Additionally, the Exchange believes this pricing will encourage Market Makers to add liquidity on the MRX order book in SPY, QQQ and IWM as the Tier 1 Market Maker Penny Symbol Maker Fee of $0.10 per contract is being reduced to $0.00 per contract. While Market Makers that add liquidity in SPY, QQQ and IWM will no longer receive the Market Maker Tier 3 or Tier 4 Maker Rebates in Penny Symbols, the proposed pricing should overall continue to attract order flow to MRX in these symbols. Market Makers have different requirements and additional obligations to the Exchange that other market participants do not (such as quoting requirements).[11] Increasing Market Maker participation in SPY, QQQ and IWM, by removing the Tier 1 Maker Fee for Market Makers to add Penny Symbol liquidity in SPY, QQQ and IWM, will benefit all market participants. Assessing Priority Customers no Penny Symbol Taker Fees in SPY, QQQ and IWM will benefit all market participants as Priority Customer liquidity provides more trading opportunities, which attracts 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, for the benefit of all market participants. The Exchange believes assessing different fees for options in SPY, QQQ and IWM, as compared to other symbols, does not impose an undue burden on competition because the Exchange would uniformly not assess a Market Maker a Penny Symbol Maker Fee or pay a Market Maker a Penny Symbol Maker Rebate in SPY, QQQ and IWM. Similarly, the Exchange would uniformly not assess Priority Customers a Penny Symbol Taker Fee in SPY, QQQ and IWM.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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 [12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MRX–2023–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MRX–2023–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MRX–2023–15 and should be submitted on or before September 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–17759 Filed 8–17–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98130; File No. SR–Phlx–2023–36]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 4 Regarding Qualified Contingent Cross Rebates

August 14, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 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 Phlx's Pricing Schedule at Options 7, Section 4, ''Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and

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[11] *See* MRX Options 2, Section 5.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

broad-based index options symbols listed within Options 7, Section 5.A).'' [3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

Phlx proposes to amend its Pricing Schedule at Options 7, Section 4, ''Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A).'' Specifically, Phlx proposes to amend its Qualified Contingent Cross (''QCC'') Rebates in Section A, and remove the expired QCC Growth Tier Rebate in Section B of Options 7, Section 4.

Today, the Exchange assesses a $.20 per contract QCC Transaction Fee for a Lead Market Maker,[4] Market Maker,[5] Firm [6] and Broker-Dealer.[7] Customers [8] and Professionals [9] are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to electronic QCC Orders [10] and Floor QCC Orders.[11]

Part A: QCC Rebates

Today, in Part A of Options 7, Section 4, the Exchange describes several QCC Rebates. Today, the Exchange pays a QCC Rebate of $0.12 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. Today, the Exchange also pays a rebate of $0.17 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month. Additionally, today, the Exchange pays a QCC Rebate of $0.14 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. Today, the Exchange pays a rebate to $0.19 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month.

Today, these QCC rebates are paid on all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional or (iv) a dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4). Further, today, volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short stock interest or reversal or conversion strategy executions, is aggregated in determining the applicable member or member organization qualifying QCC contract volume in a given month. Finally, today, members and member organizations are entitled to one QCC Rebate in a given month, which would be the greater of the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both.

Proposal

At this time, the Exchange proposes to offer two QCC Rebates in addition to the current QCC Rebates described above. The Exchange proposes to pay a rebate of $0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, in the event that a member or member organization executes (1) greater than 1,000,000 qualifying QCC contracts in a given month; (2) Floor Originated Strategy [12] Executions in excess of 3,500,000 contracts in a given month; and (3) at least 40% of the member or member organization's QCC executed contracts in that month are comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.

Additionally, the Exchange proposes to pay a rebate of $0.27 per contract, when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on

[3] On August 2, 2023, SR–Phlx–2023–32 was withdrawn and replaced with SR–Phlx–2023–33. On August 10, 2023, SR–Phlx–2023–33 was withdrawn and replaced with the instant filing.

[4] The term ''Lead Market Maker'' applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. *See* Options 7, Section 1(c). The term ''Floor Lead Market Maker'' is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange's trading floor. *See* Options 8, Section 2(a)(3).

[5] 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). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers. *See* Options 7, Section 1(c). The term ''Floor Market Maker'' is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. *See* Options 8, Section 2(a)(4).

