

hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>26</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2021-13 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-MIAX-2021-13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official

<sup>26</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2021-13 and should be submitted on or before May 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-09433 Filed 5-4-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91696; File No. SR-Phlx-2021-24]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Exchange's Pricing Schedule at Options 7 To Adopt Pricing for Index Options on the Nasdaq 100 Micro Index

April 28, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 15, 2021, 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 the Exchange's Pricing Schedule at Options 7 to adopt pricing for index options on the Nasdaq 100 Micro Index, 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

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

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

office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

###### 1. Purpose

The Exchange recently received approval to list index options on the Nasdaq 100 Micro Index ("XND") on a pilot basis.<sup>3</sup> XND will be same in all respects as the current Nasdaq 100 Index options contract ("NDX") listed on the Exchange, except it will be based on 1/100th of the value of Nasdaq 100 Index, and will be P.M. settled with an exercise settlement value based on the closing index value of Nasdaq 100 Index on the day of expiration.<sup>4</sup> The Exchange will begin to list XND on April 15, 2021.

The Exchange now proposes to amend its Pricing Schedule to adopt pricing for XND. By way of background, certain proprietary products such as NDX and NDXP are commonly excluded from a variety of fee programs. The Exchange notes that the reason for such exclusion is because the Exchange has expended considerable resources developing and maintaining its proprietary products. Similar to NDX and NDXP, XND is a proprietary product. As such, the Exchange proposes to establish transaction fees for XND that are similarly structured to the transaction fees for NDX and NDXP with some differences as noted below. The Exchange also proposes to exclude XND from several pricing programs in the same manner as which NDX and NDXP are excluded today.

<sup>3</sup> See Securities Exchange Act Release No. 91524 (April 9, 2021) (SR-Phlx-2021-07).

<sup>4</sup> *Id.* The Exchange notes that similar features are available with other index options contracts listed on the Exchange, including P.M. settled options on the full value of the Nasdaq-100 Index ("NDXP").

## Options 7, Section 1.B

Today, the Customer<sup>5</sup> Rebates in Section 1.B of the Pricing Schedule are not paid on NDX or NDXP in any rebate category. However, NDX or NDXP contracts count toward the volume requirement to qualify for a Customer Rebate Tier. The Exchange proposes to apply the Customer Rebate program in the same manner for XND.

## Options 7, Section 4

## Options Transaction Charges and Surcharges

Today, as set forth in Options 7, Section 4, electronic (both simple and complex orders) and floor Options Transaction Charges for NDX and NDXP are \$0.75 per contract for all Non-Customers.<sup>6</sup> No Options Transaction Charges for NDX and NDXP apply to Customers. Furthermore, a \$0.25 per contract surcharge is assessed to Non-Customers in NDX and NDXP.

The Exchange now proposes to establish a similar pricing structure for XND where all Non-Customers will be assessed a uniform Options Transaction Charge for electronic (simple and complex orders) and floor transactions, and Customers will not be assessed any Options Transaction Charges. Specifically, the Exchange proposes to assess Non-Customers a uniform electronic and floor Options Transaction Charge of \$0.10 per contract in XND. As noted above, Customers will receive free executions in XND. The Exchange also proposes to assess Non-Customers a surcharge of \$0.10 per contract in XND. The Exchange is proposing to assess a lower Options Transaction Charge and surcharge for XND as compared to NDX and NDXP because XND is based on 1/100 of the value of the Nasdaq 100 Index whereas both NDX and NDXP are based on the full value of the Nasdaq 100 Index. The Exchange therefore seeks to assess corresponding reduced fees for XND.

## Fee Programs

Today, NDX and NDXP are excluded from a variety of fee programs in Options 7, Section 4. The Exchange proposes to update Options 7, Section 4 to similarly exclude XND from these fee programs.

<sup>5</sup> The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(b)(45)).

<sup>6</sup> The term "Non-Customer" applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs.

NDX and NDXP are currently excluded from the \$0.12 per contract surcharge assessed to electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Symbols.<sup>7</sup> The Exchange proposes to extend this exclusion to XND.

Today, Lead Market Makers<sup>8</sup> and Market Makers<sup>9</sup> are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) Electronic Option Transaction Charges, excluding surcharges and excluding options overlying NDX and NDXP; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The Exchange proposes to similarly exclude XND from the Monthly Market Maker Cap.

