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Dated: June 23, 2023.

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Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97788; File No. SR-Phlx-2023-26]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx Options 7 Regarding PXL Order Pricing

June 22, 2023.

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 June 13, 2023, 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 its Pricing Schedule at Options 7: Section 1, General Provisions; Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY; and Section 6, Other Transaction Fees.<sup>3</sup>

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.

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

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

<sup>3</sup> On June 2, 2023, the Exchange withdrew SR-Phlx-2023-20 and replaced it with SR-Phlx-2023-24. On June 5, 2023, the Exchange withdrew SR-Phlx-2023-24 and replaced it with SR-Phlx-2023-25. On June 13, 2023, the Exchange withdrew SR-Phlx-2023-25 and replaced it with the instant filing.

#### 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 Phlx’s Pricing Schedule at Options 7: Section 1, General Provisions; Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY; and Section 6, Other Transaction Fees. Specifically, Phlx proposes to: (1) introduce new references in Options 7, Section 1; and (2) amend its Price Improvement XL (“PIXL”)<sup>4</sup> pricing for both options overlying SPY and other options to provide more detail regarding the pricing of unrelated market or marketable interest and make other amendments to utilize the proposed references. Each change is described below.

###### Options 7, Section 1

The Exchange proposes to amend Options 7, Section 1(c) to introduce four new references: “Initiating Order”, “PIXL Auction Order”, “PIXL Order”, and “PIXL Response.”

The Exchange proposes to provide that the term “Initiating Order” is one-side of a PIXL Auction Order that represents principal or other interest which is paired with a PIXL Order.

The Exchange proposes to provide that a “PIXL Auction Order” is a two-sided, paired order, comprised of a PIXL Order and an Initiating Order.

<sup>4</sup> 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 it represents as agent (an “Initiating Order”) provided it submits the PIXL Order for electronic execution into the PIXL Auction pursuant to Options 3, Section 13.

The Exchange proposes to provide that a “PIXL Order” is one-side of a PIXL Auction Order that represents an agency order on behalf a Public Customer, broker-dealer or other entity which is paired with an Initiating Order.

Finally, the Exchange proposes to provide that a “PIXL Response” is interest that executed against the PIXL Order pursuant to Options 3, Section 13.

The Exchange believes that these references will bring more transparency to Phlx’s PIXL pricing.<sup>5</sup>

###### Options 7, Section 3

The Exchange proposes to amend PIXL pricing for options overlying SPY in Options 7, Section 3, Part C. The Exchange proposes to replace the current text below with a proposed table. The current text of Options 7, Section 3, related to PIXL Executions in SPY, provides,

- *Initiating Order*: \$0.05 per contract. Members or member organizations that qualify for Options 7, Section 2, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap are eligible for a rebate of \$0.12 per contract for all SPY Complex PIXL Orders greater than 499 contracts when contra to an Initiating Order, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.
  - When the PIXL Order is contra to the Initiating Order, a Customer PIXL Order will be assessed \$0.00 per contract and all other Non-Customer market participants will be assessed a \$0.38 per contract fee when contra to an Initiating Order.
  - When the PIXL Order is contra to other than the Initiating Order, the PIXL Order will be assessed \$0.00 per contract, unless the PIXL Order is a Customer, in which case the Customer will receive a rebate of \$0.40 per contract.
  - All other Non-Customer contra parties to the PIXL Order that are not the Initiating Order will be assessed a Fee for Removing Liquidity of \$0.50 per contract or will receive the Rebate for Adding Liquidity. When the PIXL Order is contra to a Lead Market Maker or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order will not be eligible for a rebate.

In lieu of the current rule text, the Exchange proposes the below table.

<sup>5</sup> The Exchange also proposes a technical amendment in Options 7, Section 1(c) to add a period to the end of the reference to “floor transaction.”

Type of market participant	PIXL Order executes against Initiating Order <sup>1</sup>		PIXL Order executes against a PIXL Response or unrelated market or marketable interest			
	Initiating Order fee	PIXL Order fee	PIXL Order rebate	PIXL Order fee	PIXL Response or unrelated market or marketable interest received <i>during</i> a PIXL Auction fee	Unrelated market or marketable interest received <i>prior</i> to a PIXL Auction fee
Customer .....	\$0.05	\$0.00	<sup>2</sup> \$0.40	N/A	\$0.00	Options 7, Section 3, Part A Rebate for Adding Liquidity/Options 7, Section 3, Part B Fee for Adding Liquidity.
Non-Customer .....	0.05	0.38	N/A	\$0.00	0.50	Options 7, Section 3 Part A Rebate for Adding Liquidity/Options 7, Section 3 Part B Fee for Adding Liquidity.

