributor fee for TOPO Plus Orders ("TOPO Plus") to reflect substantial enhancements to the product since the current Distributor fees were set in 2010.

TOPO Plus is a direct, low-latency market data product that allows subscribers to connect to both the Top of PHLX Options ("TOPO") data feed and the PHLX Orders data feed. TOPO provides subscribers a direct data feed that includes the Exchange's best bid and offer position, with aggregate size, based on displayable order and quoting interest on the Exchange. TOPO also provides last sale information from PHLX.

PHLX Orders includes the full limit order book and contains a real-time status of simple and complex orders on the PHLX order book for all PHLX-listed

options. This includes new orders and changes to orders resting on the PHLX book. The PHLX Orders feed includes opening imbalance data, Price Improvement XL (PIXL) data and Complex Order Live Auction (COLA) information, in addition to the full limit order book data for both simple and complex orders.

The fee for TOPO Plus varies, depending on whether the subscriber is an Internal Distributor, an External Distributor, a Non-Professional Subscriber, or a Professional Subscriber.<sup>3</sup>

Currently, the monthly fee for an Internal Distributor is \$4,000, the monthly fee for an External Distributor is \$5,000, the monthly fee for a Non-Professional Subscriber is \$1, and the monthly fee for a Professional Subscriber is \$40. The Exchange is now proposing to increase the monthly fee for an Internal Distributor to \$4,500. Since its inception in 2010, the Exchange has not raised the Internal or External Distributor fee and yet has made substantial improvements to the product as illustrated below.<sup>4</sup>

While the Exchange has not raised the fees for TOPO Plus since its inception, the Exchange has added a number of functional enhancements to both TOPO and PHLX Orders in particular, and to Exchange systems in general, that enhance the value of the TOPO Plus data product. Specifically:

- In July 2011, the Exchange began disseminating timestamp messages for

<sup>3</sup> Chapter IX of the Pricing Schedule defines a distributor as "any entity that receives a feed or data file of data directly from Nasdaq PHLX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity)."

Chapter IX of the Pricing Schedule defines a Non-Professional Subscriber as "a natural person who is neither: (i) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an 'investment adviser' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. A Non-Professional Subscriber may only use the data provided for personal purposes and not for any commercial purpose."

Chapter IX of the Pricing Schedule defines a Professional Subscriber as "any Subscriber that is not a Non-Professional Subscriber. If the Nasdaq Subscriber agreement is signed in the name of a business or commercial entity, such entity would be considered a Professional Subscriber."

<sup>4</sup> See Securities Exchange Act Release No. 62194 (May 28, 2010) 75 FR 31830 (SR-Phlx-2010-48) (approving TOPO Plus fees) ("TOPO Plus approval order").

<sup>29</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.