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.[29]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00856 Filed 1–18–18; 8:45 am]

BILLING CODE 8011–01–P

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''),[1] and Rule 19b–4 thereunder,[2] 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.[3]

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.[4]

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

[29] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 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.''

[4] *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'').

TOPO and TOPO Plus Orders in nanoseconds instead of milliseconds to provide additional granularity to the order book data contained in those products.[5]

• In December 2012, the Exchange enhanced TOPO Plus to include an updated Auction Notification Message with an Order Exposure Auction Type, which notifies participants when there is an aggressively priced order available for execution that may be routed away.[6] This change helps customers understand the types of auction messages coming into the system.[7]

• In September 2013, the Exchange updated the Complex Auction Notification Message in PHLX Orders to unmask the Price, Side and Debit or Credit fields, which had been previously marked with an asterisk, leading to more transparency on the complex auction message.[8]

• In November 2014, the Exchange added Implied Orders to the Simple Order Message of PHLX Orders.[9] These orders serve to attract interest to trade with the resting Complex Order for which they represent.[10]

• In September 2015, the Exchange automated the expiration process relating to World Currency Options (''WCO''), and updated the TOPO and PHLX Orders market data specifications to accommodate a new value of ''W'' to represent the 12:00 p.m. ET closure of expiring WCO options in the Options Directory message and System Event messages.[11]

• In February 2016, the Exchange expanded the period pursuant to which the TOPO Plus product, among other products, will be made available at the beginning of the trading day. The Exchange moved up the dissemination times of the Start of Message process by two hours, to 4:00 a.m., ET., to provide members with additional time for connectivity testing and to better align with the opening times of the equity markets.[12] On December 18, 2017, the Exchange further expanded the period for which TOPO Plus will be made available at the beginning of the trading day, to 2 a.m.[13]

• In August 2015, the Exchange launched its new Disaster Recovery (''DR'') facility in Chicago, Illinois. In addition to offering expanded geographic diversity, this new location enables firms to easily connect to numerous multi-asset engines, both to receive market data and to send orders, currently housed in or near this facility, potentially reducing overall networking costs. With this DR facility upgrade, new equipment was installed that improved performance and resilience as well.[14]

• In January 2017, the Exchange introduced additional multicast IP addresses for proprietary equity and options feeds, known as ''B'' feeds, for the feeds from its DR facility in Chicago. The purpose of this change was to promote resiliency and provide additional recovery options to market participants within the same facility.[15]

Given these specific enhancements to TOPO and PHLX Orders, and to the Exchange's system generally, and given the fact that the Exchange has not increased the Distributor fees for TOPO Plus since its inception, the Exchange believes that the proposed fee increase is appropriate.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[17] 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 self-regulatory organization (''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.'' [18]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [19] (''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.[20] 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.'' [21]

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'. . . .'' [22] 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 believes that the proposed fee increase for Internal Distributors is reasonable. While the Exchange has not increased the Distributor fees for TOPO Plus since its inception, the Exchange has added a number of functional enhancements since that time to TOPO and PHLX Orders in particular, and to Exchange systems in general. These enhancements, which are described in greater detail above, correspondingly

[5] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2011-016.*

[6] *See* Securities Exchange Act Release No. 68517 (December 21, 2012), 77 FR 77134 (December 31, 2012) (SR–Phlx–2012–136).

[7] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2012-31.*

The Order Exposure auction message is sent when there is an exposed buy (or sell) order available for execution at the National Best Offer (or National Best Bid). The exposed order volume may be routed away.

[8] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2013-40.*

[9] *See* Securities Exchange Act Release No. 73545 (November 6, 2014), 79 FR 67498 (November 13, 2014) (SR–Phlx–2014–54) (approval order).

[10] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2014-35.*

Implied Orders are limit orders generated by the Exchange on behalf of Complex Orders which represent one leg of a two-legged Complex Order. Implied Orders are automatically generated on behalf of Complex Orders resting on the top of the Complex Order Book so that they are represented at the best bid and/or offer on the Exchange for the individual legs.

[11] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2015-19.*

[12] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2015-29.*

[13] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2017-34.*

[14] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2015-17.*

[15] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2017-02.*

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4) and (5).

[18] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[19] *NetCoalition* v. *SEC,* 615 F.3d 525 (DC Cir. 2010).

[20] *See NetCoalition,* at 534–535.

[21] *Id.* at 537.