Today, Firms<sup>10</sup> are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap") where Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. NDX and NDXP transactions are currently excluded from the Monthly Firm Fee Cap. The Exchange proposes to likewise exclude XND transactions from the Monthly Firm Fee Cap.

Today, the Exchange waives the Firm Floor Options Transaction Charges in Options 7, Section 4 for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership<sup>11</sup> represents both sides of a Firm transaction when such members are trading in their own proprietary account. In addition, the Broker-Dealer<sup>12</sup> Floor Options Transaction

<sup>7</sup> See Options 7, Section 4, note 7. The Exchange notes that XND, like NDX and NDXP, is a Non-Penny Symbol.

<sup>8</sup> The term "Lead Market Maker" applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)).

<sup>9</sup> The term "Market Maker" is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a).

<sup>10</sup> The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

<sup>11</sup> The term "Common Ownership" shall mean members or member organizations under 75% common ownership or control.

<sup>12</sup> The term "Broker-Dealer" applies to any transaction which is not subject to any of the other

Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.<sup>13</sup> NDX and NDXP transactions are currently excluded from each of the waivers set forth in the above paragraph. The Exchange proposes to likewise exclude XND transactions from the foregoing waivers.

Today, transactions in NDX and NDXP are excluded from the "Strategy Caps" in Options 7, Section 4. Strategy Caps limit the fees that otherwise apply to certain categories of market participants when they engage in floor options transactions while employing strategies set forth in the Pricing Schedule, namely dividend, merger, short stock interest, reversal and conversion, jelly roll, or box spread strategies. The Exchange proposes to likewise exclude transactions in XND from Strategy Caps.

Today, no Marketing Fees are assessed on transactions in NDX or NDXP. The Exchange proposes to likewise exclude XND transactions from the Marketing Fees.

## Options 7, Section 6

## PIXL Pricing

Today, options overlying NDX and NDXP are not subject to Options 7, Section 6.A. PIXL Pricing.<sup>14</sup> The Exchange proposes to likewise exclude XND from PIXL Pricing in Options 7, Section 6.A. Like NDX and NDXP transactions, XND transactions in PIXL will be subject to Options 7, Section 5.A pricing.<sup>15</sup>

## FLEX Transaction Fees

Today, FLEX options are assessed the transaction fees set forth in Options 7,

transaction fees applicable within a particular category.

<sup>13</sup> The Exchange will correct the typo in the rule text from "BDCustomer Facilitation" to "BD-Customer Facilitation."

<sup>14</sup> The Exchange will remove the stray comma from the rule text.

<sup>15</sup> As discussed later in this filing, the Exchange is also proposing to relocate NDX and NDXP pricing from Options 7, Section 4 into a separate schedule with XND pricing within Options 7, Section 5.A. Accordingly, the current reference to Options 7, Section 4 NDX and NDXP pricing within the PIXL pricing schedule will be updated to Options 7, Section 5.A.

Section 6.B.<sup>16</sup> Pursuant to this Section 6.B, the NDX and NDXP options surcharge of \$0.25 per contract applies to FLEX NDX and NDXP options for all Non-Customers.<sup>17</sup> Furthermore, the NDX and NDXP Options Transaction Charges of \$0.75 per contract (Non-Customer) and \$0.00 per contract (Customer) currently within Options 7, Section 4 apply to FLEX NDX and NDXP options.<sup>18</sup>

The Exchange proposes to charge FLEX XND options in a similar manner. Specifically, the Exchange will apply the proposed XND options surcharge of \$0.10 per contract to Non-Customers in FLEX XND options. Further, the Exchange will apply the proposed XND Options Transaction Charges of \$0.10 per contract (Non-Customer) and \$0.00

per contract (Customer) to FLEX XND options.

Market Access and Routing Subsidy (“MARS”)

Today, as set forth in Options 7, Section 6.E, the Exchange provides MARS Payments to Phlx members that have System Eligibility<sup>19</sup> and have routed the requisite number of Eligible Contracts<sup>20</sup> daily in a month, which were executed on Phlx. Currently, NDX and NDXP are not considered Eligible Contracts. Under this proposal, XND will likewise be excluded from Eligible Contracts.

