

in the LULD Plan<sup>113</sup> and requires that Equity Members comply with the LULD Plan's provisions. Proposed MIAX PEARL Equities Rule 2622(e) also describes the Exchange's order handling procedures to comply with the LULD Plan.<sup>114</sup>

### III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change, as Modified by Amendment No. 1

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>115</sup> to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the amended proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change, as modified by Amendment No. 1, to inform the Commission's analysis of whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>116</sup> the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the amended proposal's consistency with:

- Section 6(b)(1) of the Act, which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange;<sup>117</sup> and
- Section 6(b)(5) of the Act, which requires, among other things, that the

<sup>113</sup> The Exchange represents that it intends to become a Participant in the LULD Plan prior to launching MIAX PEARL Equities. See Notice, *supra* note 3, at 8068, n.87.

<sup>114</sup> For a description of the order handling procedures under proposed Exchange Rule 2622(e), see *id.* at 8068.

<sup>115</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>116</sup> *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See *id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. See *id.*

<sup>117</sup> 15 U.S.C. 78f(b)(1).

rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."<sup>118</sup>

### IV. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by June 8, 2020. Rebuttal comments should be submitted by June 22, 2020. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>119</sup>

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, as modified by Amendment No. 1, in addition to any other comments they may wish to submit about the proposal.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, as modified by Amendment No. 1, including whether the proposal 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 No. SR-PEARL-2020-03 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 No. SR-PEARL-2020-03. The 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

<sup>118</sup> 15 U.S.C. 78f(b)(5).

<sup>119</sup> 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 such 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 publicly available. All submissions should refer to File No. SR-PEARL-2020-03 and should be submitted on or before June 8, 2020. Rebuttal comments should be submitted by June 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>120</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88857; File No. SR-BX-2020-008]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Credits and Fees, at Equity 7, Section 118(a)

May 12, 2020.

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 May 1, 2020, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule

<sup>120</sup> 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 transaction credits and fees, at Equity 7, Section 118(a), as described further below.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The Exchange operates on the "taker-maker" model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at \$1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange.

Over the course of the last few months, the Exchange has experimented with various reformulations of its pricing schedule with the aim of increasing activity on the Exchange, improving market quality, and increasing market share.<sup>3</sup> Although

these changes have met with some success, the Exchange has yet to achieve the results it desires. Accordingly, the Exchange proposes to again revise its pricing schedule, in large part, in a further attempt to improve the attractiveness of the market to new and existing participants.

##### Description of the Changes

###### Credits for Accessing Liquidity through the Exchange

The Exchange proposes to revise its schedule of credits to add one new credit. Specifically, the Exchange proposes to provide a \$0.0027 per share executed credit (for securities in Tapes A and B) and a \$0.0026 per share executed credit (for securities in Tape C) for orders that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member: (i) Whose combined liquidity removing and adding activities equal to or exceed 0.185% of total Consolidated Volume during a month; and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange believes that the availability of the new credits will incentivize members that currently qualify for one of the lesser credits to increase their existing levels of liquidity adding and removal activities on the Exchange to attain it. In doing so, the Exchange intends to improve the overall quality and attractiveness of the Nasdaq BX market.

###### Charges for Adding Liquidity to the Exchange

In addition to the above, the Exchange proposes to amend its existing schedule of charges for adding displayed liquidity to the Exchange.

First, the Exchange proposes to amend its existing \$0.0026 per share executed charge for displayed orders entered by a member that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month. The Exchange proposes to reduce the percentage of total Consolidated Volume needed to qualify for this charge, from 0.15% to 0.11% total Consolidated Volume. By easing the volume requirements for this charge, which represents a discount off of the standard \$0.0030 per share executed charge (for all other orders), the Exchange intends

to increase the number of members that seek to and do qualify for it, and thereby provide incentives for members to add liquidity to the Exchange.

Second, the Exchange proposes to add to its schedule of charges a new \$0.0025 per share executed charge for displayed orders entered by a member that adds liquidity equal to or exceeding 0.175% of total Consolidated Volume during a month. The Exchange proposes to add this new charge, which also represents a discount off of the standard charge, to provide a new incentive for members that already qualify for the \$0.0026 per share executed charge to increase their volume of liquidity adding activity so as to qualify for the further discounted charge of \$0.0025 per share executed.

