

submissions should refer to file number SR–PEARL–2023–69 and should be submitted on or before January 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99186; File No. SR–Phlx–2023–56]

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

December 14, 2023.

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 December 5, 2023, 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 its Rules at Options 7, Section 9, Other Member Fees.<sup>3</sup>

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The Exchange proposes to amend Options 7, Section 9, B, Port Fees, to increase the SQF Port<sup>4</sup> Fee cap.

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.<sup>5</sup> Today, member organizations are not assessed an active SQF Port Fee for additional ports acquired for ten business days for the purpose of transitioning technology.<sup>6</sup> 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.<sup>7</sup>

At this time, the Exchange proposes to increase the maximum SQF Port Fee of \$42,000 per month to \$50,000 per month. The Exchange is not amending the \$1,250 per port, per month fee. As is the case today, the Exchange would not assess a member organization an

<sup>4</sup> “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. See Options 3, Section 7(a)(i)(B).

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

<sup>6</sup> 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. See Options 7, Section 9, B.

<sup>7</sup> 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.

SQF Port Fee beyond the monthly cap once the member organization has exceeded the monthly cap for the respective month. Despite increasing the maximum SQF Port Fee from \$42,000 per month to \$50,000 per month, the Exchange will continue to offer member organizations the opportunity to cap their SQF Port Fees so that they would not be assessed these fees beyond the cap. 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,<sup>8</sup> only one SQF Port is necessary for a Phlx Market Maker to fulfill its regulatory quoting obligations.<sup>9</sup>

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</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 proposed pricing change to increase the maximum SQF Port Fee is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[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’;

<sup>8</sup> 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.

<sup>9</sup> 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.

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

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>34</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> The Exchange initially filed the proposed pricing changes on November 28, 2023 (SR–Phlx–2023–52). On December 5, 2023, the Exchange withdrew that filing and submitted this filing.

[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>12</sup>

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>13</sup>

Numerous indicia demonstrate the competitive nature of this market. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The proposed pricing change to increase the maximum SQF Port Fee from \$42,000 to \$50,000 per month is reasonable because despite the increase in the maximum SQF Port Fee, the Exchange will continue to offer member organizations the opportunity to cap their SQF Port Fees so that they would not be assessed SQF Port Fees beyond the cap. Additionally, 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,<sup>14</sup> only one SQF Port is necessary for a Phlx Market Maker to fulfill its regulatory quoting obligations.<sup>15</sup>

The proposed pricing change to increase the maximum SQF Port Fee

from \$42,000 to \$50,000 per month is equitable and not unfairly discriminatory because the Exchange would uniformly not assess any Market Makers that exceeded the maximum SQF Port Fee any SQF Port Fees beyond the maximum amount. Market Makers are the only market participants that are assessed an SQF Port Fee because they are the only market participants that are permitted to quote on the Exchange.

#### *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 believes its proposal remains competitive with other options markets who also offer order entry protocols. 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 maximum SQF Port Fee from \$42,000 to \$50,000 per month does not impose an undue burden on competition because the Exchange would uniformly not assess any Market Makers that exceeded the maximum SQF Port Fee any SQF Port Fees beyond the maximum amount. Market Makers are the only market participants that are assessed an SQF Port Fee because they are the only market participants that are permitted to quote on the Exchange.

#### *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>16</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 (<https://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-2023-56 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-2023-56. 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,

<sup>12</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>13</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>14</sup> 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.

<sup>15</sup> Phlx Market Makers have various regulatory requirements as provided 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.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2023-56 and should be submitted on or before January 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99184; File No. SR-CboeEDGA-2023-021]

### Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Provide a Discount on the Purchase of Historical Equity Short Volume and Trade Reports

December 14, 2023.

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 December 1, 2023, Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) 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

Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://markets.cboe.com/us/>

[equities/regulation/rule\\_filings/edga/](http://markets.cboe.com/us/equities/regulation/rule_filings/edga/)), at the Exchange’s Office of the Secretary, 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 proposes to update its Fee Schedule to provide a discount on fees assessed to EDGA Members (“Members”)<sup>3</sup> and non-Members that purchase \$20,000 or more of U.S. Equity Short Volume and Trades Reports (“Short Volume Reports”), effective December 1, 2023 through December 31, 2023.

By way of background, the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade date,<sup>4</sup> total volume,<sup>5</sup> short volume,<sup>6</sup> and sell short exempt volume,<sup>7</sup> by symbol.<sup>8</sup> The Short Volume Report also includes an end-of-month report that provides a record of all short sale transactions for the month, including trade date and time (in

<sup>3</sup> See Rule 1.5(n) (“Member”). The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

<sup>4</sup> “Trade date” is the date of trading activity in yyyy-mm-dd format.

<sup>5</sup> “Total volume” is the total number of shares transacted.

<sup>6</sup> “Short volume” is the total number of shares sold short.

<sup>7</sup> “Short exempt volume” is the total number of shares sold short classified as exempt.

<sup>8</sup> “Symbol” refers to the Cboe formatted symbol in which the trading activity occurred. See [https://cdn.cboe.com/resources/membership/US\\_Symbolology\\_Reference.pdf](https://cdn.cboe.com/resources/membership/US_Symbolology_Reference.pdf).

microseconds),<sup>9</sup> trade size,<sup>10</sup> trade price,<sup>11</sup> and type of short sale execution,<sup>12</sup> by symbol and exchange.<sup>13</sup> The Short Volume Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., makes the Short Volume Report available for purchase to Users on the LiveVol DataShop website ([datashop.cboe.com](http://datashop.cboe.com)). Both the end-of-day report and end-of-month report are included in the cost of the Short Volume Report and are available for purchase by both Members as well as non-Members on an annual or monthly<sup>14</sup> basis. The monthly fee is \$750 per Internal Distributor<sup>15</sup> and \$1,250 per External Distributor.<sup>16</sup> Additionally, the Exchange offers historical reports containing both the end-of-day volume and end-of-month trading activity. The fee per month of historical data is \$500. The Short Volume Report provided on a historical basis is only for display use redistribution (e.g., the data may be provided on the User’s platform).

<sup>9</sup> “Trade date and time” is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 ET format.

<sup>10</sup> “Trade size” is the number of shares transacted.

<sup>11</sup> “Trade price” is the price at which shares were transacted.

<sup>12</sup> “Short type” is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (see 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (see 17 CFR 242.201(c)).

<sup>13</sup> “Exchange” is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

<sup>14</sup> The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on October 24, 2023, the monthly fee will cover the period of October 24, 2023, through November 23, 2023. If the User cancels its subscription prior to November 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

<sup>15</sup> An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity. See Cboe EDGA U.S. Equities Exchange Fee Schedule.

<sup>16</sup> An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity. See Cboe EDGA U.S. Equities Exchange Fee Schedule.

<sup>17</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.