

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-NASDAQ-2022-003 and should be submitted on or before February 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94034]

Order Granting Application by Nasdaq BX, Inc. for an Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

January 24, 2022.

Nasdaq BX, Inc. ("BX" or "Exchange") has filed with the Securities and Exchange Commission ("Commission") an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ from the rule filing requirements of Section 19(b) of the Exchange Act² with respect to certain rules of the Financial Industry Regulatory Authority, Inc. ("FINRA") that the Exchange seeks to incorporate by reference.³ Section 36 of the Exchange Act, subject to certain limitations, authorizes the Commission to conditionally or unconditionally

exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

The Exchange has requested, pursuant to Rule 0-12 under the Exchange Act,⁴ that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Exchange's rules that are effected solely by virtue of a change to a cross-referenced FINRA rule. Specifically, the Exchange requests that it be permitted to incorporate by reference changes made to the FINRA rules that are cross-referenced in the Exchange's rules identified below, without the need for the Exchange to file separately similar proposed rule changes pursuant to Section 19(b) of the Exchange Act:⁵

- General 9, Section 1(b) (Prohibition Against Trading Ahead of Customer Orders) cross-references FINRA Rule 5320 (except for FINRA Rule 5320.02(b) and the reference to FINRA Rule 6420 in FINRA Rule 5320).
- General 9, Section 1(c) (Front Running Policy) cross-references FINRA Rule 5270.
- General 9, Section 1(f) (Confirmation of Callable Common Stock) cross-references FINRA Rule 2232.
- General 9, Section 1(g) (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) cross-references FINRA Rule 2140.
- General 9, Section 2 (Customers' Securities or Funds) cross-references FINRA Rule 2150.
- General 9, Section 3 (Communications with the Public) cross-references FINRA Rule 2210 (except for FINRA Rule 2210(c)).
- General 9, Section 5 (Telemarketing) cross-references FINRA Rule 3230.
- General 9, Section 6 (Forwarding of Proxy and Other Issuer-Related Materials) cross-references FINRA Rule 2251.
- General 9, Section 7 (Disclosure of Financial Condition, Control Relationship with Issuer and Participation or Interest in Primary or Secondary Distribution) cross-references FINRA Rules 2261, 2262, and 2269.
- General 9, Section 8 (SIPC Information) cross-references FINRA Rule 2266.

- General 9, Section 9 (Fairness Opinions) cross-references FINRA Rule 5150.

- General 9, Section 10(a) (Recommendations to Customers (Suitability)) cross-references FINRA Rule 2111 (except for the references to FINRA Rule 2214 in FINRA Rule 2111).

- General 9, Section 10(c) (Know Your Customer) cross-references FINRA Rule 2090.

- General 9, Section 12 (Customer Account Statements) cross-references FINRA Rule 2231.

- General 9, Section 13 (Margin Disclosure Statement) cross-references FINRA Rule 2264.

- General 9, Section 14 (Approval Procedures for Day-Trading Accounts) cross-references FINRA Rules 2130 and 2270.

- General 9, Section 15 (Borrowing From or Lending to Customers) cross-references FINRA Rule 3240.

- General 9, Section 16 (Charges for Services Performed) cross-references FINRA Rule 2122.

- General 9, Section 17 (Net Transactions with Customers) cross-references FINRA Rule 2124.

- General 9, Section 19 (Discretionary Accounts) cross-references FINRA Rule 3260.

- General 9, Section 20 (Supervision) cross-references FINRA Rules 3110 and 3170.

- General 9, Section 21 (Supervisory Control System, Annual Certification of Compliance and Supervisory Processes) cross-references FINRA Rules 3120 and 3130 (except for the references to MSRB rules in FINRA Rule 3130).

- General 9, Section 23 (Outside Business Activities of an Associated Person) cross-references FINRA Rule 3270.

- General 9, Section 24 (Private Securities Transactions of an Associated Person) cross-references FINRA Rule 3280.

- General 9, Section 25 (Transactions for or by Associated Persons) cross-references FINRA Rule 3210.

- General 9, Section 26 (Influencing or Rewarding Employees of Others) cross-references FINRA Rule 3220.

- General 9, Section 27 (Reporting Requirements) cross-references FINRA Rule 4530 (except for FINRA Rule 4530(h)).

- General 9, Section 28 (Disclosure to Associated Persons When Signing Form U4) cross-references FINRA Rule 2263 (except for subsection (2) of FINRA Rule 2263).

- General 9, Section 30 (Books and Records) cross-references FINRA Rule 4511.

- General 9, Section 31 (Use of Information Obtained in Fiduciary

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78mm(a)(1).

² 15 U.S.C. 78s(b).

³ See Letter from Angela S. Dunn, Principal Associate General Counsel, BX, to J. Matthew DeLesDernier, Assistant Secretary, Commission, dated August 26, 2021 ("Exemptive Request").

⁴ 17 CFR 240.0-12.

