comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2024–014, and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06588 Filed 3–27–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99841; File No. SR–Phlx–2024–15]

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

March 22, 2024.

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 March 20, 2024, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities

[32] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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 proprietary data fees for Top of PHLX Options ("TOPO"), PHLX Orders, and TOPO Plus Orders at Options 7, Section 10, as described further below.

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"),[3] PHLX Orders,[4] and

[3] *See* Options 3, Section 23(a)(1) ("Top of PHLX Options ('TOPO') is a direct data feed product that includes the Exchange's best bid and offer price, with aggregate size, based on displayable order and quoting interest on Phlx and last sale information for trades executed on Phlx. 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. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only.").

[4] *See* Options 3, Section 23(a)(1) ("PHLX Orders is a real-time full Limit Order book data feed that provides pricing information for orders on the PHLX Order book for displayed order types as well as market participant capacity. PHLX Orders is

TOPO Plus Orders at Options 7, Section 10.[5]

Top of PHLX Options ("TOPO")

TOPO is a direct data feed that provides subscribers with PHLX Best Bid and Offer ("BBO")[6] and last sale information.[7] The data distributed on TOPO is identical to the data simultaneously sent to the Options Price Reporting Authority ("OPRA").[8] 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.[9] 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,[10] $2,500 for External Distributors,[11] $1 for a Non-Professional Subscriber,[12] and

currently provided as part of the TOPO Plus Orders data product. PHLX Orders provides real-time information to enable users to keep track of the single and complex order book(s). The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, leg information on complex strategies and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. The feed also provides auction and exposure notifications and order imbalances on opening/reopening (size of matched contracts and size of the imbalance)").

[5] 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 SR–Phlx 2024–03. On March 20, 2024, SR–Phlx–2024–03 was withdrawn and replaced with the instant filing to provide additional detail regarding the proposal.

[6] The Best Bid and Offer includes aggregate size information based on displayable order and quoting interest on the Exchange.

[7] *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.*

[8] *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.").

[9] *See, e.g.,* Nasdaq, "Top of Phlx Options Interface Specifications, Version 3.4" Section 4.3 available at *https://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/topofphlx.pdf* (describing the start of day options directory message, which lists all symbols eligible for the auction process).

[10] *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.").

[11] *See id.*

[12] *See id.* ("A Non-Professional Subscriber is a natural person who is neither: (i) registered or

$40 for a Professional Subscriber.[13] None of these fees have changed for over a decade since January 2013.[14]

PHLX Orders

PHLX Orders is a real-time order book feed with pricing information for displayed orders on the PHLX order book.[15] 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 [16] on the order book, including new orders and changes to orders resting on the PHLX book for all PHLX-listed options.[17] The PHLX Orders feed includes data on the opening imbalance, Price Improvement XL (PIXL),[18] and Complex Order Live Auction (COLA).[19] A notification message is sent for symbols entering an

auction.[20] PHLX Orders also furnishes an historical record of all simple and complex order message data from the PHLX Orders data feed. PHLX Orders information is not sent to OPRA.[21]

PHLX Orders is an alternative to PHLX Depth of Market. It is an optimized technical channel designed to lower technology costs, reduce processing time, and facilitate the ingestion of data while still providing customers insight beyond the top of book by viewing active buy and sell orders. PHLX Orders excludes quotations by market makers and other authorized entities that is included in PHLX Depth of Market.[22]

What is the utility of an orders-only data feed? It provides customers with the opportunity to reduce bandwidth (and therefore data processing costs) by several orders of magnitude relative to the full depth of book feed, while retaining a view of market participant orders (setting aside symbols where participants have not placed orders).

The December 2023 bandwidth report shows that the PHLX Depth of Market feed transmitted a maximum of 14.3 billion messages per day during the month of December,[23] while the PHLX Orders feed transmitted a maximum of 53.6 million messages over the same period (41.5 million messages for simple orders, and 12.1 million messages for complex orders). The Exchange's full depth of book feed requires the customer to process over 200 times more messages than the orders feed over the course of a day; replacing a depth of book feed with an orders feed allows a customer to reduce the maximum

number of daily messages it receives by 99.6%.