The current rule text in the first bullet states that the Initiating Order is \$0.05 per contract. This fee currently applies to Customers <sup>6</sup> and Non-Customers <sup>7</sup> and is reflected in the proposed table in a manner consistent with the current rule text. The remainder of the sentence was relocated to footnote 1. The Exchange proposes to amend the original rule text by breaking the current sentence into two sentences and restating the rebate that will be paid by the Exchange for SPY Complex Orders in a succinct manner. This non-substantive amendment to new footnote 1 would provide,

A rebate of \$0.12 will be paid to members or member organizations that qualify for Options 7, Section 2, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap. The rebate will be paid on all SPY Complex PIXL Orders greater than 499 contracts when contra to an Initiating Order, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.

The current rule text in the second bullet applies to the scenario where the PIXL Order is contra to the Initiating Order. In this case, the Customer PIXL Order is assessed \$0.00 per contract and Non-Customer PIXL Orders are assessed a \$0.38 per contract fee. The proposed table reflects these current PIXL Order fees and does not substantively amend the rule text in this second bullet.

The current rule text in the third bullet applies to the scenario when the

PIXL Order is contra to a PIXL Response or unrelated market or marketable interest. In this case, the PIXL Order is \$0.00 for Non-Customers and the Customer receives a rebate of \$0.40 per contract. The proposed table reflects these current PIXL Order fees and does not substantively amend the rule text in this third bullet.

Finally, the current rule text in the fourth bullet provides that Non-Customer PIXL Responses or unrelated market or marketable interest that trades with a PIXL Order are assessed a Fee for Removing Liquidity of \$0.50 per contract. The Exchange notes that this fee is currently applicable to unrelated market or marketable interest that was received *during* the PIXL Auction. This fee is reflected in the proposed table but is not referred to as a Fee to Remove Liquidity, rather simply as a fee. The rule text states that Non-Customers could also receive a Rebate for Adding Liquidity, but such a rebate is not possible in this scenario as the PIXL Responses and unrelated market or marketable interest would be removing liquidity in this scenario. Because the Rebate for Adding Liquidity is not possible in this scenario, it is being removed. The last sentence of the final bullet is reflected in footnote 2 to the table and the language has been amended to replace the words “contra to” with “executed against.” Also, the word “unrelated” was added before Lead Market Maker or Market Maker quote because that interest would have been placed on the order book. The Exchange amended the language to clearly state “which was received prior to the PIXL Auction” instead of “established at the initiation of a PIXL auction.” <sup>8</sup> The Exchange believes the

proposed rule text adds clarity to understand the particular scenario.

The current rule text does not make clear the fee that a Customer PIXL Response or unrelated market or marketable interest, received *during* a PIXL Auction, would be assessed when that response or interest executes against a PIXL Order. Today, the Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction is not assessed a fee in this scenario. The Exchange proposes to memorialize the \$0.00 per contract rate in this proposed table at this time to add transparency to the SPY PIXL pricing. This fee is not changing, rather it is being memorialized in the proposed table.

The Exchange notes that unrelated market or marketable interest received in SPY *during* a PIXL Auction is noted in the current rule text, other than the Customer PIXL Response or unrelated market or marketable interest described above. Today, unrelated market or marketable interest in SPY received *prior* to the PIXL Auction is subject to the simple order book pricing within Options 7, Section 3, Part A and the complex order book pricing within Options 7, Section 3, Part B. At this time, the Exchange proposes to memorialize this pricing in the proposed table. The Exchange applies the order book pricing within Options 7, Section 3, Parts A and B to interest received *prior* to the PIXL Auction, which is considered unrelated market or marketable interest for purposes of the PIXL Auction, because at the time the interest was submitted to the order book, the Phlx members and member organizations would have known <sup>9</sup> that

<sup>9</sup> Phlx members and member organizations become aware of ongoing PIXL Auctions when Phlx disseminates a PIXL Auction Notification or “PAN.” When the Exchange receives a PIXL Order for Auction processing, a PAN detailing the side and size and option series of the PIXL Order is sent

<sup>6</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)). See Options 7, Section 1(c).