Options 7, Section 5

In connection with the foregoing changes to adopt pricing for XND, the

Exchange proposes to relocate the pricing for NDX and NDXP and related notes presently set forth in Options 7, Section 4 regarding the Options Transaction Charges and the Non-Customer surcharge, and to group them with the proposed Options Transaction Charges and proposed Non-Customer surcharge for XND.<sup>21</sup> The Exchange proposes to set forth the foregoing fees in new Section 5.A of Options 7, and title this section “Broad-Based Index Options.” As proposed, the pricing schedule in Options 7, Section 5.A, which will apply to electronic (simple and complex orders) and floor transactions, will be as follows:

OPTIONS TRANSACTION CHARGES

Symbol	Customer	Professional	Lead market maker and market maker	Broker-dealer	Firm
NDX <sup>1</sup> .....	\$0.00	\$0.75	\$0.75	\$0.75	\$0.75
NDXP <sup>1</sup> .....	0.00	0.75	0.75	0.75	0.75
XND <sup>2</sup> .....	0.00	0.10	0.10	0.10	0.10

- These fees are per contract.
- Floor transaction fees will apply to any “as of” or “reversal” adjustments for manually processed trades originally submitted electronically or through FBMS.

<sup>1</sup> A surcharge for NDX and NDXP of \$0.25 per contract will be assessed to Non-Customers.

<sup>2</sup> A surcharge for XND of \$0.10 per contract will be assessed to Non-Customers.

As shown above, the rates for NDX and NDXP are not changing; rather, the existing Options Transaction Charges and Non-Customer surcharges in Options 7, Section 4 are being relocated into Options 7, Section 5.A and grouped together with the proposed pricing for XND. The Exchange considers it appropriate to separate out NDX, NDXP, and XND pricing in the manner described above so that Phlx’s pricing for these index options may be easily located within its Pricing Schedule. For the sake of clarity, the Exchange also proposes to amend the Options Transaction Charge header for Non-Penny Symbols in Options 7, Section 4, which already excludes NDX and

NDXP, to add XND to the list of excluded Non-Penny Symbols that will not be subject to this fee. The Exchange further proposes to amend its Pricing Schedule to update all current references to Options 7, Section 4 NDX and NDXP pricing to Options 7, Section 5.A.<sup>22</sup>

The Exchange also proposes non-substantive, clean-up changes in Options 7, Section 5 to restructure the existing rule text. With the changes proposed above to add new Section 5.A of Options 7 to set forth NDX, NDXP, and XND pricing, the Exchange proposes to set forth Singly Listed Options pricing in new Section 5.B. The Exchange also proposes to set forth FX

Options pricing in new Section 5.C, and further proposes to relocate the language regarding U.S. dollar-settled foreign currency options into the new Section 5.C header. Accordingly, new Section 5.C will be titled, “FX Options: U.S. dollar-settled foreign currency options include XDB, XDE, XDN, XDS, XDA, XDZ and XDC.” The Exchange is not amending any of the existing rates for Singly Listed Options or FX Options with this proposal. Lastly, the Exchange proposes to retitle Options 7, Section 5 as “Index and Singly Listed Options (Includes options overlying FX Options, equities, ETFs, ETNs, and indexes not listed on another exchange).”

<sup>16</sup> The characteristics of a FLEX option are described in Options 8, Section 34.

<sup>17</sup> The Exchange will correct the typo in the rule text from “Section 6, B” to “Section 6.B.”

<sup>18</sup> See *supra* note 15. All current references to Options 7, Section 4 NDX and NDXP pricing within the FLEX transaction fees schedule will be updated to Options 7, Section 5.A.

<sup>19</sup> To qualify for MARS, a Phlx member’s routing system (“hereinafter System”) would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx’s API to access current Phlx match engine functionality. Further, the member’s System would also need to cause Phlx to be the one

of the top five default destination exchanges for individually executed marketable orders if Phlx is at the national best bid or offer (“NBBO”), regardless of size or time, but allow any user to manually override Phlx as a default destination on an order-by-order basis. Notwithstanding the above, with respect to Complex Orders a Phlx member’s routing system would not be required to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. Any Phlx member would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies Phlx that it appears to be robust and reliable. The member remains solely responsible for implementing and operating its system.

<sup>20</sup> For the purpose of qualifying for the MARS Payment, Eligible Contracts include the following: Firm, Broker-Dealer, Joint Back Office or “JBO” or Professional equity option orders that are electronically delivered and executed. Eligible Contracts do not include floor-based orders, qualified contingent cross or “QCC” orders, price improvement or “PIXL” orders, or Singly Listed Orders.