To cite another example, the 1 millisecond bandwidth peak for PHLX Depth of Market was 13.96 million messages; the comparable number of messages for orders was 1.45 million (891 thousand for simple and 561 thousand for complex orders). Replacing depth of book with orders can therefore reduce the number of messages processed at peak at the 1 millisecond bandwidth by nearly 90%.

Approximately 56% of customers who take any data feed at all from the PHLX exchange take an orders feed (either Orders only or TOPO Plus Orders) without depth of book. Another 38% of customers take both orders and depth feeds. The remaining 6% take either top of book or depth of book alone.

What type of customer takes an orders feed in lieu of depth? In general, firms that only need information on actively trading options do so. There are a great number of use cases that fit this broad description, but, for purposes of illustration, the Exchange is aware of at least two such types of customers.

The first is the market participant that does not engage in order routing. These are broker dealers that use third parties to route orders, either because the originating broker-dealer is not a member of the exchange or to save costs. Without the need for additional information to inform routing decisions, such customers often focus on active trading alone, and therefore purchase the orders feed.

A second category of customers are those that use options data to analyze trends in other markets. One example of this type of customer is the equity trader that analyzes equity-based options to gauge market sentiment in the underlying equity. For such customers, there is relatively little utility in the full depth feed, given that market sentiment is best gauged using options that are being actively traded, rather than those that are dormant.

As noted above, there are some customers that purchase both orders and depth. Vendors are one example of this type of customer. They purchase market data solely for resale, not for trading on behalf of themselves or others. Another example is the firm that uses orders for analysis and depth for order routing. As noted above, the orders feed can be useful for assessing sentiment in equity markets, while depth is often used in order routing decisions. Firms that engage in both functions can lower overall processing requirements by using orders for analytics and depth for routing.

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.'').

[13] *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.'').

[14] *See* Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR–Phlx–2012–145).

[15] *See* Options 3 (Options Trading Rules), Section 23(a)(2) (Data Feeds and Trade Information).

[16] *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.'').

[17] *See* Nasdaq, ''PHLX Orders,'' available at *https://www.nasdaqtrader.com/Micro.aspx?id=PHLXOrders.*

[18] *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.'').

[19] *See* Options 3, Section 14(e) (describing the process for the Complex Order Live Auction (''COLA'')).

[20] Nasdaq, ''PHLX Orders Interface Specification,'' (Version 1.92) available at *https://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/topoplusorders.pdf* (describing auction notification message).

[21] *See* Limited Liability Company Agreement of Options Price Reporting Authority, LLC Article V, Section 5.2(c)(i) (January 1, 2010), available at *https://assets.website-files.com/5ba40927ac854d8c97bc92d7/;5d0bd57d87d3ccca102102d7_OPRA%20Plan%20with%20Updated%20Exhibit%20A%20-%2006-19-2019.pdf* (describing last sale and best bid and offer information disseminated by OPRA).

[22] *See* Options 3 (Options Trading Rules), Section 23(a)(3) (Data Feeds and Trade Information) (''PHLX Depth of Market is a data product that provides: (i) order *and quotation* information for *individual quotes* and orders on the order book . . .'') (emphasis added); Section 4(b) (Entry and display of Quotes) (identifying the market participants authorized to submit quotes to the Exchange).

[23] *See* Nasdaq, ''December 2023 Bandwidth Report,'' available at *https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.nasdaqtrader.com%2Fcontent%2Ftechnicalsupport%2Fspecifications%2Fdataproducts%2Fbandwidthreport.xls&wdOrigin=BROWSELINK.*

Purchase of PHLX Orders is optional. Customers can obtain all of the data contained in PHLX Orders from PHLX Depth of Market feed, and may purchase the latter if they do not realize the cost savings offered by PHLX Orders.

PHLX Orders is a derivative product designed as a lower-cost alternative to a depth of book feed. It is not a complement to any other product offered by the Exchange or any of its competitors. Customers are free to purchase PHLX Orders or not, and can reject the feed for any reason, including the fee charged.