[22] *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)).

enhance the value of the TOPO Plus data product. The proposed fee increase is therefore reflective of, and closely aligned to, these enhancements and the corresponding increased value of the TOPO Plus data product. The Exchange also believes that the amount of the fee increase is reasonable when comparing the amount of the proposed Internal Distributor fee to the amount of the current Internal Distributor fee and factoring in time and inflation.[23] The Exchange also notes that the proposed Internal Distributor fee for TOPO Plus is still less than if an Internal Distributor purchased TOPO and PHLX Orders separately ($2,000 monthly for TOPO + $3,000 monthly for PHLX Orders).

The Exchange also believes that the proposed fee increase is equitably allocated, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange makes all services and products subject to this fee available on a non-discriminatory basis to similarly-situated recipients, and the proposed fee increase here will apply equally to all entities that meet the definition of an Internal Distributor.

The Exchange notes that it is only proposing to increase the fee for Internal Distributors, not for External Distributors, Non-Professional Subscribers, or Professional Subscribers. As noted above, the Exchange has made a number of product and system enhancements since the inception of TOPO Plus that have increased the value of that data product. While External Distributors have also received the benefit of these enhancements, the Exchange is not increasing the External Distributor fee at this time. The Exchange believes that this is equitable and not unfairly discriminatory for several reasons. First, a fee differential for external, as opposed to internal, distribution is well-recognized in the financial services industry as a reasonable distinction, and has been repeatedly accepted by the Commission as an equitable allocation of reasonable dues, fees and other charges.[24] External Distributors already pay, and will continue to pay, a higher monthly fee than Internal Distributors.

Second, the Exchange believes that External Distributors of TOPO Plus, in comparison to Internal Distributors, may confer an additional benefit on market participants generally and the Exchange in particular. As the Exchange noted when it filed a proposed rule change to establish the fees for TOPO Plus, the higher fee for External Distributors in comparison to Internal Distributors reflected the fact that External Distributors had fewer limitations on their scope of distribution of TOPO Plus than Internal Distributors, and the reasonable expectation that External Distributors would distribute TOPO Plus to a higher number of subscribers than Internal Distributors; specifically, to Professional Subscribers who would use the data for commercial purposes.[25] The Exchange believes that the value of external distribution of TOPO Plus extends beyond External Distributors to other market participants and to the Exchange as well. In distributing TOPO Plus externally, External Distributors provide market participants that purchase this product (and who may be unwilling or unable to purchase TOPO Plus as an Internal Distributor) with a greater awareness of order activity on the Exchange. This, in turn, may result in those market participants directing more order flow to the Exchange, benefitting both the Exchange and market participants that desire to transact on the Exchange. Currently, the majority of Distributors for TOPO Plus are Internal Distributors, with relatively few External Distributors. Given the increased benefits that may accompany the external distribution of TOPO Plus, and the Exchange's corresponding desire to retain External Distributor interest in TOPO Plus, the Exchange believes that it is equitable and not unfairly discriminatory to not impose a similar fee increase on External Distributors.

The Exchange also believes that it is equitable and not unfairly discriminatory to not assess a fee increase on Professional and Non-Professional Subscribers. By definition, Subscribers (either Professional or Non-Professional) are categorically different than Distributors (either Internal or External). The Exchange believes that it is equitable and not unfairly discriminatory to implement a fee increase for one category of market participants (Distributors) and not for another category of market participants (Subscribers), because these two categories are not similarly situated, both in terms of the fees that they pay, and the permissible ways in which they may use the data. Additionally, there is already a significant difference between the current amount paid by Non-Professional and Professional Subscribers ($1 and $40 monthly, respectively), and Internal and External distributors ($4,000 and $5,000, respectively).

Finally, the Exchange notes that the Act does not prohibit all distinctions among customers, but rather discrimination that is unfair. As the Commission has recognized, ''[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.''[26] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.''[27] The proposed fee, like all market data fees, is constrained by the Exchange's need to compete for order flow as discussed below, and is subject to competition from other exchanges. If the Exchange is incorrect in its assessment of price, it will lose market share as a result.

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. The proposed fee structure is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup costs while continuing to offer its data products at competitive rates to firms.