<sup>7</sup> The term “Non-Customer” applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs. See Options 7, Section 1(c).

<sup>8</sup> See Securities Exchange Act Release No. 80064 (February 24, 2017), 82 FR 11666 (February 24, 2017) (SR-Phlx-2017-15).

there was no ongoing PIXL Auction and would not expect to be subject to the PIXL pricing. Rather, these market participants would be subject to SPY order book pricing similar to all other orders entered into Phlx's order book. In contrast, the Exchange applies the SPY PIXL pricing within Options 7, Section 3 to the unrelated market or marketable interest that interest arrived *during* a PIXL Auction because Phlx seeks to incentivize members and member organizations to submit PIXL Auction Orders to receive a guaranteed execution and potential price improvement. Phlx members and member organizations submitting interest to the order book during a PIXL Auction are aware that they may be allocated in the PIXL Auction. The Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement. The pricing for unrelated market or marketable interest received *during* a PIXL Auction is not changing, this is the pricing being assessed today by Phlx.

Options 7, Section 6

The Exchange proposes to amend Options 7, Section 6.A, PIXL Pricing. The Exchange proposes to create paragraphs in lieu of the single block text within Options 7, Section 6.A which describes the Initiating Order, and demarcate each paragraph with a symbol. The Exchange is not otherwise amending that paragraph.

Next, the Exchange proposes to amend the rule text under the heading, "PIXL Order Executions in Options 7, Section 4, Multiply Listed Options (including ETFs, ETNs and indexes which are Multiply Listed):" The Exchange is amending the current rule text in the second bullet which currently states,

When a PIXL Order is contra to a PIXL Auction Responder, a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer PIXL Orders will be assessed \$0.30 per contract in Penny Symbols or \$0.38 per contract in Non-Penny Symbols. A Responder that is a Lead Market Maker or a Market Maker will be assessed \$0.25 per

contract in Penny Symbols or \$0.40 per contract in Non-Penny Symbols. Other Non-Customer Responders will be assessed \$0.48 per contract in Penny Symbols or \$0.70 per contract in Non-Penny Symbols when contra to a PIXL Order. A Responder that is a Customer will be assessed \$0.00 per contract in Penny Symbols and Non-Penny Symbols.

The Exchange proposes to create two separate bullets in lieu of this one bullet. The first bullet would provide,

When a PIXL Order executes against a PIXL Response or unrelated market or marketable interest received during a PIXL Auction, a Customer PIXL Order will be assessed \$0.00 per contract, and other Non-Customer PIXL Orders will be assessed \$0.30 per contract in Penny Symbols or \$0.38 per contract in Non-Penny Symbols.

In amending this sentence, the Exchange proposes to replace the words "is contra to" with "executes against." Also, the Exchange proposes to replace the words "Auction Responder" with "PIXL Response or unrelated market or marketable interest received during a PIXL Auction." Finally, the Exchange is adding an "and" in the sentence to make the sentence clear. These non-substantive changes utilize the references proposed within Options 7, Section 1. As amended, the second bullet would provide,

A PIXL Response or unrelated market or marketable interest received during a PIXL Auction from a Lead Market Maker or a Market Maker will be assessed \$0.25 per contract in Penny Symbols or \$0.40 per contract in Non-Penny Symbols. Other Non-Customer PIXL Responses and unrelated market or marketable interest received during a PIXL Auction will be assessed \$0.48 per contract in Penny Symbols or \$0.70 per contract in Non-Penny Symbols when contra to a PIXL Order. A PIXL Response or unrelated market or marketable interest received during a PIXL Auction from a Customer will be assessed \$0.00 per contract in Penny Symbols and Non-Penny Symbols.

Similar to the first bullet, the Exchange proposes to replace "Responder" with "PIXL Response or unrelated market or marketable interest received during a PIXL Auction."<sup>10</sup> These non-substantive changes utilize the references proposed within Options 7, Section 1.

The Exchange is also amending the current rule text in the third bullet which currently states,

When a PIXL Order is contra to a resting order or quote a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer will be assessed \$0.30 per contract and the resting order or quote will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.

The Exchange proposes to create two separate bullets in lieu of this one bullet. The first bullet would provide,

When a PIXL Order is a Customer order and executes against unrelated market or marketable interest received prior to a PIXL Auction, the Customer order will be assessed \$0.00 per contract. Unrelated market or marketable interest received prior to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.