Current monthly fees for PHLX Orders are $3,000 for Internal Distributors, $3,500 for External Distributors, $1 for a Non-Professional Subscriber, and $40 for a Professional Subscriber. None of these fees have changes for over a decade since January 2013.[24]

TOPO Plus Orders

TOPO Plus is a direct market data product that offers subscribers both TOPO and PHLX Orders for a consolidated fee that is less than the combined fee of the two products.[25]

Monthly fees for TOPO Plus Orders are currently $4,500 for Internal Distributors, $5,000 for External Distributors, $1 for a Non-Professional Subscriber, and $40 for a Professional Subscriber.

Internal Distributor fees for TOPO Plus Orders were modified in January 2018, over five years ago,[26] but the other TOPO Plus Orders fees have not changed since January 2013.[27]

Usage of TOPO, PHLX Orders, and TOPO Plus Orders

Different types of market participants purchase TOPO, PHLX Orders and TOPO Plus Orders, including market makers, vendors, banks, proprietary traders, agency brokers (brokers that route trades on behalf of other market participants), hedge funds, index providers and other firms.

In characterizing market participants, we must be clear that firms use data feeds for multiple tasks. A market maker, for example, may use market data for order routing, or for risk analysis used in quoting in their assigned option series. Banks may use

market data for prime brokerage services, proprietary trading, or risk management. Market data vendors do not directly use the data at all, but rather disseminate data to market participants that use the data for a multiplicity of purposes. Other firms purchase options data to assess the value of equity securities.[28]

Characterizing firms based on what we understand to be their primary market activity, and understanding that firms play multiple roles, we estimate that approximately half of the customers that take top of book data in any form, in combination with other products or alone, are market makers, and the remaining half are market data vendors, banks, proprietary traders, agency brokers, hedge funds, index providers, and others. Roughly the same distribution applies to customers that purchase PHLX Orders, whether alone or in combination with other products. Although the distributions are roughly similar, different customers are purchasing different products in different combinations.

As explained above, firms generally purchase PHLX Orders rather than depth of book data to lower technology costs and reduce processing time, while still providing customers insight into open executable orders that could impact the BBO.

A more specific explanation of how TOPO, PHLX Orders and TOPO Plus Orders is used will vary based on use case, with many firms employing multiple use cases. Market makers, banks, hedge funds, and proprietary traders often use top of book and orders feeds for trading, order routing and analysis. Banks may use market data for prime brokerage services, proprietary trading, or risk management. The clients of market data vendors will utilize the data for many different purposes. We do not have sufficient visibility into our customers' businesses and proprietary processes to be able to determine precise data usage by customer category.

Proposed Changes

For TOPO, the Exchange proposes to increase the monthly charge for Internal Distributors from $2,000 to $2,500, and the monthly charge for External Distributors from $2,500 to $3,000. No changes are proposed for Non-Professional and Professional Subscriber fees.

For PHLX Orders, the Exchange proposes to increase the monthly charge for Internal Distributors from $3,000 to $3,500, and the monthly charge for External Distributors from $3,500 to $4,000. No changes are proposed for Non-Professional and Professional Subscriber fees.

For TOPO Plus Orders, the Exchange proposes to increase the monthly charge for Internal Distributors from $4,500 to $5,500, and the monthly charge for External Distributors from $5,000 to $6,000. No changes are proposed for Non-Professional and Professional Subscriber fees.

The proposed changes are designed to update data fees to reflect their current value, rather than their value when these fees were set 5 or 10 years ago.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[29] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[30] 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.

This belief is based on several factors.

First, exchange fees are constrained because market participants can choose among seventeen different venues for options trading, and therefore no single venue can charge excessive fees without losing customers and market share.

Second, fees for TOPO are constrained because the identical top of book data is sent to OPRA, and certain market participants may choose to rely exclusively on OPRA rather than purchasing the proprietary data product.

Third, the purchase of PHLX Orders is optional. It is designed as a lower-cost alternative to depth of book, and, as such, is not a complement to any other product offered by the Exchange or any of its competitors. Customers may purchase PHLX Orders or not, and can reject the feed for any reason, including the fee charged.

Fourth, the proposed fees are comparable to, and in some cases less than, those of similarly situated exchanges.

Fifth, the current fees do not properly reflect the value of the underlying product, as fees for the products in question have been static in nominal terms, and therefore falling in real terms (due to inflation), while the amount of

[24] *See* Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR–Phlx–2012–145).

