

stocks: Rule 614(e) requires the participants to the effective national market system plan(s) for NMS stocks to submit an amendment to such plan(s) within 150 days of the effectiveness of the amendments that contain certain specified provisions.

7. Collection and dissemination of information by national securities exchanges and national securities associations: The amendment to Rule 603(b) requires every national securities exchange on which an NMS stock is traded and the national securities association to make available to all competing consolidators and self-aggregators all information with respect to quotations for and transactions in NMS stocks, including all data necessary to generate consolidated market data products, in the same manner and using the same methods, including all methods of access and using the same format as such exchange or association makes available any information with respect to quotations for and transactions in NMS stocks to any person.

These collections of information are necessary to further the national market system objectives set forth in Section 11A(a)(1) of the Exchange Act. Without Rules 603 and 614, the Commission would be unable to fulfill these statutory responsibilities.

The staff estimates that 8 entities may register as competing consolidators and therefore are subject to the collection of information described in paragraph 1 through 5 above. The staff estimates that there are 19 entities that are subject to the collection of information described in paragraph 6 above. The staff estimates that there are 17 entities that are subject to the collection of information described in paragraph 7 above. The staff estimates that the aggregate annual compliance burden for the industry is 35,715 hours and \$45,611,043.

Compliance with Rules 603 and 614 is mandatory. Competing consolidators are required to keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and such other records as shall be made or received by it in the course of its business as such and in the conduct of its business. Competing consolidators must keep these documents for a period of no less than five years, the first two years in an easily accessible place. This requirement is consistent with current SEC rules for SROs. The Form CC and amendments to the effective national market system plan(s) will not be confidential; they will be posted on the

Commission's public website. Competing consolidators will make available to subscribers consolidated market data products, which therefore will not be confidential. Competing consolidator records will be available to the Commission and other regulators. The reports and reviews of competing consolidators will be published on competing consolidator websites and will not be confidential. Finally, the exchanges and associations will make available to competing consolidators and self-aggregators quotation and transaction information.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by April 15, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: February 8, 2024.

**Sherry R. Haywood**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-072, OMB Control No. 3235-0076]

### Proposed Collection; Comment Request; Extension: Regulation D (Form D)

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form D (17 CFR 239.500) is a notice of sales filed by issuers making an offering of securities in reliance on an exemption under Regulation D (17 CFR 230.501 *et seq.*) or Section 4(a)(5) of the Securities Act of 1933 (15 U.S.C. 77d(a)(5)). Regulation D sets forth rules governing the limited offer and sale of securities without Securities Act registration. The purpose of Form D is to collect empirical data, which provides a continuing basis for action by the Commission either in terms of amending existing rules and regulations or proposing new ones. In addition, the Form D allows the Commission to elicit information necessary in assessing the effectiveness of Regulation D (17 CFR 230.501 *et seq.*) and Section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)) as capital-raising devices for all businesses. Approximately 38,735 issuers file Form D and it takes approximately 5 hours per response. We estimate that 25% of 5 hours per response (1.25 hour per response) is prepared by the issuer for an annual reporting burden 48,419 hours (1.25 hour per response × 38,735 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by April 15, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington,

DC 20549 or send an email to: *PRA\_Mailbox@sec.gov*.

Dated: February 7, 2024.

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99491; File No. SR-Phlx-2024-03]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchanges Fees for Top of PHLX Options (TOPO), PHLX Orders, and TOPO Plus Orders

February 7, 2024.

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 January 29, 2024, 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 the Exchange’s fees for Top of PHLX Options (TOPO), PHLX Orders, and TOPO Plus Orders.

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

The purpose of the proposed rule change is to amend the Exchange’s proprietary data fees for Top of PHLX Options (“TOPO”), PHLX Orders, and TOPO Plus Orders at Options 7, Section 10.<sup>3</sup>

##### Top of PHLX Options (“TOPO”)

TOPO is a direct data feed that provides subscribers with PHLX Best Bid and Offer (“BBO”) <sup>4</sup> and last sale information.<sup>5</sup> The data distributed on TOPO is identical to the data simultaneously sent to the Options Price Reporting Authority (“OPRA”).<sup>6</sup> The TOPO feed also provides administrative information to facilitate trading on the Exchange such as, for example, the list of symbols trading on a particular day.<sup>7</sup> TOPO reduces the transmission and processing latencies for top of book information relative to the OPRA feed by avoiding the latencies generated by the latter in consolidating data.