<sup>21</sup> In particular, note 5 will be deleted in Options 7, Section 4 and relocated into new note 1 in Options 7, Section 5.A. Further, the note 8 language in Options 7, Section 4 will be copied into a new bullet point in Options 7, Section 5.A.

<sup>22</sup> In particular, the Exchange will update references within Options 7, Sections 6.A and 6.B.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>24</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

### Options 7, Section 1.B

The Exchange's proposal to not pay the Customer Rebates in Options 7, Section 1.B on XND, but to count XND volume toward qualifying for a Customer Rebate Tier, similar to NDX and NDXP, is reasonable because the Exchange seeks to treat XND in the same manner as NDX and NDXP under this rebate program. NDX, NDXP, and XND represent similar options on the same underlying Nasdaq 100 Index. Further, it is reasonable to not pay Customer Rebates on XND in any rebate category because this index option will be exclusively listed on Phlx only. The original intent of the Customer Rebate Program was to pay rebates on electronically-delivered multiply-listed options. By definition, XND will not be a multiply-listed option, and the Exchange does not desire to pay rebates on XND because of the exclusivity of this option. While the Exchange will not pay any Customer Rebates on XND transactions, the Exchange also believes it is reasonable to count XND in the total volume to qualify a market participant for these rebates as market participants would be incentivized to transact in XND to qualify for the Customer Rebate Tiers.

The Exchange believes that its proposal to not pay Customer Rebates on XND, but to count XND volume toward the volume requirement to qualify for a rebate tier is equitable and not unfairly discriminatory because the Exchange would apply the rebate program as described uniformly for all market participants. Any market participant is eligible to earn a Customer Rebate.

### Options 7, Section 4

#### Options Transaction Charges and Surcharges

The Exchange believes it is reasonable to assess the proposed Options Transaction Charge and Non-Customer surcharge as discussed above for XND

because the proposed pricing reflects the exclusive and proprietary nature of this product. Similar to NDX and NDXP, the Exchange seeks to recoup the operational costs for listing proprietary products.<sup>25</sup> Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.<sup>26</sup> Further, the Exchange notes that with its products, market participants are offered an opportunity to transact in NDX, NDXP, or XND, or separately execute options overlying PowerShares QQQ Trust ("QQQ").<sup>27</sup> Offering such proprietary products provides market participants with a variety of choices in selecting the product they desire to utilize in order to transact in the Nasdaq 100 Index. When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

Further, the Exchange believes that the proposed rates for XND are reasonable because they are well within the range of fees assessed for the Exchange's other proprietary products, namely NDX and NDXP.<sup>28</sup> The Exchange believes it is reasonable to charge lower rates for XND compared to NDX and NDXP because XND is based on 1/100 of the value of the Nasdaq 100 Index while both NDX and NDXP are based on the full value of the Nasdaq 100 Index. The Exchange therefore seeks to assess corresponding reduced fees for this product.

The Exchange's proposal to assess the \$0.10 per contract Options Transaction Charge in XND is equitable and not unfairly discriminatory because the Exchange will assess this fee uniformly to all Non-Customers. The Exchange similarly believes that the proposed \$0.10 per contract XND surcharge is

<sup>25</sup> By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

<sup>26</sup> See pricing for the Mini-RUT Index options ("MRUT") on Cboe Exchange, Inc.'s Fees Schedule.

<sup>27</sup> QQQ is an exchange-traded fund based on the same Nasdaq 100 Index as NDX, NDXP, and XND.

<sup>28</sup> Specifically, the Exchange is proposing to assess Non-Customers an Options Transaction Charge of \$0.10 per contract in XND while Customers will receive free executions. Today, the Exchange assesses Non-Customers an Options Transaction Charge of \$0.75 per contract for both NDX and NDXP, and does not assess Customers an Options Transaction Charge. Additionally, the Exchange is proposing to assess Non-Customers a surcharge of \$0.10 per contract for XND whereas today, Non-Customers are assessed a surcharge of \$0.25 per contract for NDX and NDXP.

equitable and not unfairly discriminatory because it will apply uniformly to all Non-Customers. The Exchange believes it is equitable and not unfairly discriminatory to assess no transaction fees to Customers for XND because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Market Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