##### Impact of the Changes

Those participants that act as net removers of liquidity from the Exchange will benefit directly from the proposed addition of new credits that would apply to orders that remove liquidity from the Exchange. Those participants that act as net adders of liquidity will also benefit from the new credits insofar as they are tied to members achieving a threshold level of liquidity adding and removing activity on the Exchange; any ensuing increase in liquidity adding and removing activity will improve the overall quality of the market, to the benefit of all members.

Meanwhile, the proposed changes to ease the qualifying volume threshold to qualify for the \$0.0026 per share executed charge and to establish a new \$0.0025 charge, will benefit participants that are net adders of liquidity by enabling them to more easily qualify for the existing \$0.0026 per share executed discounted charge, and by providing members with an incentive to increase their liquidity adding activity to qualify for the new \$0.0025 per share executed discounted charge. The Exchange notes that its proposal is not otherwise targeted at or expected to be limited in its applicability to a specific segment(s) of market participants nor will it apply differently to different types of market participants.

##### 2. Statutory Basis

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

<sup>3</sup> See Securities Exchange Act Release No. 34-87271 (October 10, 2019), 84 FR 55621 (October 17, 2019) (SR-BX-2019-035); Securities Exchange Act Release No. 34-87271 (September 24, 2019), 84 FR

57530 (October 25, 2019) (SR-BX-2019-031); Securities Exchange Act Release No. 34-86120 (June 17, 2019); 84 FR 29270 (June 21, 2019) (SR-BX-2019-026); Securities Exchange Act Release No. 34-85912 (May 22, 2019); 84 FR 24834 (May 29, 2019) (SR-BX-2019-013).

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

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

designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

#### The Proposal Is Reasonable

The Exchange's proposed changes to its schedule of credits and fees are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity 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'; [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>6</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>7</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges.

<sup>6</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>7</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.<sup>8</sup>

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.<sup>9</sup> Separately, the Exchange has provided the SEC staff with multiple examples of instances where pricing changes by BX and other exchanges have resulted in shifts in exchange market share. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange has designed its proposed schedule of credits and charges to provide increased overall incentives to members to increase their liquidity removal and adding activity on the Exchange. An increase in liquidity removal and adding activity on the Exchange will, in turn, improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants. Generally, the proposed new credit and amended and new charges will be comparable to, if not favorable to, those that its competitors provide.<sup>10</sup>

The Exchange notes that those participants that are dissatisfied with the proposed credits or fees are free to shift their order flow to competing venues that offer them higher credits or lower fees.

#### The Proposal Is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its proposed new credits and amended and new charges fairly among its market participants. It is equitable for the Exchange to increase its credits to participants whose orders remove liquidity from the Exchange as a means of incentivizing increased liquidity removal activity on the Exchange as well as to tie the receipt of

<sup>8</sup> See CBOE EDGA Fee Schedule, at [https://markets.cboe.com/us/equities/membership/fee\\_schedule/edga/](https://markets.cboe.com/us/equities/membership/fee_schedule/edga/); NYSE National Fee Schedule, at [https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE\\_National\\_Schedule\\_of\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf).

<sup>9</sup> The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

<sup>10</sup> See n. 8, *supra*.

the credits to the member engaging in a threshold volume of combined liquidity removal and adding activity on the Exchange. Furthermore, it is equitable for the Exchange to propose higher credits for participants with orders in securities in Tapes A and B than it proposes for participants with orders in Tape C due to the Exchange's desire to specifically promote increased liquidity removal activity in securities in Tapes A and B. Likewise, it is equitable for the Exchange to reduce charges to participants whose orders add liquidity to the Exchange as a means of incentivizing liquidity adding activity. An increase in overall liquidity removal and addition activity on the Exchange will improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants.