Monthly fees for TOPO are currently \$2,000 for Internal Distributors,<sup>8</sup> \$2,500 for External Distributors,<sup>9</sup> \$1 for a Non-Professional Subscriber,<sup>10</sup> and \$40 for a

<sup>3</sup> The proposed changes were initially filed on November 16, 2023, as SR-Phlx-2023-51. On December 5, 2023, SR-Phlx-2023-51 was withdrawn and replaced with SR-Phlx-2023-57. On January 29, 2024, SR-Phlx-2023-57 was withdrawn and replaced with the instant filing to provide additional detail regarding the proposal.

<sup>4</sup> The Best Bid and Offer includes aggregate size information based on displayable order and quoting interest on the Exchange.

<sup>5</sup> See PHLX, “Top of Phlx Options,” available at [https://www.nasdaqtrader.com/Micro.aspx?id=TOPO#:~:text=Top%20of%20PHLX%20Options%20\(TOPO,in%20the%20consolidated%20market%20feed](https://www.nasdaqtrader.com/Micro.aspx?id=TOPO#:~:text=Top%20of%20PHLX%20Options%20(TOPO,in%20the%20consolidated%20market%20feed).

<sup>6</sup> See Options 3 (Options Trading Rules), Section 23(a)(1) (Data Feeds and Trade Information) (“The data contained in the TOPO data feed is identical to the data simultaneously sent to the processor for the OPRA and subscribers of the data feed.”).

<sup>7</sup> See, e.g., Nasdaq, “Top of Phlx Options Interface Specifications, Version 3.4” Section 4.3 available at <https://www.nasdaqtrader.com/content/technical/support/specifications/dataproducts/topofphlx.pdf> (describing the start of day options directory message, which lists all symbols eligible for the auction process).

<sup>8</sup> See Options 7, Section 10 (Proprietary Data Feed Fees) (Top of PHLX Options) (“A ‘distributor’ of Nasdaq PHLX data is any entity that receives a feed or data file . . . directly from Nasdaq PHLX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors execute a Nasdaq PHLX distributor agreement.”).

<sup>9</sup> See *id.*

<sup>10</sup> See *id.* (“A Non-Professional Subscriber is a natural person who is neither: (i) registered or

Professional Subscriber.<sup>11</sup> None of these fees have changed for over a decade, since January 2013.<sup>12</sup>

##### PHLX Orders

PHLX Orders is a real-time order book feed with pricing information for displayed orders on the PHLX order book.<sup>13</sup> The data provided for each options series includes the symbols (series and underlying security), a put or call indicator, expiration date, and the strike price of the series. It also provides the real-time status of simple and complex orders <sup>14</sup> on the order book, including new orders and changes to orders resting on the PHLX book for all PHLX-listed options.<sup>15</sup> The PHLX Orders feed includes data on the opening imbalance, Price Improvement XL (PIXL),<sup>16</sup> and Complex Order Live Auction (COLA).<sup>17</sup> A notification

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.”).

<sup>11</sup> See *id.* (“A Professional Subscriber is 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.”).

<sup>12</sup> See Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR-Phlx-2012-145).

<sup>13</sup> See Options 3 (Options Trading Rules), Section 23(a)(2) (Data Feeds and Trade Information).

<sup>14</sup> See Options 3 (Options Trading Rules), Section 23(a)(2) (Data Feeds and Trade Information); Section 14(a)(i) (“Complex Order. For purposes of the electronic trading of Complex Orders, a Complex Order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy.”).

<sup>15</sup> See Nasdaq, “PHLX Orders,” available at <https://www.nasdaqtrader.com/Micro.aspx?id=PHLXOrders>.

<sup>16</sup> See Options 3 (Options Trading Rules), Section 23(a)(2); Section 13 (Price Improvement XL) (“A member may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker-dealer, or any other entity (‘PIXL Order’) against principal interest or against any other order (except as provided in sub-paragraph (a)(6) below) it represents as agent (an ‘Initiating Order’) provided it submits the PIXL Order for electronic execution into the PIXL Auction (‘Auction’) pursuant to this Rule.”).

<sup>17</sup> See Options 3, Section 14(e) (describing the process for the Complex Order Live Auction (‘COLA’)).

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

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