### Fee Programs

The Exchange believes that the proposed updates in Options 7, Section 4 in connection with the application of certain fee programs to XND are reasonable, equitable, and not unfairly discriminatory. Particularly, the Exchange believes that it is reasonable to exclude XND from the Non-Penny complex surcharge in note 7 of Options 7, Section 4, Monthly Market Maker Cap, Monthly Firm Fee Cap, Floor Options Transaction Charge waivers, Strategy Caps, and Marketing Fees in the same manner in which NDX and NDXP are currently excluded from the same programs today. The Exchange believes it is appropriate to update these fee programs in a manner that similarly situates XND with NDX and NDXP as these are all proprietary products that are based on the Nasdaq 100 Index. In addition, similar to NDX and NDXP, the Exchange seeks to recoup the operational costs for listing proprietary products by excluding XND from programs that cap or waive transaction fees for market participants. As it relates to the Marketing Fee, the Exchange believes it is reasonable to exclude XND from this fee, similar to NDX and NDXP today, because the purpose of the Marketing Fee is to generate more Customer order flow to the Exchange. Because XND will be an exclusively listed product on Phlx, the Exchange does not believe that applying a marketing fee is necessary for this product.

The Exchange's proposal to exclude XND from the various fee programs in Options 7, Section 4 as discussed above is equitable and not unfairly discriminatory because the programs will equally exclude in the same manner all market participants' orders in XND. The Exchange notes that its proposal does not alter any of the existing fee programs, but instead merely proposes to exclude XND in

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(4) and (5).

those programs in the same way that NDX and NDXP are currently excluded.

#### Options 7, Section 6 PIXL Pricing

The Exchange's proposal to exclude XND from PIXL pricing in Options 7, Section 6.A, and instead assess XND transactions in PIXL the proposed Options 7, Section 5.A pricing is reasonable because the Exchange intends to assess the same fees across the board for XND transactions (*i.e.*, \$0.10 per contract for Non-Customers and free executions for Customers). This will align the pricing structure for XND with NDX and NDXP, which are currently assessed the same \$0.75 per contract Non-Customer fee across the board while Customers receive free executions.

The proposed changes are equitable and not unfairly discriminatory because the Exchange will uniformly exclude NDXP from PIXL pricing for all market participants, and instead uniformly charge them the Options 7, Section 5.A pricing.

#### FLEX Transaction Fees

The Exchange believes that its proposal to assess FLEX XND options the Options Transaction Charge and Non-Customer options surcharge in Options 7, Section 5.A is reasonable because the Exchange intends to assess the same fees across the board for XND transactions. Specifically, the Exchange will apply the proposed XND options surcharge of \$0.10 per contract to Non-Customers in FLEX XND options. Further, the Exchange will apply the proposed XND Options Transaction Charges of \$0.10 per contract (Non-Customer) and \$0.00 per contract (Customer) to FLEX XND options. FLEX NDX and NDXP options are likewise assessed the same Options Transaction Charge and Non-Customer options surcharge that NDX and NDXP options are assessed today. The Exchange's proposal is equitable and not unfairly discriminatory because the Exchange will uniformly apply these fees to FLEX NDX and NDXP options to all similarly situated market participants.

#### MARS

The Exchange believes it is reasonable to exclude XND from Eligible Contracts for purposes of qualifying for a MARS Payment in the same manner in which NDX and NDXP are currently excluded today. The Exchange believes it is appropriate to update its MARS program in a manner that similarly situates XND with its other proprietary products, NDX and NDXP, which are all based on the Nasdaq 100 Index.

The Exchange believes that its proposal is equitable and not unfairly discriminatory because the Exchange will uniformly exclude XND from MARS for all market participants.

#### Options 7, Section 5

The Exchange believes that the proposed changes to relocate and group the transaction fees for NDX, NDXP, and XND within Options 7, Section 5.A, and all of the non-substantive changes related to the relocation, each as discussed above, are reasonable, equitable, and not unfairly discriminatory. The proposed changes are all intended to bring greater clarity, and will ensure that the Exchange's pricing for NDX, NDXP, and XND may be easily located within its Pricing Schedule. The Exchange further believes that the proposed non-substantive changes in Options 7, Section 5 to restructure the existing rule text and retitle various section headers are reasonable, equitable, and not unfairly discriminatory as they will facilitate the use of the Pricing Schedule by market participants.

#### *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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. The Exchange notes that with its products, market participants are offered an opportunity to transact in NDX, NDXP, or XND, or separately execute options overlying QQQ. Offering these products provides market participants with a variety of choices in selecting the product they desire to utilize to transact in the Nasdaq 100 Index.

