SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100579; File No. SR–Phlx–2024–33]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees for Nasdaq 100 Index Options in Options 7, Section 5.A

July 23, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2024, 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 fees for Nasdaq 100 Index options in the Exchange's Pricing Schedule at Options 7, Section 5.A.

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.

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

[2] 17 CFR 240.19b–4.

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 fees for NDX [3] and NDXP.[4] The Exchange initially filed the proposed pricing changes on July 1, 2024 (SR–Phlx–2024–30). On July 12, 2024, the Exchange withdrew that filing and submitted this filing.

As set forth in Options 7, Section 5.A, the Exchange currently charges all Non-Customer [5] orders in NDX and NDXP a $0.75 per contract transaction fee. Customer [6] orders are currently assessed a $0.25 per contract transaction fee in NDX and NDXP. These transaction fees apply to electronic simple and complex executions as well as floor transactions.

The Exchange now proposes to assess a surcharge of $0.25 per contract to all market participants for simple and complex executions in NDX and NDXP with a premium price of $25.00 or greater.[7] The fees for simple and complex executions in NDX and NDXP with a premium price of less than $25.00 will remain unchanged under this proposal. The Exchange notes that charging different fees based on the option premium is consistent with how other options are priced at another options exchange.[8] The Exchange further notes that the proposed surcharge amount is within the range of surcharges assessed for transactions in other products at other options exchanges.[9]

The Exchange notes that less than 50% of total NDX and NDXP executed volume is in NDX and NDXP contracts with a premium of $25.00 or greater, as shown in the chart below.[10]

[3] NDX represents A.M.-settled options on the full value of the Nasdaq 100 Index traded under the symbol NDX.

[4] NDXP represents P.M.-settled options on the full value of the Nasdaq 100 Index traded under the symbol NDXP.

[5] The term ''Non-Customer'' applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs.

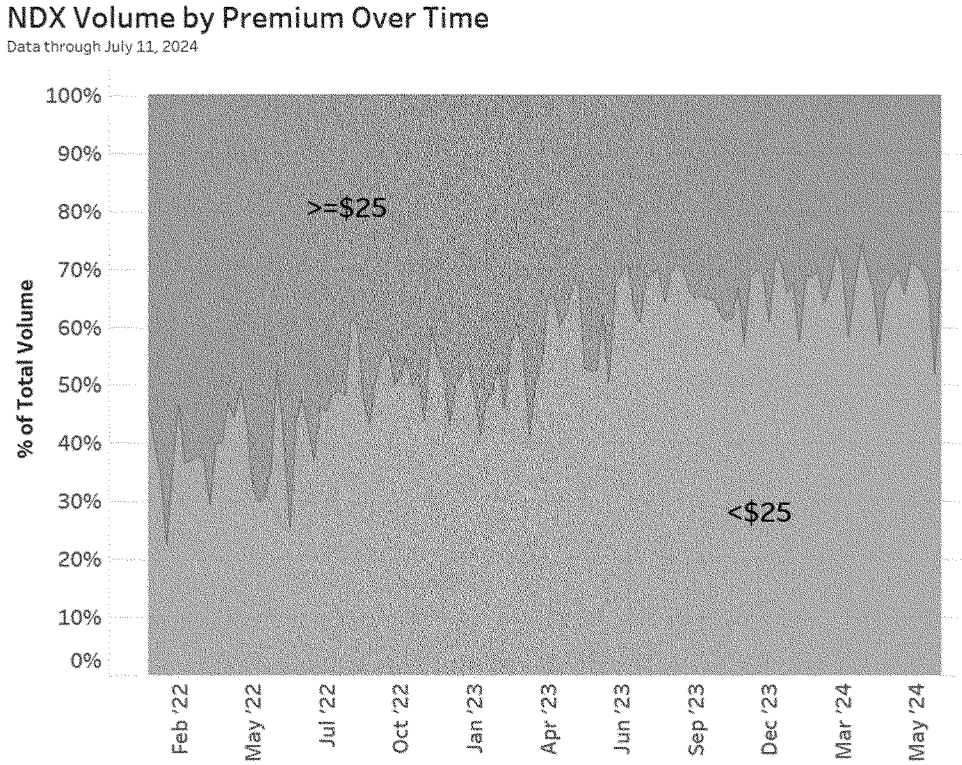
[6] The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of a broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(b)(45)).

[7] *See* proposed note 7 in Options 7, Section 5.A.

[8] For example, Cboe Options (''Cboe'') currently assesses customers a $0.36 per contract fee (if premium < $1.00) or $0.45 per contract fee (if premium >= $1.00) for SPX and SPESG options. Cboe also currently assesses market-makers a $0.05 per contract fee (if premium is $0.00–$0.10) or $0.23 per contract (if premium >= $0.11) for VIX options. *See* Cboe Fees Schedule.

