

upcoming AIM Auction is de minimis. Currently, that risk is present for non-appointed Market-Makers, but the Exchange has not observed any trends of solicited market participants separately submitting unrelated orders as a result of knowledge of impending AIM Auctions in other classes. The Exchange notes Rule 5.37, Interpretation and Policy .02 prohibits a pattern or practice of submitting orders or quotes for the purpose of disrupting or manipulating AIM Auctions, and Rule 8.10 requires TPHs to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by TPHs and their associated persons. Finally, the Exchange believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it will be permit orders for accounts of appointed Market-Makers to be solicited in the same manner as orders for the accounts of all other market participants. Currently, all market participants other than appointed Market-Makers may be solicited as the contra and submit responses in AIM Auctions for all classes. Given the additional costs and obligations associated with being an appointed Market-Maker, the Exchange does not believe these Market-Makers should have fewer execution opportunities with respect to volume submitted for execution through AIM auctions and not for electronic execution against interest in the book. The Exchange believes the proposed rule change will provide all Market-Makers on the Exchange with the same ability to participate in AIM in all classes at all times, which may further increase execution and price improvement opportunities for customers.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it provides the same execution opportunities in AIM Auctions to appointed Market-Makers that are currently available to all other market participants. Additionally, the proposed rule change will further align open outcry and electronic crossing auctions and the execution and price

improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in auctions across all classes.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it relates to orders submitted into auction mechanisms on the Exchange. Additionally, the Exchange notes that the rules of at least one other options exchange permits orders for the accounts of appointed market-makers to be solicited as contra orders for that exchange's electronic crossing price improvement auction.¹⁴ The Exchange believes the proposed rule change may improve price competition within AIM Auctions, because the primary liquidity providers will be able to increase participation in AIM Auctions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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

¹⁴ See NYSE American, Inc. ("American") Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. See also <https://www.nyse.com/markets/american-options/cube-customer-best-execution>.

- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2025-090 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-CBOE-2025-090. 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 filing 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-2025-090 and should be submitted on or before January 12, 2026.

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

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104429; File No. SR-Phlx-2025-68]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adjust Professional Subscriber Fees for Top of PHLX Options and PHLX Orders for Inflation

December 17, 2025.

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 December 5, 2025, 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

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 adjust Professional Subscriber fees for Top of PHLX Options, TOPO Plus Orders and PHLX Orders to be the same as those currently applicable to PHLX Depth Data.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rulefilings>, and at the principal office of the Exchange.

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 proposes to adjust the Exchange's Professional Subscriber fees for Top of PHLX Options ("TOPO"), PHLX Orders, and TOPO Plus Orders for inflation.³

Top of PHLX Options

Top of PHLX Options calculates and disseminates the Exchange's best bid and offer position, with aggregate size (including total size in aggregate, for Professional Order size in the aggregate and Public Customer Order size in the aggregate), based on displayable order and quote interest in the System. The data contained in the TOPO data feed is identical to the data simultaneously sent to the processor for the OPRA and subscribers of that 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

Customers are free to purchase TOPO or not, and can reject the feed for any reason, including the fee charged.

The monthly Professional Subscriber fee for TOPO is currently \$40.⁵ This fee has not changed for over a decade, since January 2013.⁶

PHLX Order Feed

Nasdaq Phlx Order Feed ("Order Feed") provides pricing information on new orders resting on the Phlx Order book (e.g. price, quantity, market participant capacity and Attributable Order tags when provided by a Member). Nasdaq Phlx Order Feed is currently provided as part of the TOPO Plus Orders data product. The data provided for each options series includes the symbols (series and underlying security), displayed order types, order attributes (e.g., OCC account number, give-up information, CMTA information), 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. The feed also provides auction and exposure notifications and order imbalances on opening/reopening (size of matched contracts and size of the imbalance).⁷ The Order Feed provides customers with the opportunity to reduce bandwidth (and therefore data processing costs) 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).

⁴ See Options 3, Section 23(a)(1).

⁵ See Options 7, Section 10 (Proprietary Data Feed Fees) (Top of PHLX Options). A Professional Subscriber is any Subscriber that is not a Non-Professional Subscriber. See *id.* A Non-Professional Subscriber is a natural person who is neither: (i) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an 'investment adviser' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. A Non-Professional Subscriber may only use the data provided for personal purposes and not for any commercial purpose. See *id.*

⁶ See Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SR-Phlx-2012-145).