⁵ See Exemptive Request, *supra* note 3, at 6.

Capacity) cross-references FINRA Rule 2060.

- General 9, Section 33 (Reporting Requirements for Clearing Firms) cross-references FINRA Rule 4540.
- General 9, Section 34 (Extensions of Time Under Regulation T and SEC Rule 15c3-3) cross-references FINRA Rule 4230.
- General 9, Section 37 (Anti-Money Laundering Compliance Program) cross-references FINRA Rule 3310.
- General 9, Section 38(b) (Margin Requirements) cross-references FINRA Rule 4210.
- General 9, Section 39(b) (Fidelity Bonds) cross-references FINRA Rule 4360.
- General 9, Section 40 (Capital Compliance) cross-references FINRA Rule 4110.
- General 9, Section 41 (Regulatory Notification and Business Curtailment) cross-references FINRA Rule 4120.
- General 9, Section 42 (Audit) cross-references FINRA Rule 4140.
- General 9, Section 43 (General Requirements) cross-references FINRA Rule 4511.
- General 9, Section 44 (Records of Written Customer Complaints) cross-references FINRA Rule 4513.
- General 9, Section 45 (Customer Account Information) cross-references FINRA Rule 4512.
- General 9, Section 46 (Authorization Records for Negotiable Instruments Drawn From a Customer's Account) cross-references FINRA Rule 4514.
- General 9, Section 47 (Approval and Documentation of Changes in Account Name or Designation) cross-references FINRA Rule 4515.
- General 9, Section 48 (Notifications, Questionnaires and Reports) cross-references FINRA Rule 4521.
- General 9, Section 64 (Account Approval) cross-references FINRA Rule 2360(b)(16).
- Equity 9, Section 15 (Suitability) cross-references FINRA Rule 2360(b)(19).
- Equity 9, Section 16 (Discretionary Accounts) cross-references FINRA Rule 2360(b)(18).
- Equity 9, Section 17 (Supervision of Accounts) cross-references FINRA Rule 2360(b)(20).
- Equity 9, Section 18 (Customer Complaints) cross-references FINRA Rule 2360(b)(17)(A).
- Equity 9, Section 19 (Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants) cross-references FINRA Rule 2220 (except for FINRA Rule 2220(c)).

- Equity 9, Section 20 (Maintenance of Records) cross-references FINRA Rule 2360(b)(17)(B).

- Equity 10, Section 2 (Investment Company Securities) cross-references FINRA Rule 2341 (except for the reference to FINRA Rule 2320 in FINRA Rule 2341).

- Equity 11, Rule 11860 (Acceptance and Settlement of COD Orders) cross-references FINRA Rule 11860.

- Equity 11, Rule 11870 (Customer Account Transfer Contracts) cross-references FINRA Rule 11870.

The Exchange represents that the FINRA rules listed above are regulatory rules and not trading rules.⁶ The Exchange represents that, as a condition to the requested exemption from Section 19(b) of the Exchange Act, the Exchange will provide written notice to its members whenever FINRA proposes a change to a cross-referenced rule.⁷ The Exchange states that such notice will alert its members and persons associated with a member to the proposed FINRA rule change and give them an opportunity to comment on the proposal.⁸ The Exchange further represents that it will inform members in writing when the Commission approves any such proposed rule changes.⁹

According to the Exchange, this exemption is appropriate because it would result in the Exchange's rulebook being consistent with the relevant cross-referenced FINRA rules at all times, thus ensuring consistent regulation of joint members of BX and FINRA.¹⁰ The Exchange further states that, even if members are not joint members of BX and FINRA, the exemption is appropriate because it will permit its rules to remain consistent with FINRA's rules and ensure consistent treatment of industry members with respect to the aforementioned rules.¹¹

The Commission has issued exemptions similar to the Exchange's request.¹² In granting similar

⁶ See *id.* at 6, n.14. The Exchange also states that it is not "cherry picking" because the Exchange would be incorporating categories of rules. See *id.*

⁷ See *id.* at 6. The Exchange represents that it will provide such notice via a posting on the same website location where the Exchange posts its own rule filings pursuant to Rule 19b-4(l) within the time frame required by such rule. See *id.* at 6-7, n.15. The website posting will include a link to the location on FINRA's website where the applicable proposed rule change is posted. See *id.*

⁸ See *id.* at 6-7.

⁹ See *id.* at 7.

¹⁰ See *id.* at 6.