[9] For example, Cboe currently assesses customers a $0.25 per contract exotic surcharge and a $0.21 per contract execution surcharge in SPX and SPESG options. *See* Cboe Fees Schedule. In addition, the Exchange's affiliate, Nasdaq Phlx LLC (''Phlx'') current assesses a $0.25 per contract complex surcharge for executions in singly-listed U.S. dollar-settled foreign currency options. *See* Phlx Options 7, Section 5.D.

[10] The chart includes A.M. and P.M. settled options on the full value of the Nasdaq 100® Index on Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq Phlx LLC.



Notably, the majority of NDX and NDXP contracts have a premium price of below $25.00. The Exchange believes that on the whole, while it is proposing a $0.25 per contract surcharge on NDX and NDXP executions with a premium price of $25.00 or greater, market participants will continue to be incentivized to transact in NDX and NDXP, especially given that the majority of such transactions would occur below the threshold at which the proposed surcharge would be assessed.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposal to add a $0.25 per contract surcharge to all market participants for simple and complex executions in NDX and NDXP with a premium price of $25.00 or greater is reasonable because the proposed pricing reflects the proprietary nature of these products. Similar to other proprietary products like options overlying the Nasdaq 100 Micro Index (''XND''), the Exchange seeks to recoup the operational costs of listing proprietary products.[13] 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 and based on the option premium.[14] Further, the Exchange notes that market participants are offered different ways to gain exposure to the Nasdaq 100 Index, whether through the Exchange's proprietary products like options overlying NDX, NDXP, or XND, or separately through multi-listed options overlying Invesco QQQ Trust (''QQQ'').[15] Offering such products provides market participants with a variety of choices in selecting the product they desire to utilize in order to gain exposure to the Nasdaq 100 Index. 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 further believes that the proposed surcharge described above is reasonable because the new fee is in line with surcharges assessed on other index products at other options exchanges.[16]

The Exchange believes that its proposal is equitable and not unfairly discriminatory because it will be applied uniformly to all market participants. Assessing a surcharge only for executions in NDX and NDXP whose premium is $25.00 or greater is equitable and not unfairly discriminatory for the reasons that follow. As shown in the chart above, the majority of NDX and NDXP contracts have a premium of less than $25.00, and the Exchange is limiting the proposed surcharge to higher-priced NDX and NDXP contracts (*i.e.,* $25.00 or greater), while maintaining lower costs on lower-priced NDX and NDXP contracts (*i.e.,* below $25.00). As such, the Exchange believes that its proposal will continue to promote liquidity in these products, to the benefit of all market participants because the majority of NDX contracts would not incur the proposed $0.25 surcharge as they would fall below the premium price threshold at which the surcharge would be assessed.

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

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] 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.

[14] *See supra* note 8.

[15] QQQ is an exchange-traded fund based on the same Nasdaq 100 Index as NDX, NDXP, and XND.

[16] *See supra* note 9.

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 intra-market competition, the Exchange will apply the proposed surcharge uniformly to all market participants. As discussed above, the majority of NDX and NDXP contracts have a premium of less than $25.00 and these contracts would not incur the proposed $0.25 surcharge as they would fall under the premium price threshold at which the surcharge would be assessed. By limiting the proposed surcharge to higher-priced NDX and NDXP contracts (*i.e.,* with a premium price of $25.00 or higher), the Exchange believes that its proposal will continue to promote liquidity in these products by maintaining lower costs for lower-priced NDX and NDXP contracts. Greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery.

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 options 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. As noted above, market participants are offered an opportunity to transact in NDX, NDXP, or XND, or separately execute options overlying QQQ. Offering these products provides market participants with a variety of choices in selecting the product they desire to use to gain exposure to the Nasdaq 100 Index. Furthermore, the proposed surcharge is in line with surcharges assessed on other products at another options exchange.[17]

In addition to the Exchange, market participants have alternative options exchanges that they may participate on and direct their order flow, which list proprietary products that compete with NDX and NDXP.[18] 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 changes will impair the ability of members or competing options exchanges to maintain their competitive standing in the financial markets.

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.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–Phlx–2024–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–Phlx–2024–33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–Phlx–2024–33 and should be submitted on or before August 19, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

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[17] *See supra* note 9.

[18] *See e.g.,* pricing for Russell 2000 Index (''RUT'') on Cboe's Fees Schedule and Cboe C2 Exchange, Inc.'s (''C2'') Fees Schedule. *See also* SPX pricing on Cboe's Fees Schedule. Both RUT and SPX are proprietary products on the Cboe markets that are broad-based index options, like NDX and NDXP.

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100582; File No. SR–CboeBZX–2024–071]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish New Logical Ports in Connection With a New Connectivity Offering on Its Equity Options Platform

July 23, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17,

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

[2] 17 CFR 240.19b–4.