[25] *See* PHLX, TOPO Plus PHLX Orders, available at *https://www.nasdaqtrader.com/Micro.aspx?id=TOPOPlusOrders.*

[26] *See* Securities Exchange Act Release No. 82495 (January 12, 2018), 83 FR 2839 (January 19, 2018) (SR–Phlx–2018–08).

[27] *See* Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR–Phlx–2012–145).

[28] We do not include ''High Frequency Trading Firm'' as a distinct category because many market participant may engage in low latency trading strategies to some degree, but the Exchange does not have sufficient information to be able to characterize any particular firm as a high frequency trader.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(4) and (5).

information transmitted in those fees have more than doubled in just the past five years, reflecting a substantial increase in customer value due to the significantly higher levels of liquidity currently available on the Exchange.

Sixth, higher fees for the external distribution of TOPO, PHLX Orders, and TOPO Plus Orders are based on the additional value vendors receive from distributing data to their own customers and typically charging for the service.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade options. Until recently, sixteen exchanges have offered options trading services,[31] and they are now being joined by a 17th member.[32] Not a single options exchange trades more than 11 percent of the options market by volume.[33] PHLX, the second largest options exchange by volume, only has 9 percent of the options market.[34] Only one of the 17 options exchanges have a market share over 10 percent.[35] This broad dispersion of market share demonstrates that market participants can and do exercise choice in options trading venues. As the number of exchanges continues to grow, competition will become fiercer and customer choice will continue to expand.

Most option contracts on the TOPO, TOPO Plus, and Orders data feeds are traded on multiple exchanges. A sample of trading on March 7, 2024, from The Options Clearing Corporation shows that 5,836 symbols were traded on PHLX's options exchange, of which only 53 symbols were listed on the PHLX options exchange only, and another 33 symbols were listed on multiple Nasdaq-affiliated options exchanges.

In order to remain competitive with other options exchanges, PHLX, like

some options exchanges, offers several proprietary options products that are only traded on Nasdaq-affiliated exchanges. These include products based on the Nasdaq 100® Index,[36] such as NDX (Nasdaq 100 Index on PHLX, Nasdaq GEMX, LLC (''GEMX'') and Nasdaq ISE, LLC (''ISE'')), XND (Nasdaq 100 Micro Index on PHLX and ISE), and NQX (Nasdaq 100 Micro Index on ISE), as well as volatility products such as VOLQ (Nasdaq-100® Volatility Index), foreign currency options, and other products.

Some Nasdaq option proprietary products are subject to direct, substitution-based competition from other options exchanges. All are subject to the competition among exchanges for membership and market share. Examples of substitution-based competition include the VOLQ, which can be substituted with the Cboe Volatility Index® (''VIX'').[37] NDX (listed in PHLX, GEMX and ISE), XND (listed on PHLX and ISE) and NQX (listed on ISE) all offer different ways of gaining exposure to the Nasdaq 100® Index, are therefore each serves as a direct substitute for the others.[38] The Nasdaq 100® Index products also have alternatives among other exchanges.[39]

Exchange proprietary products are also subject to competition among exchanges for membership and market share.[40] There are many factors that may cause a market participant to decide to

become a member of a particular exchange; among these are product offerings. Introducing new and innovative products to the marketplace designed to meet customer demands may attract market participants to become a member of a particular options venue by allowing market participants greater trading opportunities and new avenues to manage risks. An exchange's proprietary product offering may attract order flow to a particular exchange to trade a particular options product and generally make that exchange a more desirable venue to transaction options, thereby attracting membership to that exchange.

In light of the number of trading venues available to customers, the Exchange must price its products, including TOPO, PHLX Orders, and TOPO Plus Orders (as well as other products), competitively. If not, customers would move to other venues. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [41] 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.'' [42]

The Top of Book Data in TOPO Is Sent to OPRA

The top of book data in TOPO is sent to OPRA; under OPRA rules, proprietary options information is available to customers that have equivalent access to OPRA information, and therefore is supplementary to the OPRA feed.[43] Specifically, Section 5.2(c)(iii) of the OPRA Plan provides that ''[a] Member [of the OPRA Plan] may disseminate its Proprietary Information,'' provided that ''such dissemination is limited to other Members and to persons who also have equivalent access to consolidated Options Information disseminated by OPRA for the same classes or series of options that are included in the Proprietary Information . . . .'' [44] ''Consolidated Options Information'' refers to ''consolidated Last Sale Reports combined with either consolidated

[31] *See* OPRA Plan, list of OPRA Participant Exchanges, available at *https://www.opraplan.com/faqs.* (All options exchanges are members of the OPRA Plan.).