⁷ See Options 3, Section 23(a)(2.)

Customers are free to purchase PHLX Orders or not, and can reject the feed for any reason, including the fee charged.

The monthly Professional Subscriber fee for Phlx Orders is currently \$40. This fee has not changed in over a decade, since January 2013.⁸

TOPO Plus Orders

TOPO Plus Orders offers both TOPO and the Order Feed for a consolidated fee that is less than the combined fee for the two products.

Customers are free to purchase TOPO Plus Orders or not, and can reject the feed for any reason, including the fee charged.

The monthly Professional Subscriber fee for TOPO Plus Orders is currently \$40. This fee has not changed since January 2013.⁹

Proposed Changes

The Exchange proposes to increase the Professional Subscriber Fees for TOPO, Orders, and TOPO Plus Orders for inflation.

In January 2025, the Exchange proposed an inflationary adjustment to certain market data fees separated into three tranches to prevent any undue impact that execution in one tranche would have on our customers: 45 percent in 2025; 30 percent in 2026; and the final 25 percent in 2027.¹⁰

The Exchange proposes to replicate that proposal for these Professional Subscriber fees, using both the same measure of inflation and the same three tranche structure that became operative on January 1, 2025.

As explained in that filing, the Exchange has continuously invested in its products after the current fees were first instituted to accommodate the increasing amount of information processed and the changes in technology over time. These investments have been necessary in part because of increases in the amount of information processed, coupled with the need to maintain infrastructure in a high fixed cost environment as system demand has increased over time:

- Peak Rate by Millisecond: up approximately 40%
- Average Rate per Millisecond: up approximately 37%
- Peak Rate per Second: up approximately 109%
- Average Rate per Second: up approximately 113%
- Peak Total Messages: up approximately 477%

⁸ See *Supra* n. 5.

⁹ See *id.*

¹⁰ See Securities Exchange Act Release No. 102125 (January 6, 2025), 90 FR 2766 (January 13, 2025) (SR-Phlx-2024-73).

³ This proposal was initially filed as SR-Phlx-2025-65. On December 5, 2025, that proposal was withdrawn and replaced with the instant filing.

- Average Total Messages: up approximately 626%
- Average Daily Volume: up approximately 18%
- Maximum Message Count: up approximately 477%

With this increase in message traffic and the need to maintain infrastructure, the Exchange expended significant resources to improve its market data products to meet customer expectations, including continued investment in all aspects of the technology ecosystem (e.g., software, hardware, and network). And the Exchange continues to invest in enhancing its technology for the benefit and often at the behest of its customers. Yet the Exchange has not adjusted any of the fees included in this proposal for many years to even partially offset the costs of maintaining and enhancing its market data offerings.

Inflationary Index

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (PPI), which is a tailored measure of inflation.¹¹ As a general matter, the Producer Price Index is a family of indexes that measure the average change over time in selling prices received by domestic producers of goods and services, assessing price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI), that measure price change from the purchaser's perspective.¹²

About 10,000 PPIs for individual products and groups of products are tracked and released each month.¹³ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers

approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI ("Data Processing PPI"), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services. The Data Processing PPI was introduced in January 2002 by the Bureau of Labor Statistics (BLS) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System.¹⁴ According to the BLS, "[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract."¹⁵

The Exchange believes the Data Processing PPI is an adequate measure

to for adjusting fees for its proprietary market data products because the Exchange uses its "own computer systems" and "proprietary software," i.e., its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers' transactions in U.S. equity securities.¹⁶

The Exchange furthermore notes that the Data Processing PPI is a stable metric with limited volatility, unlike other consumer-side inflation metrics. The Data Processing PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data Processing PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was 0.62%, with a cumulative increase of 15.67% over this 21-year period.

