

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 necessary or appropriate in the public interest, for the protection of investors, or 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-PEARL-2017-18 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-PEARL-2017-18. 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-PEARL-2017-18, and should be submitted on or before May 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Brent J. Fields,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80474; File No. SR-Phlx-2017-30]

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

April 17, 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 April 7, 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 proposal [sic] to amend the Exchange's Pricing Schedule at Section B, entitled "Customer Rebate Program," Section II, entitled "Multiply Listed Options Fees,"<sup>3</sup> and Section IV, Part B entitled "FLEX Transaction Fees"<sup>4</sup> to remove references to 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

<sup>19</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> These fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

<sup>4</sup> Multiply Listed Options includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

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

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 Pricing Schedule at Section B, entitled "Customer Rebate Program," Section II, entitled "Multiply Listed Options Fees," and Section IV, Part B entitled "FLEX Transaction Fees" to remove references to MNX.

The Exchange is delisting MNX on Phlx on April 7, 2017. As a result of delisting MNX, the Exchange is removing references from its Pricing Schedule to specific pricing for MNX. No market participant would be able to trade an option overlying MNX on Phlx once it is delisted.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</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

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

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>8</sup>

Likewise, in *NetCoalition v. Securities and Exchange Commission*<sup>9</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>10</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>11</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>12</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 remove references from its Pricing Schedule to specific pricing for MNX is reasonable because the Exchange is delisting MNX on Phlx on April 7, 2017 and the specific pricing for MNX would not be applicable.

The Exchange’s proposal to remove references from its Pricing Schedule to specific pricing for MNX is equitable and not unfairly discriminatory because no market participant would be able to trade an option overlying MNX on Phlx once it is delisted.

#### *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 changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

In terms of inter-market competition, the Exchange believes that its proposed rebates and fees continue to remain competitive in SPY and Multiply Listed Options. 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 order execution venues to maintain their competitive standing in the financial markets.

The Exchange’s proposal to remove references from its Pricing Schedule to specific pricing for MNX does not impose an undue burden on intra-market competition because no market participant would be able to trade an option overlying MNX on Phlx once it is delisted.

#### *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>13</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-2017-30 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-Phlx-2017-30. 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.,

<sup>8</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>9</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>10</sup> See *NetCoalition*, at 534–535.

<sup>11</sup> *Id.* at 537.

<sup>12</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>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-30 and should be submitted on or before May 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2017-08062 Filed 4-20-17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80472; File No. SR-CBOE-2017-028]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

April 17, 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 April 3, 2017, Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “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 text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 amend its Fees Schedule. Specifically, the Exchange is eliminating certain fees relating to the PULSe workstation. By way of background, the PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of the Exchange. Exchange Trading Permit Holders (“TPHs”) may also make workstations available to their customers, which may include TPHs, non-broker dealer public customers and non-TPH broker dealers.

The Exchange first proposes to eliminate the Away-Market Routing Intermediary fee. This fee is payable by a Routing Intermediary and only applicable for away-market routing from any PULSe workstation for which it serves as the Routing Intermediary. The fee is \$0.02 per contract or share equivalent for the first million contracts or share equivalent executed in a month for executions on all away markets aggregated across all such PULSe workstations, and \$0.03 per contract or share equivalent for each additional contract or share equivalent executed in the same month on all away markets.

The Exchange also proposes to eliminate the CBOE Routing fee. The CBOE Routing fee is payable by a TPH and only applicable for routing to CBOE from non-TPH PULSe workstations made available by the TPH. The fee is \$0.02 per contract or share equivalent for the first 1 million contracts or share equivalent executed in a month on CBOE that originate from non-TPH PULSe workstations made available by the TPH, and \$0.03 per contract or share equivalent for each additional contract or share equivalent executed on CBOE in the same month from the non-TPH

PULSe workstations made available by the TPH.

Lastly, the Exchange proposes to eliminate the Routing Intermediary Inactivity fee. The Routing Intermediary Inactivity fee would be charged to a Routing Intermediary in the calendar year after the year in which the Routing Intermediary was charged the Routing Intermediary Certification Fee. The fee is \$5,000/year less the aggregate amount of Away-Market Routing Intermediary and CBOE Routing fees charged to a Routing Intermediary during that calendar year (if Routing Intermediary was charged less than an aggregate of \$5,000 in Away-Market Routing Intermediary and CBOE Routing fees that year). As the Exchange is eliminating both the Away-Market Routing Intermediary and CBOE Routing fees and the inactivity fee is based in part on the amount of those fees assessed, the Exchange proposes to eliminate the inactivity fee as well.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>3</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>4</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>5</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes eliminating the Away-Market Routing Intermediary fee, the CBOE Routing fee and the Routing Intermediary Inactivity fee is reasonable because market participants who would otherwise be subject to those fees will no longer be assessed

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</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).

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