[32] *See* Securities Exchange Act Release No. 98388 (September 14, 2023), 88 FR 64963 (September 20, 2023) (File No. 4–443) (''Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options To Add MEMX LLC as a Plan Sponsor'').

[33] *See* Nasdaq, Options Market Statistics (Last updated November 3, 2023), available at *https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary.* On November 3, 2023, the total percentage of options market volume by exchange was as follows: ARCA: 11%; PHLX: 9%; CBOE: 9%; BOX: 8%; ISE: 7%; EDGX: 7%; AMEX: 7%; MIAX: 7%; MPRL: 7%; NOM: 6%; BATS: 6%; C2: 5%; EMLD: 4%; MRX: 3%; GEMX: 3%; BXOP: 3%; MEMX: 0%.

[34] *See id.*

[35] *See id.*

[36] The NASDAQ-100 is an index which includes 100 of the world's largest non-financial companies listed on the wider NASDAQ Stock market, based on their market capitalization.

[37] *See* Securities Exchange Act Release No. 95170 (June 29, 2022), 87 FR 40295 (July 6, 2022) (SR–Phlx–2022–27) (explaining that the Nasdaq-100® Volatility Index (''VOLQ'') is subject to ''significant substitution-based competitive forces; market participants can substitute options on VOLQ for products offered by other exchanges, for example, the options on the Cboe Volatility Index® (''VIX'').'').

[38] *See, e.g.,* Securities Exchange Act Release No. 99141 (December 12, 2023), 88 FR 87466 (December 18, 2023) (SR–Phlx–2023–55) (''[M]arket participants are offered different ways to gain exposure to the Nasdaq 100 Index, whether through the Exchange's proprietary products like options overlying NDX, NDPX, or XND, or separately through multi-listed options overlying Invesco QQQ Trust (''QQQ''); Securities Exchange Act Release No. 99171 (December 14, 2023), 88 FR 88206 (December 20, 2023) (SR–ISE–2023–36) (explaining that NDX, XND and NQX provide ''market participants with a variety of choices in selecting the product they desire to utilize in order to gain exposure to the Nasdaq 100 Index.'').

[39] *See, e.g.,* Securities Exchange Act Release No. 99141 n.7 (December 12, 2023), 88 FR 87466 (December 18, 2023) (SR–Phlx–2023–55) (explaining that the fees for NDX and NDXP are in line with fees assessed by Cboe on its MXEA and MXEF options products).

[40] *See* Securities Exchange Act Release No. 95170 (June 29, 2022), 87 FR 40295 (July 6, 2022) (SR–Phlx–2022–27) (discussing the role of proprietary data products in the competition among exchanges).

[41] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca–2006–21).

[42] *Id.*

[43] *See* Limited Liability Company Agreement of Options Price Reporting Authority, LLC § 5.2(c)(iii) (January 1, 2010), available at *https://assets.website-files.com/5ba40927ac854d8c97bc92d7/5d0bd57d87d3ccca102102d7_OPRA%20Plan%20with%20Updated%20Exhibit%20A%20-%2006-19-2019.pdf* (''OPRA Plan'').

[44] *Id.*

Quotation Information or the BBO furnished by OPRA.'' [45] Access is deemed to be ''equivalent'' ''if both if both kinds of information are equally accessible on the same terminal or work station . . . .'' [46]

Any customer that purchases proprietary options data from the Exchange, including TOPO and TOPO Plus Orders, must also have equivalent access to the OPRA Plan. As noted above, the best bid and offer and last sale information available from TOPO and TOPO Plus Orders fees is identical to the information simultaneously sent to OPRA by the Exchange.[47] OPRA provides NBBO and last sale information on options transactions. TOPO and TOPO Plus Orders provide additional administrative information unique to trading on the Exchange, and also reduce the transmission and processing latencies generated through the process of consolidating data into the OPRA feed.[48] Because top of book and last sale information is available on OPRA as well as TOPO, and customers who purchase TOPO have equivalent access to the OPRA feed, certain customers may choose to rely on the OPRA feed in lieu of purchasing PHLX data, thereby limiting the ability of the Exchange from charging excessive fees for its TOPO and TOPO Plus Orders feeds.