Further, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed XND pricing will apply uniformly to all similarly situated market participants. Specifically, all Non-Customers will be assessed a uniform Options Transaction Charge and options surcharge while Customers receive free executions. As discussed above, Customer liquidity benefits all market participants by providing more

trading opportunities, which attracts other market participants, thus facilitating tighter spreads and increased order flow.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>29</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2021-24 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-2021-24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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. 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-Phlx-2021-24 and should be submitted on or before May 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

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

[FR Doc. 2021-09281 Filed 5-4-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91710; File No. SR-PEARL-2021-18]

### **Self-Regulatory Organizations; MIAx PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Interpretation and Policy .13 (Temporary Extension of the Limited Period for Registered Persons To Function as Principals) to Exchange Rule 3100, Registration Requirements, To Extend The Expiration Date of The Temporary Amendment Set Forth in SR-PEARL-2020-36 from April 30, 2021 to June 30, 2021**

April 29, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 21, 2021, MIAx PEARL, LLC ("MIAx Pearl" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described

in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. 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 is filing a proposal to amend Interpretation and Policy .13 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) to Exchange Rule 3100, Registration Requirements, to extend the expiration date of the temporary amendment set forth in SR-PEARL-2020-36 from April 30, 2021 to June 30, 2021. The Exchange does not anticipate providing any further extensions to the temporary amendment identified in this proposed rule change beyond June 30, 2021.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl>, at MIAx Pearl's principal office, and at the Commission's Public Reference Room.

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

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

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

###### **1. Purpose**

The Exchange proposes to amend Interpretation and Policy .13 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) to Exchange Rule 3100, Registration Requirements, to extend the expiration date of the temporary amendment set forth in SR-PEARL-2020-36 from April 30, 2021 to June 30, 2021. The proposed rule change would extend the 120-day period that certain individuals can function as principals without having successfully passed an appropriate qualification examination through June

30, 2021,<sup>3</sup> and would apply only to those individuals who were designated to function as principals prior to March 3, 2021. This proposed rule change is based on a filing recently submitted by the Financial Industry Regulatory Authority, Inc. ("FINRA")<sup>4</sup> and is intended to harmonize the Exchange's registration rules with those of FINRA so as to promote uniform standards across the securities industry.

In response to the COVID-19 global pandemic, last year FINRA began providing temporary relief by way of frequently asked questions ("FAQs")<sup>5</sup> to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that have significantly limited the ability of individuals to sit for examinations due to Prometric test center capacity issues.<sup>6</sup>

FINRA published the first FAQ on March 20, 2020, providing that individuals who were designated to function as principals under FINRA Rule 1210.04<sup>7</sup> prior to February 2, 2020, would be given until May 31, 2020, to pass the appropriate principal qualification examination.<sup>8</sup> On May 19, 2020, FINRA extended the relief to pass the appropriate examination until June 30, 2020. On June 29, 2020, FINRA again extended the temporary relief

<sup>3</sup> See Exchange Act Release No. 91506 (April 8, 2021) 86 FR 19671 (April 14, 2021) (SR-FINRA-2021-005) (the "FINRA Filing"). The Exchange notes that the FINRA Filing also provides temporarily relief to individuals registered with FINRA as Operations Professionals under FINRA Rule 1220. The Exchange does not have a registration category for Operations Professionals and therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing. If the Exchange seeks to provide additional temporary relief from the rule requirement identified in this proposal beyond June 30, 2021, it will submit a separate rule filing to further extend the temporary extension of time.

<sup>4</sup> See *id.*

<sup>5</sup> See <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#qe>.

<sup>6</sup> At the outset of the COVID-19 pandemic, all FINRA qualification examinations were administered at test centers operated by Prometric. Based on the health and welfare concerns resulting from COVID-19, in March 2020 Prometric closed all of its test centers in the United States and Canada and began to slowly reopen some of them at limited capacity in May. Currently, Prometric has resumed testing in many of its United States and Canada test centers, at either full or limited occupancy, based on local and government mandates.

<sup>7</sup> Exchange Rule 3100, Interpretation and Policy .04, is the corresponding rule to FINRA Rule 1210.04.

<sup>8</sup> FINRA Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) allows a FINRA-member firm to designate certain individuals to function in a principal capacity for 120 calendar days before having to pass an appropriate principal qualification examination. Exchange Rule 3100, Interpretation and Policy .04, provides the same allowance to Exchange Members.

<sup>30</sup> 17 CFR 200.30-3(a)(12).

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

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