Any participant that is dissatisfied with the proposed new credit or its amended or new charges is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

#### The Proposed Credit Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for its proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Both net removers and net adders of liquidity to the Exchange stand to benefit directly from the proposed changes. Moreover, to the extent that the proposed changes increase liquidity addition and removal activity on the Exchange, this will improve market quality and the attractiveness of the Nasdaq BX market,

to the benefit of all existing and prospective participants.

Furthermore, it is not unfairly discriminatory for the Exchange to propose higher credits for participants with orders in securities in Tapes A and B than it proposes for participants with orders in Tape C because the Exchange seeks to promote increased liquidity removal activity specifically in securities in Tapes A and B.

Moreover, any participant that is dissatisfied with the proposed new credits or proposed amended or new charges is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

#### *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.

#### *Intramarket Competition*

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive the higher credits or lower charge. Moreover, members are free to trade on other venues to the extent they believe that the credit provided or fees imposed are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

#### *Intermarket Competition*

Addressing whether the proposal could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits and charges will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 32 alternative trading systems. 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 and credits 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 and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee and credits changes in this market may impose any burden on competition is extremely limited.

The proposed restated schedule of credits and charges is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 17–18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 37% of industry volume for the month of March 2019.

The Exchange intends for the proposed changes to its schedule of credits and fees, in the aggregate, to increase member incentives to engage in the removal and addition of liquidity on the Exchange. These changes are procompetitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

In sum, if the changes proposed herein is 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.

#### *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>11</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 No. SR-BX-2020-008 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 No. SR-BX-2020-008. 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,

<sup>11</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. 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 No. SR-BX-2020-008, and should be submitted on or before June 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-88858; File No. SR-Phlx-2020-26]

**Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Phlx’s Pricing Schedule at Options 7, Section 4**

May 12, 2020.

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 30, 2020, Nasdaq PHLX LLC (“Phlx” or “Exchange”) 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**

The Exchange proposes to amend Phlx’s Pricing Schedule at Options 7, Section 4, “Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed).” The Exchange also proposes to correct a technical amendment within Options 7, Section 1.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on May 1, 2020.

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

Phlx proposes to amend its pricing within Options 7, Section 4, “Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed)” to: (1) Decrease an existing strategy cap for certain strategies; and (2) establish a new daily cap for certain strategies in a single class of options.<sup>3</sup> The Exchange also proposes to correct a technical amendment within Options 7, Section 1.

Today, to qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange Trading Floor or as a Floor Qualified Contingent Cross Order.<sup>4</sup>

Currently, the Exchange offers the following strategy caps:

Floor options transactions—multiply listed options	Strategy	Qualification	Cap
Lead Market Maker, Market Maker, Professional, Firm and Broker-Dealer.	dividend .....	executed on the same trading day in the same options class when such members are trading: (1) In their own proprietary accounts; or (2) on an agency basis. If transacted on an agency basis, the daily cap will apply per beneficial account.	\$1,100
Lead Market Maker, Market Maker, Professional, Firm and Broker-Dealer.	reversal and conversion, merger, short stock interest, jelly roll, and box spread strategies.	executed on the same trading day for all options classes in the aggregate when such members are trading (1) in their own proprietary accounts; or (2) on an agency basis. If transacted on an agency basis, the daily cap will apply per beneficial account.	1,100
Per member organization .....	dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies (“Monthly Strategy Cap”).	combined executions in a month when trading in its own proprietary accounts.	65,000

• Reversal and conversion, jelly roll and box spread strategy executions will

not be included in the Monthly Strategy Cap for a Firm. Reversal and conversion,

jelly roll and box spread strategy executions (as defined in this Options 7,

<sup>12</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 term “class of options” means all option contracts of the same type of option covering the

same underlying stock or Exchange-Traded Fund Share (in the case of options on a stock or Exchange-Traded Fund Share) or the same underlying foreign currency (in the case of options on a foreign currency). See Options 1, Section 1(b)(9). The Exchange proposes to replace the terms

“options class” and “options classes” in the current rule text, within Options 7, Section 4, with the terms “class of options” and “classes of options”, respectively, to conform to the defined term.

<sup>4</sup> See Phlx’s Pricing Schedule at Options 7, Section 4.