Proposed Fee Changes

The proposed inflationary adjustments are based on a comparison of the Data Processing PPI index on the last date that the relevant fee was adjusted with the level of the Data Processing PPI index on August 1, 2024. That percentage increase was then applied to the prior fee to determine the proposed fee, and then rounding the result.¹⁷ As noted above, the Exchange proposes to adjust fees in three tranches: one in 2025 that will cover 45 percent of the adjustment, another in 2026 to cover an additional 30 percent, and a final tranche in 2027 for the final 25 percent of the adjustment. Table 1 below shows the proposed changes for 2025, 2026 and 2027, the date of the last fee change, and the overall adjustment for TOPO Professional Subscriber,¹⁸ TOPO Plus Orders Professional Subscriber,¹⁹ and PHLX Orders Professional Subscriber:²⁰

TABLE 1—PROPOSED INFLATIONARY ADJUSTMENTS

Product	Current	2025	2026	2027	Last change	Overall percent change
TOPO Professional Subscriber	\$40	\$42.30	\$44.10	\$45.10	1/1/2013	12.8
TOPO Plus Orders Professional Subscriber	40	42.30	44.10	45.10	1/1/2013	12.8
PHLX Orders Professional Subscriber	40	42.30	44.10	45.10	1/1/2013	12.8

¹¹ See <https://fred.stlouisfed.org/series/PCU51825182#0>.

¹² See <https://www.bls.gov/ppi/overview.htm>.

¹³ See <https://www.bls.gov/ppi/overview.htm>.

¹⁴ NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

¹⁵ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

¹⁶ The Exchange notes that the Bureau of Labor Statistics uses a number of measures of inflation

that may apply to Exchange market data. For example, there is also an inflation measure related to PPI industry data for data processing, hosting and related services: Hosting, ASP, and other IT infrastructure provisioning services. This other measure has been used by other SROs in determining price changes and may provide an alternative point of reference.

¹⁷ The Exchange rounded fees as follows: fee values over \$999.99 were rounded to the nearest \$10; fees between \$99.99 and \$999.99 were rounded to the nearest dollar; fees between \$9.99 and \$99.99

were rounded to the nearest \$0.50; fees less than \$9.99 were rounded to the nearest \$0.10. Where rounding would have caused the proposed fee to exceed the rate of inflation, the Exchange rounded downward.

¹⁸ See *Supra* n. 5. The change as calculated by the Data Processing PPI index is 12.9%. The actual change is 12.8% due to rounding of the fee.

¹⁹ *Id.*

²⁰ *Id.*

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²² 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 is because it is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees, and, as noted above, the Exchange has not increased any of these fees since 2013. In the years following the last fee increase, the Exchange has made significant investments in upgrades to Exchange systems and enhancing the quality of its services as measured by, among other things, increased throughput. As such, Exchange customers have benefitted while the Exchange's ability to recoup its investments has been hampered, and Exchange fees have fallen in real terms during the relevant period.

Between 2018 and 2023, for example, the overall inflation rate was an average of 3.93% per year, producing a cumulative inflation rate of 21.28%.²³ Using the more targeted inflation number of Data Processing PPI, the cumulative inflation rate was 8.07%.²⁴ The Exchange believes the Data Processing PPI is a reasonable metric for this fee increase because it is targeted to producer-side increases in the data processing industry, which, based on the definition adopted by BLS, would include the Exchange's market data products. Notwithstanding this inflation, the Exchange has not increased its fees for the subject services since 2013, and therefore the proposed fee changes represent a reasonable increase from the current fees.

The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. The Exchange continues to invest in maintaining and enhancing its market data products for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and network while

introducing new and innovative products. The goal of these enhancements, among other things, is to provide faster and more consistent market data products. The Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its market data products.

No Unfair Discrimination

The Proposal is not unfairly discriminatory. The proposed fees are optional data fees available to all market participants 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.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data), because TOPO, PHLX Orders, and TOPO Plus Orders are available to any market participant at the same price and any market participant that elects to purchase any of these products may 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.²⁵

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-2025-68 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-2025-68. 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 filing 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-2025-68 and should be submitted on or before January 12, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Sherry R. Haywood,

Assistant Secretary.

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²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(4) and (5).

²³ See <https://www.officialdata.org/us/inflation/2019?endYear=2023&amount=1>.

²⁴ See <https://data.bls.gov/timeseries/PCU518210518210>.

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁶ 17 CFR 200.30-3(a)(12).