[6] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. *See* Options 7, Section 1(c).

[7] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. *See* Options 7, Section 1(c).

[8] 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).

[9] The term ''Professional'' applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Options 7, Section 1(c).

[10] Electronic QCC Orders are described in Options 3, Section 12.

[11] Floor QCC Orders are described in Options 8, Section 30(e).

[12] Floor Originated Strategy Executions are defined as a dividend, merger, short stock interest, reversal and conversion, jelly roll or box spread strategy as described in Options 7, Section 4. The Exchange proposes to add this defined term in the Pricing Schedule at Part A of Options 7, Section 4.

the other side, in the event that a member or member organization executes: (1) greater than 1,000,000 qualifying QCC contracts in a given month; (2) Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month and (3) at least 40% of the member or member organization's QCC executed contracts in that month are comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.

Additionally, the Exchange would continue to pay QCC Rebates on all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional; or (iv) a dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4). Also, the Exchange would continue to aggregate volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions, in determining the applicable member or member organization qualifying QCC contract volume in a given month.

Finally, the Exchange currently only permits member and member organizations to receive either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both. The Exchange is removing this rule text from the Pricing Schedule because the QCC Growth Tier Rebate pricing was only available until July 31, 2023 as explained further below. The Exchange also proposes to remove the Part ''A'' reference as there is no longer a Part B.

The Exchange believes that the proposed QCC Rebates in Part A will encourage Phlx members and member organizations to transact a greater number of QCC Orders on the Exchange.

Part B: QCC Growth Tier Rebate

The Exchange offered a QCC Growth Tier Rebate [13] to encourage Phlx members and member organizations to transact a greater number of QCC Orders on Phlx. The QCC Growth Tier Rebate expired on July 31, 2023. The Exchange proposes to remove the pricing from the Pricing Schedule at this time.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[15] 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 Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [17] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[18] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [19]

Further, ''[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'. . . .'' [20] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange's proposal to offer two new QCC Rebates in Section A of Options 7, Section 4,[21] in addition to the current QCC Rebates, is reasonable because the proposed QCC Rebates will encourage Phlx members and member organizations to transact a greater number of qualifying QCC contracts and Floor Originated Strategy Executions on Phlx. The proposal would pay a new rebate of $0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, and the proposal would pay a new higher rebate of $0.27 per contract, when the QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. The Exchange believes that the higher rebate of $0.27 per contract, when the QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, is reasonable because the Exchange assesses a QCC Transaction Fee of $0.20 per contract on Lead Market Makers, Market Makers, Firms and Broker-Dealers and does not assess a QCC Transaction Fee on Customers and Professionals. The third qualification,

[13] The QCC Growth Tier Rebate permitted Phlx members and member organizations to qualify for certain rebates by executing a certain amount of floor transactions, electronic QCC Orders and Floor QCC Orders volume in excess of the member's or member organization's QCC transaction volume in January 2023. The Exchange also offered an alternative qualification to achieve the QCC Growth Tier Rebate by executing transactions in open outcry along with QCC volume.

[14] 15 U.S.C. 78f(b).

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

[16] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[17] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[18] *See NetCoalition,* at 534–535.

[19] *Id.* at 537.

[20] *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)).

[21] The Exchange proposes to pay a rebate of $0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, in the event that a member or member organization both executes greater than 1,000,000 qualifying QCC contracts in a given month and executes Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month. Additionally, the Exchange proposes to pay a $0.27 per contract, when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, in the event that a member or member organization both executes greater than 1,000,000 qualifying QCC contracts in a given month and executes Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month.

which requires that 40% of the QCC executed contracts to have a Lead Market Maker, Market Maker, Broker-Dealer, or Firm on each side of the transaction, will assist the Exchange in funding the higher $0.27 per contract QCC Rebate.

The Exchange's proposal to offer two new QCC Rebates in Section A of Options 7, Section 4,[22] in addition to the current QCC Rebates, is equitable and not unfairly discriminatory because all members and member organizations may qualify for QCC Rebates, provided they transact the requisite volume. The Exchange believes that the higher rebate of $0.27 per contract, when the QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, is equitable and not unfairly discriminatory because the Exchange assesses a QCC Transaction Fee of $0.20 per contract for Lead Market Makers, Market Makers, Firms and Broker-Dealers and does not assess a QCC Transaction Fee on Customers and Professionals. The proposed rebate of $0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, is lower as compared to the $0.27 per contract rebate because Customers and Professionals do not pay a QCC Transaction Fee whereas Lead Market Makers, Market Makers, Broker-Dealers, and Firms pay a $0.20 per contract QCC Transaction Fee.