The Purchase of PHLX Orders Is Optional

Purchase of PHLX Orders is optional. As explained above, customers can obtain all of the data contained in PHLX Orders from PHLX Depth of Market feed, and may purchase the latter if they do not realize the cost savings offered by PHLX Orders. PHLX Orders is not a complement to any other product offered by the Exchange or any of its competitors; customers are free to purchase PHLX Orders or not, and can reject the feed for any reason, including the fee charged.

The Proposed Fees Are Comparable to Those of Other Exchanges

The proposed fees are comparable to, and in some cases less than, those of other similarly situated exchange fees. Options market statistics show that PHLX has a market share of approximately 9%. ARCA, with an 11% market share, and CBOE, with a 9% market share, are its closest competitors.[49]

To obtain top of book and depth of book information for internal distribution (including both simple and complex options) from ARCA, a customer would be required to pay an Access Fee of $3,000 per month, a Non-Display fee of at least $5,000 per month for simple options, and a Non-Display fee of $1,000 for Complex Options, for a total of $9,000 per month.[50] To obtain the same information from PHLX under the new proposal, a customer would pay the Internal Distributor fee of $2,500 for TOPO, and an Internal Distributor fee of $4,000 for PHLX Depth Data,[51] for a total of $6,500 per month.

To obtain comparable information for Cboe Options, a customer would be required to pay a combined fee of $9,000 per month.[52] As noted above, a PHLX customer would pay the Internal Distributor fee of $2,500 for TOPO, and an Internal Distributor fee of $4,000 for PHLX Depth Data,[53] for a total of $6,500 per month.

As such, the proposed fees are comparable to fees charged by industry peers, and therefore presumptively reasonable.

Real Exchange Fees Have Fallen While Traffic Has Increased

As explained above, the Internal Distributor fee for TOPO Plus Orders

was increased in 2018,[54] while none of the other fees have changed for over a decade, since January 2013.[55] This means that fees for TOPO, PHLX Orders, and TOPO Plus Orders have fallen in real terms due to inflation. Using data generated by the Department of Commerce to estimate inflation in the market for portfolio management and investment services,[56] inflation has increased prices by 63.9% since January 2013, when most of the fees at issue were set, and 15.7% since January 2018, when internal distributor fees for TOPO Plus Orders were last modified. At the same time, the average daily message count of PHLX has more than doubled in just five years, from approximately 3.0 billion messages per day in 2018 to approximately 8.2 billion messages in 2023.[57] PHLX grew in conjunction with options trading overall, which in the aggregate grew at a faster pace than PHLX alone. Between January 2018 and December 2023, options volume on PHLX grew by 31%, while options volume on all exchanges nearly doubled, from 467 million options to 912 million instruments.[58]

Growth in options trading means better value for the consumer. The greater variety of options contracts traded means that customers have more choice. The greater number of buyers and sellers in the market means that there is more liquidity, resulting in tighter spreads and better consumer value on each trade. Greater choice and tighter spreads mean that the consumer obtains more value from options markets overall, which should be reflected in fees for exchange services, including market data. The proposal is therefore reasonable in light of the substantial increase in customer value generate by the higher levels of liquidity

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[45] *Id.*

[46] *Id.*

[47] As noted above, the TOPO feed includes administrative information (but not data) that is not provided on the OPRA feed, such as symbol directory messages. *See* Nasdaq, ''Top of Phlx Options Interface Specifications, Version 3.4'' Section 4.3 available at *https://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/topofphlx.pdf* (describing the start of day options directory message, which lists all symbols eligible for the auction process).

[48] The bid and offer and last sale information provided with the TOPO Plus Orders product is identical to the data sent to OPRA, although the ''orders'' component of TOPO Plus Orders is not.