The Exchange does not believe that the proposed fee increase will impose any burden on intra-market competition that is not necessary or appropriate. As discussed above, the proposed increase to the Internal Distributor fee will apply equally to all market participants that qualify as Internal Distributors. While the Exchange is only proposing to increase the fee for Internal Distributors, the Exchange does not believe that this will impose a burden on intra-market competition, including on External Distributors that is not necessary or appropriate. The Exchange's rules set forth different standards for the use of Internal Distributor data versus External Distributor data, and this proposal does not alter those terms of use. As such, the

[23] As noted above, TOPO Plus was launched in 2010. A $4,000 monthly fee with an interest rate increase of 2.85%, compounded annually for 8 years, would result in a fee of $5,000 monthly.

[24] *See, e.g.,* Nasdaq Rules 7019 (Market Data Distributor Fees); 7022(c) (Short Interest Report); 7023(c) (Enterprise License Fees for Depth-of-Book Data); and 7052(c) (Distributor Fees for Nasdaq Daily Short Volume and Monthly Short Sale Transaction Files).

[25] *See* Securities Exchange Act Release No. 61878 (April 8, 2010), 75 FR 20023 (April 16, 2010) (SR–Phlx–2010–48) (notice of filing).

[26] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[27] *Id.*

Exchange does not believe that the proposal will impact the current competitive dynamic between Internal Distributors and External Distributors, to the extent such a dynamic exists. Moreover, the Exchange notes the majority of TOPO Plus subscribers are Internal Distributors; in not assessing a similar fee increase on External Distributors in order to encourage market participants to remain External Distributors, the Exchange is attempting to promote a more diverse ecosystem of market data Distributors. Finally, the Exchange notes that Distributors may always elect to not distribute TOPO Plus at all if they deem the distribution fee to be excessive.

For the same reasons, the Exchange believes that the proposed fee increase does not impose a burden on Professional and Non-Professional Subscribers that is not necessary or appropriate. As discussed above, Professional and Non-Professional Subscribers are categorically different than Distributors, and have significantly different terms of usage for TOPO Plus than Distributors. As with Distributors, those terms of use remain unchanged by this proposal. Therefore, the Exchange does not believe that the proposal will impact that any competitive dynamic that may exist between Distributors and Subscribers.

With respect to inter-market competition, the Exchange notes that the market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data offered, and the value provided. This rule proposal does not burden competition, since other SROs and data vendors continue to offer alternative data products and, like the Exchange, set fees, but rather reflects the competition between data feed vendors and will further enhance such competition. TOPO Plus competes directly with existing similar products. The product is part of the existing market for proprietary last sale data products that is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchased).

In the Exchange's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, the Exchange would be unable to defray its platform costs of providing the joint products.

An exchange's broker-dealer customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will disfavor a particular exchange if the expected revenues from executing trades on the exchange do not exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing more orders will become correspondingly more valuable.

Similarly, in the case of products such as TOPO Plus that may be distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their retail customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. Exchanges and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, the Exchange believes that products such as TOPO Plus can enhance order flow to the Exchange by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to Distributors and investors decreases if order flow falls, because the products contain less content.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. The Exchange pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

Indeed, in approving the fees for TOPO Plus in 2010, the Commission noted that the Exchange was subject to competitive pressures in setting its fees for TOPO Plus. First, the Commission noted that the Exchange had a ''compelling need'' to attract order flow, which imposed ''significant pressure'' on the Exchange to act reasonably in setting its fees for PHLX market data, particularly given that ''the market participants that will pay such fees often will be the same market participants from whom Phlx must attract order flow.'' [28] The Commission also found that there were a number of alternative sources of information that imposed significant competitive pressures on the Exchange in setting the terms for distributing TOPO Plus. The Commission found that the availability of those alternatives, as well as the Exchange's compelling need to attract order flow, imposed ''significant competitive pressure on Phlx to act equitably, fairly, and reasonably in setting the terms of its proposal.'' [29] The Exchange believes that the same analysis and conclusions apply here.

In sum, the proposed fee structure is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup costs while continuing to offer its data products at competitive rates to firms

3. 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.[30]

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.* Please include File Number SR–Phlx–2018–08 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–2018–08. 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 the Exchange. 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–Phlx–2018–08, and should be submitted on or before February 9, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00852 Filed 1–18–18; 8:45 am]

BILLING CODE 8011–01–P

[28] *See* TOPO Plus approval order, 75 FR at 31833.

[29] *Id.*

[30] 15 U.S.C. 78s(b)(3)(A)(ii).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82501; File No. SR–OCC–2017–808]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice, as Modified by Amendment No. 1, Concerning the Adoption of a New Minimum Cash Requirement for the Clearing Fund

January 12, 2018.

The Options Clearing Corporation (''OCC'') filed on November 14, 2017