¹¹ See *id.*

¹² See, e.g., Securities Exchange Act Release Nos. 83296 (May 21, 2018), 83 FR 24362 (May 25, 2018) (order granting NYSE National, Inc.'s exemptive request relating to rules of FINRA incorporated by reference); 83040 (April 12, 2018), 83 FR 17198

exemptions, the Commission stated that it would consider similar future exemption requests, provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0-12 under the Exchange Act;¹³

- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and

- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.¹⁴

The Commission believes that the Exchange has satisfied each of these conditions. The Commission also believes that granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of the Commission's and the Exchange's resources by avoiding duplicative rule filings based on simultaneous changes

(April 18, 2018) (order granting MIAx PEARL, LLC's exemptive request relating to rules of the Miami International Securities Exchange, LLC incorporated by reference); 76998 (January 29, 2016), 81 FR 6066, 6083-84 (February 4, 2016) (order granting application for registration as a national securities exchange of ISE Mercury, LLC and exemptive request relating to rules of certain self-regulatory organizations ("SROs") (including FINRA) incorporated by reference); 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) ("BATS Options Market Order"); 61152 (December 10, 2009), 74 FR 66699, 66709-10 (December 16, 2009) (order granting application for registration as a national securities exchange of C2 Options Exchange, Incorporated and exemptive request relating to rules of the Chicago Board Options Exchange, Incorporated, incorporated by reference).

¹³ See 17 CFR 240.0-12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule).

¹⁴ See BATS Options Market Order, *supra* note 12 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) ("2004 Order"))).

to identical rule text sought by more than one SRO.¹⁵ The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described FINRA rules it has incorporated by reference. This exemption is conditioned upon the Exchange promptly providing written notice to its members whenever FINRA changes a rule that the Exchange has incorporated by reference.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act,¹⁶ that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in the Exemptive Request, provided that the Exchange promptly provides written notice to its members whenever FINRA proposes to change a rule that the Exchange has incorporated by reference.

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

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94044; File No. SR-PHLX-2022-02]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend References to FINRA Continuing Education Fees

January 24, 2022.

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 12, 2022, 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 Phlx’s Pricing Schedule at Options 7, Section 9, Other Member Fees, to reflect adjustments to FINRA Continuing Education Fees.

The Exchange also proposes technical amendments to Phlx Options 7, Section 1, General Provisions.

While the changes proposed herein are effective upon filing, the Exchange has designated the new Maintaining Qualifications Program (“MQP”) Fee, elimination of the \$100 Continuing Education Session Fee, and technical amendments to become operative on January 31, 2022. Additionally, the Exchange designates an \$18 Continuing Education Regulatory Element Session Fee to become operative on January 1, 2023.³

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

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

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

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

1. Purpose

This proposal amends Phlx’s Pricing Schedule at Options 7, Section 9C, FINRA Fees, to reflect adjustments to FINRA Continuing Education Fees.⁴ The FINRA fees are collected and retained by FINRA via Web CRD for the

registration of employees of Phlx members and member organizations that are not FINRA members (“Non-FINRA members”). The Exchange is merely listing these fees on its Pricing Schedule. The Exchange does not collect or retain these fees.

Today, Phlx Options 7, Section 9C, provides a list of FINRA Web CRD Fees, Fingerprint Processing Fees, and Continuing Education Fees. The Exchange proposes to amend the Continuing Education Fees within Options 7, Section 9C on behalf of the Exchange. The fees listed within Options 7, Section 9C reflect fees set by FINRA.

Specifically, the Exchange proposes to decrease the \$55 Continuing Education Web-based Fee to \$18. This amendment is made in accordance with a recent FINRA rule change to adjust to its fees.⁵ FINRA currently charges a fee of \$55 to each individual who completes the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. In conjunction with the amendments to transition to an annual Regulatory Element requirement, FINRA amended the Continuing Education Regulatory Element Session Fee from \$55 to \$18.⁶ FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the \$18 Continuing Education Regulatory Element Session Fee as of January 1, 2023 to coincide with the effective date of the transition to an annual Regulatory Element requirement.⁷

⁵ See note 3 above. On September 21, 2021, the SEC approved amendments to FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements) to, among other things, require registered persons to complete the Regulatory Element of CE annually by December 31 of each year, rather than every three years, and to complete Regulatory Element content for each representative or principal registration category that they hold. See Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR-FINRA-2021-015). The Regulatory Element is administered by FINRA and focuses on regulatory requirements and industry standards. The proposed rule change also included amendments to the Firm Element training, which is provided by each firm annually to its registered persons and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

⁶ FINRA notes that the proposed \$18 annual fee is comparable to the current \$55 fee over a three-year period. Moreover, the proposed fee for the annual Regulatory Element would be the same for all registered persons, regardless of the amount of annual content that they would be required to complete (that is, an individual who holds multiple registrations would be subject to the same proposed \$18 annual fee as an individual who holds a single registration). See note 3 above.

⁷ The Exchange would file to remove the rule text concerning the \$55 fee once the \$18 fee becomes operative.

¹⁵ See BATS Options Market Order, *supra* note 12, 75 FR at 8761; *see also* 2004 Order, *supra* note 14, 69 FR at 8502.

¹⁶ 15 U.S.C. 78mm.

¹⁷ 17 CFR 200.30-3(a)(76).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 93928 (January 7, 2022) (SR-FINRA-2021-034).

⁴ FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.