[49] *See* Nasdaq, Options Market Statistics (Last updated November 3, 2023), available at *https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary.*

[50] *See,* NYSE Arca Options Proprietary Market Data Fees (as of July 3, 2023), available at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[51] *See* Options 7, Section 10 (Proprietary Data Feed Fees) (PHLX Depth Data). ARCA does not charge separately for top of book and depth of book. Although PHLX is not proposing to change fees for depth of book information, PHLX depth of book information is included here to maintain comparability.

[52] *See* Cboe Data Services (CDS), Market Data Product Price List (updated July 1, 2023), available at *https://cdn.cboe.com/resources/membership/US_Market_Data_Product_Price_List.pdf.*

[53] *See* Options 7, Section 10 (Proprietary Data Feed Fees) (PHLX Depth Data). ARCA does not charge separately for top of book and depth of book. Although PHLX is not proposing to change fees for depth of book information, PHLX depth of book information is included here to ensure comparability.

[54] *See* Securities Exchange Act Release No. 82495 (January 12, 2018), 83 FR 2839 (January 19, 2018) (SR–Phlx–2018–08).

[55] *See* Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR–Phlx–2012–145).

[56] Bureau of Economic Analysis, U.S. Department of Commerce, ''Personal Consumption Expenditures Price Index,'' available at *https://www.bea.gov/data/personal-consumption-expenditures-price-index.*

[57] PHLX Data (Average Daily Message Count was 2,979,919,551.32 in 2018, and 8,243,516,029.17 thus far in 2023). The significant increases in data traffic have also required technological upgrades to manage the larger traffic volume and to respond to overall technological change in the industry. *See, e.g.,* Securities Exchange Act Release No. 82495 (January 12, 2018), 83 FR 2839 (January 19, 2018) (SR–Phlx–2018–08) (discussing a number of functional enhancements to both TOPO and PHLX Orders).

[58] Options Clearing Corporation, ''Volume and Open Interest,'' available at *https://www.theocc.com/market-data/market-data-reports/volume-and-open-interest/volume-by-exchange.*

now available on the Exchange, coupled with the fall in real prices due to inflation.

External Distributors Receive Additional Value

External Distributors receive additional value not available to Internal Distributors by disseminating information externally and typically charging for the service. This additional value supports higher fees for external distribution for TOPO, PHLX Orders, and TOPO Plus Orders. Higher fees for external distribution of data are common throughout the industry, and nearly universal among exchanges. The difference in value between internal and external distribution is also reflected in the current fee schedule, which has previously been shown to be consistent with the Exchange Act.

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In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because: (i) customers have a choice in trading venue, and will exercise that choice and trade at another venue if exchange fees are not set competitively; (ii) the top of book data sent in the TOPO feed are also sent to OPRA, and customers have the option of relying on OPRA data; (iii) the purchase of PHLX Orders is entirely optional as it is a low-cost alternative to the PHLX Depth of Market product; (iv) the proposed fees are comparable to those of other exchanges; (v) exchange fees have fallen in real terms while the amount of liquidity available on the exchange has increased, and (vi) external vendors receive additional value from distributing data to their own customers and typically charging for the service, and therefore charging higher fees for external distribution is fair and reasonable.

No Unfair Discrimination

The Proposal is not unfairly discriminatory. The three market data feeds at issue here—TOPO, PHLX Orders, and TOPO Plus Orders—are used by a variety of market participants for a variety of purposes. Users include regulators, market makers, competing exchanges, media, retail, academics, portfolio managers. Market data feeds will be available to members of all of these groups on a non-discriminatory basis.

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.

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the Proposal does not impose any burden on the ability of other options exchanges to compete. PHLX fees are comparable to, and in some cases less than, those of other exchanges, as discussed above.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because PHLX market data is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase PHLX market data can do so on a non-discriminatory basis.

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.[59]

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 (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–Phlx–2024–15 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–2024–15. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–Phlx–2024–15 and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024–06574 Filed 3–27–24; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20172 and #20173; MAINE Disaster Number ME–20003]

Presidential Declaration of a Major Disaster for the State of Maine

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of MAINE (FEMA–4764–DR), dated 03/20/2024.

Incident: Severe Storms and Flooding.

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[59] 15 U.S.C. 78s(b)(3)(A)(ii).

[60] 17 CFR 200.30–3(a)(12).