In amending this sentence, the Exchange proposes to replace the words "is contra to a resting order or quote" with "executes against unrelated market or marketable interest received prior to a PIXL Auction" and "PIXL Order" with "Customer PIXL Order." Any order resting on the order book would have been received prior to the PIXL Auction. The Exchange also proposes to add a new sentence that states, "Unrelated market or marketable interest received prior to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4." Today, the rule text does not describe the manner in which the Exchange prices unrelated market or marketable interest received prior to the commencement of a PIXL Auction. This new sentence memorializes the current pricing that Phlx members and member organizations are assessed for such interest, which is order book pricing. As amended, the second bullet would provide,

Non-Customer PIXL Orders will be assessed \$0.30 per contract when trading with an unrelated market or marketable interest received prior to the PIXL Auction and the unrelated market or marketable interest received prior to the PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.

The Exchange is adding the words "PIXL Order" after Non-Customer since it started a new sentence to retain the original reference to a PIXL Order at the beginning of the current sentence.<sup>11</sup> To add more context to this scenario, the Exchange is also noting that "when trading with an unrelated market or marketable interest received prior to the PIXL Auction" to make clear the type of interest trading with the Non-Customer PIXL Order. The Exchange is also replacing the phrase "resting order or quote" with "unrelated market or marketable interest received prior to the PIXL Auction." These non-substantive amendments utilize the references within Options 7, Section 1. Also, of note, any order resting on the order

over the Exchange's TOPO data feed pursuant to Options 3, Section 23(a)(1) and Specialized Quote Feed pursuant to Options 3, Section (a)(i)(B). See Phlx Options 3, Section 13(b)(1)(C).

<sup>10</sup> The Exchange proposes other technical amendments for readability of the sentence.

<sup>11</sup> The Exchange is also making other technical changes to start a new paragraph, removing " , other."

book would have been received prior to the PIXL Auction.

As noted herein, the Exchange applies the order book pricing within Options 7, Section 4 to interest received *prior to* the PIXL Auction, which is considered unrelated market or marketable interest for purposes of the PIXL Auction, because at the time the interest was submitted to the order book, the Phlx members and member organizations would have known that there was no ongoing PIXL Auction and would not expect to be subject to the PIXL pricing. In contrast, the Exchange applies PIXL pricing within Options 7, Section 6 to the unrelated market or marketable interest when interest arrived *during* a PIXL Auction because Phlx seeks to incentivize members and member organizations to submit PIXL Auction Orders to receive a guaranteed execution, and potential price improvement. Phlx members and member organizations submitting interest to the order book during a PIXL Auction are aware that they may be allocated in the PIXL Auction. These market participants would be subject to order book pricing similar to all other orders entered into Phlx's order book. The Exchange assesses the PIXL pricing in Options 7, Section 6 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement.

The Exchange's pricing models for the order book and PIXL Auction each seek to attract liquidity to Phlx and reward members and member organizations differently for the order flow. To this end, the Exchange's pricing considers the manner in which orders interact with the PIXL Auction based on the timing of when the order entered the order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>13</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.

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*<sup>14</sup> (“NetCoalition”), the D.C. Circuit stated, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”<sup>15</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

## Options 7, Section 1

The Exchange's proposal to amend Options 7, Section 1(c) to introduce four new references: “Initiating Order”, “PIXL Auction Order”, “PIXL Order”, and “PIXL Response” is reasonable, equitable and not unfairly discriminatory because these references will bring more transparency to Phlx's PIXL pricing and also apply in the same

manner to all PIXL transactions executed on the Exchange.

## Options 7, Section 3

The Exchange's proposal to amend PIXL pricing for options overlying SPY in Options 7, Section 3, Part C by replacing the current text below with a proposed table is reasonable, equitable and not unfairly discriminatory because the proposed table reflects the current pricing offered today on Phlx and adds transparency to that pricing. The proposed table does not amend the current rule text except to add the Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction, which is currently not described in the rule text, and to specify the pricing for unrelated market or marketable interest received *during* a PIXL Auction.

Assessing a SPY Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction is reasonable because the Exchange currently does not assess a Customer a PIXL Order fee when the PIXL Order trades against a PIXL Response or unrelated market or marketable interest. The Exchange believes that not assessing a fee will attract more SPY Customer liquidity to Phlx's PIXL Auction. The proposed SPY Customer PIXL Response and unrelated market or marketable interest of \$0.00 per contract reflects the current rate assessed today to these participants.