The Exchange's proposal to remove the pricing for the QCC Growth Tier Rebate in Section B of Options 7, Section 4 as well as the rule text concerning receiving either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both, is reasonable, equitable and not unfairly discriminatory because as noted in the Pricing Schedule, the QCC Growth Tier Rebate pricing was only available until July 31, 2023. This pricing is no longer available.

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.

Inter-Market 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 of where to transact options. 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.

Intra-Market Competition

The proposed amendments do not impose an undue burden on intra-market competition. In terms of intra-market competition, the Exchange's proposal to offer two new QCC Rebates in Section A of Options 7, Section 4,[23] in addition to the current QCC Rebates, does not impose an undue burden on competition because all members and member organizations may qualify for QCC Rebates, provided they transact the requisite volume. The Exchange believes that the higher rebate of $0.27 per contract, when the QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, does not impose an undue burden on competition because the Exchange assesses a QCC Transaction Fee of $0.20 per contract for Lead Market Makers, Market Makers, Firms and Broker-Dealers and does not assess a QCC Transaction Fee on Customers and Professionals. The proposed rebate of $0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, is lower as compared to the $0.27 per contract rebate because Customers and Professionals do not pay a QCC Transaction Fee whereas Lead Market Makers, Market Makers, Broker-Dealers, and Firms pay a $0.20 per contract QCC Transaction Fee.

The Exchange's proposal to remove the pricing for the QCC Growth Tier Rebate in Section B of Options 7, Section 4, as well as the rule text concerning receiving either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both, does not impose an undue burden on competition because, as noted in the Pricing Schedule, the QCC Growth Tier Rebate pricing was only available until July 31, 2023. This pricing is no longer available.

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.[24]

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

IV. Solicitation of Comments

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

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–Phlx–2023–36 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–2023–36. This file

[22] *See supra* note 21.

[23] *See supra* note 21.

[24] 15 U.S.C. 78s(b)(3)(A)(ii).

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–Phlx–2023–36 and should be submitted on or before September 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–17760 Filed 8–17–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98123; File No. SR–CboeEDGX–2023–052]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

August 14, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2023, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''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

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, 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 its Fee Schedule, effective August 1, 2023. The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 17% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange assesses fees in connection with orders routed away to various exchanges. Currently, under the Fee Codes and Associated Fees section of the Fee Schedule, fee code RP is appended to routed Customer orders to NYSE American (''AMEX''), BOX Options Exchange (''BOX''), Nasdaq BX Options (''BX''), Cboe Exchange, Inc. (''Cboe''), ISE Mercury, LLC (''ISE Mercury'' or ''MERC''), MIAX Options Exchange (''MIAX'') or Nasdaq PHLX LLC (''PHLX'') (excluding orders in SPY options) and assesses a charge of $0.25 per contract; fee code RQ is appended to routed Customer orders in Penny classes to NYSE Arca, Inc (''ARCA''), Cboe BZX Exchange, Inc. (''BZX Options''), Cboe C2 Exchange, Inc. (''C2''), Nasdaq ISE (''ISE''), ISE Gemini, LLC (''ISE Gemini''), MIAX Emerald Exchange (''MIAX Emerald''), MIAX Pearl Exchange (''MIAX Pearl''), or Nasdaq Options Market LLC (''NOM'') and assesses a charge of $0.85 per contract; and fee code RR is appended to routed Customer orders in Non-Penny classes to ARCA, BZX Options, C2, ISE, ISE Gemini, MIAX Emerald, MIAX Pearl or NOM and assesses a charge of $1.25.

The Exchange notes that its current approach to routing fees is to set forth in a simple manner certain sub-categories of fees that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.,* clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, ''Routing Costs''). The Exchange then monitors the fees charged as compared to the costs of its routing services and adjusts its routing fees and/or sub-categories to ensure that the Exchange's fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. The Exchange notes that other options exchanges currently assess routing fees in a similar manner as the

[25] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets U.S. Options Market Monthly Volume Summary (July 27, 2023), available at *https://markets.cboe.com/us/options/market_statistics/.*