Assessing a SPY Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction is equitable and not unfairly discriminatory 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.

Assessing unrelated market or marketable interest in SPY received *prior to* a PIXL Auction the simple order book pricing within Options 7, Section 3, Part A and the complex order book pricing within Options 7, Section 3, Part B is reasonable because at the time the interest was submitted to the order book, the Phlx members and member organizations would have known that there was no ongoing PIXL Auction and would not expect to be subject to the PIXL pricing. In contrast, applying SPY PIXL pricing within Options 7, Section

<sup>14</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>15</sup> *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4) and (5).

3 to the unrelated market or marketable interest that interest arrived *during* a PIXL Auction is reasonable because Phlx seeks to incentivize members and member organizations to submit PIXL Auction Orders to receive a guaranteed execution and potential price improvement. Phlx members and member organizations submitting interest to the order book during a PIXL Auction are aware that they may be allocated in the PIXL Auction. The Exchange's pricing models for the order book and PIXL Auction each seek to attract liquidity to Phlx and reward members and member organizations differently for the order flow. To this end, the Exchange's pricing considers the manner in which orders interact with the PIXL Auction based on the timing of when the order entered the order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

Assessing unrelated market or marketable interest in SPY received *prior* to a PIXL Auction the simple order book pricing within Options 7, Section 3, Part A and the complex order book pricing within Options 7, Section 3, Part B is equitable and not unfairly discriminatory because all Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction will be uniformly assessed the applicable order book pricing for adding liquidity. The Exchange's proposal would treat Phlx members and member organizations who submitted unrelated market or marketable interest in SPY which rested on the order book *prior* to the commencement of a PIXL Auction in the same manner as other Phlx members and member organizations who posted liquidity on the order book as they would both be considered makers of liquidity. Conversely, the Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement.

The Exchange's proposal to amend the rule text in the last sentence of the final bullet that is being relocated to

footnote 2 to state "which was received prior to the PIXL Auction" instead of "established at the initiation of a PIXL auction" is reasonable, equitable and not unfairly discriminatory because the proposed new language continues to reflect the intent of the original language.<sup>16</sup> The amended rule text makes clear that the Lead Market Maker or Market Maker quote that is being referenced would have been resting on the order book prior to the PIXL Order. Today, the rebate is paid to the PIXL Order where the Lead Market Maker or Market Maker executes against the PIXL Order portion of the paired order as a response. The Exchange would apply new footnote 2 uniformly to Customer PIXL Orders.

#### Options 7, Section 6

The Exchange's proposal to amend Options 7, Section 6.A, PIXL Pricing to make technical non-substantive rule changes and replace certain text with the proposed references within Options 7, Section 1 is reasonable, equitable and not unfairly discriminatory as it will clarify and harmonize the current rule text by utilizing specified terms.

The Exchange's proposal to add a new sentence that states, "Unrelated market or marketable interest received prior to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4," is reasonable because the proposed rule text will describe the manner in which the Exchange prices unrelated market or marketable interest received prior to the commencement of a PIXL Auction. This new sentence memorializes the current pricing that Phlx members and member organizations are assessed for such interest, which is order book pricing. The Exchange applies the order book pricing within Options 7, Section 4 to interest received *prior* to the PIXL Auction, which is considered unrelated market or marketable interest for purposes of the PIXL Auction, because at the time the interest was submitted to the order book, the Phlx members and member organizations would have known that there was no ongoing PIXL Auction and would not expect to be subject to the PIXL pricing. In contrast, the Exchange applies PIXL pricing within Options 7, Section 6 to the unrelated market or marketable interest when interest arrived *during* a PIXL Auction because Phlx seeks to incentivize Participants to submit PIXL Auction Orders to receive a guaranteed execution and potential price

improvement. Phlx members and member organizations submitting interest to the order book during a PIXL Auction are aware that they may be allocated in the PIXL Auction.

Additionally, the Exchange's pricing models for the order book and PIXL Auction each seek to attract liquidity to Phlx and reward members and member organizations differently for the order flow. To this end, the Exchange's pricing considers the manner in which orders interact with the PIXL Auction based on the timing of when the order entered the order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

The Exchange's proposal to add a new sentence that states, "Unrelated market or marketable interest received prior to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4," is equitable and not unfairly discriminatory because all Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction will be uniformly assessed the applicable order book pricing for adding liquidity. The Exchange's proposal would treat Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction in the same manner as other Phlx members and member organizations who posted liquidity on the order book as they would both be considered makers of liquidity. Conversely, the Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement.

#### 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.

<sup>16</sup> See Securities Exchange Act Release No. 80064 (February 24, 2017), 82 FR 11666 (February 24, 2017) (SR-Phlx-2017-15).

### Intermarket Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice to initiate a price improvement auction. 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. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

### Intramarket Competition

The Exchange's proposal to amend Options 7, Section 1(c) to introduce four new references: "Initiating Order", "PIXL Auction Order", "PIXL Order", and "PIXL Response" does not impose an undue burden on competition because these references will apply in the same manner to all PIXL transactions executed on the Exchange.

Assessing a Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction does not impose an undue burden on competition 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.

Assessing unrelated market or marketable interest within Options 7, Section 3, related to SPY, that was received *prior* to a PIXL Auction the simple order book pricing within Options 7, Section 3, Part A and the complex order book pricing within Options 7, Section 3, Part B does not impose an undue burden on competition because all Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement

of a PIXL Auction will be uniformly assessed the applicable order book pricing for adding liquidity. The Exchange's proposal would treat Phlx members and member organizations who submitted unrelated market or marketable interest in SPY which rested on the order book *prior* to the commencement of a PIXL Auction in the same manner as other Phlx members and member organizations who posted liquidity on the order book as they would both be considered makers of liquidity. Conversely, the Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement. The Exchange would apply new footnote 2 uniformly to Customer PIXL Orders.

The Exchange's proposal to add a new sentence that states, "Unrelated market or marketable interest received prior to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4," does not impose an undue burden on competition because all Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction will be uniformly assessed the applicable order book pricing for adding liquidity. The Exchange's proposal would treat Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction in the same manner as other Phlx members and member organizations who posted liquidity on the order book as they would both be considered makers of liquidity. Conversely, the Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement.

### 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>17</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 (<https://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-2023-26 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-2023-26. 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

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2023-26 and should be submitted on or before July 20, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 2023-13790 Filed 6-28-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-456, OMB Control No. 3235-0515]

### Proposed Collection; Comment Request; Extension: Schedule TO

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

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

Schedule TO (17 CFR 240.14d-100) must be filed by a reporting company that makes a tender offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under Section 12 of the Exchange Act (15 U.S.C. 78l) (which offer, if consummated, would cause that person to own over 5% of that class of the securities) must file Schedule TO. The purpose of Schedule TO is to improve communications between public

companies and investors before companies file registration statements involving tender offer statements. Schedule TO takes approximately 44.752 hours per response and is filed by approximately 1,378 issuers annually. We estimate that 50% of the 44.752 hours per response (22.376 hours) is prepared by the issuer for an annual reporting burden of 30,834 hours (22.376 hours per response × 1,378 responses). An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by July 31, 2023 to (i) [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: June 23, 2023.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 2023-13784 Filed 6-28-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97794; File No. SR-BOX-2023-17]

### Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 7660 (Communications and Equipment)

June 23, 2023.

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 June 12, 2023, BOX Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is

publishing this notice to solicit comments on the proposed rule from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7660 (Communications and Equipment). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <https://rules.boxexchange.com/rulefilings>.

#### 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 self-regulatory organization 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 self-regulatory organization 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 Rule 7660 to modernize and clarify the scope of the recordkeeping obligations for Floor Participants<sup>3</sup> relating to communication devices. Specifically, the Exchange is proposing to amend Rule 7660 to: (1) codify that the registration requirement is only applicable to any communication device to be used for business purposes; and (2) explicitly provide that Floor Participants must maintain records of the use of any communication devices on the Trading Floor.<sup>4</sup>

Rule 7660, which applies to the use of electronic communication devices on the Trading Floor, was adopted in 2017

<sup>3</sup> The term "Floor Participant" means Floor Brokers as defined in Rule 7540 and Floor Market Makers as defined in Rule 8510(b). See BOX Rule 100(a)(26).

<sup>4</sup> The term "Trading Floor" or "Options Floor" means the physical trading floor of the Exchange located in Chicago. The Trading Floor shall consist of one "Crowd Area" or "Pit" where all option classes will be located. The Crowd Area or Pit shall be marked with specific visible boundaries on the Trading Floor, as determined by the Exchange. A Floor Broker must open outcry an order in the Crowd Area. See BOX Rule 100(a)(68).

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

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

<sup>18</sup> 17 CFR 200.30-3(a)(12).