

Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: May 2, 2023; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Christopher C. Mohr; *Comments Due*: May 10, 2023.

This Notice will be published in the **Federal Register**.

**Erica A. Barker**,  
Secretary.

[FR Doc. 2023-09780 Filed 5-8-23; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97426; File No. SR-Phlx-2023-15]

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

May 3, 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 May 1, 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).”

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).” Specifically, Phlx proposes to amend its Qualified Contingent Cross (“QCC”) Growth Tier Rebate, in Section B of Options 7, Section 4.

Today, the Exchange offers a QCC Growth Tier Rebate to encourage Phlx members and member organizations to transact a greater number of QCC Orders on Phlx. In order to qualify for the QCC Growth Tier Rebate, a member’s or member organization’s total floor transaction,<sup>3</sup> and electronic QCC Orders and Floor QCC Orders volume (“QCC transaction volume”) must exceed 12,500,000 contracts in a given month. In addition to the aforementioned criteria, the member’s or member organization’s respective Phlx House Account<sup>4</sup> must execute QCC transaction volume of 250,000 or more contracts in excess of the member’s or member organization’s QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 250,000 or more contracts in a given month.

The Exchange also offers an alternative qualification to achieve the

<sup>3</sup> The term “floor transaction” is a transaction that is effected in open outcry on the Exchange’s trading floor. See Phlx Options 7, Section 1(c). Of note, the term “floor transaction” is more broadly defined than the term “Open Outcry Floor Transaction” which is discussed herein and is a subset of the term “floor transaction”.

<sup>4</sup> Each Phlx member or member organization is required to establish one Phlx House Account with the Exchange’s Membership Department. Only one Phlx House Account is required to transact business on Phlx. The Exchange assesses a \$50.00 a month account fee for this account as provided for within Options 7, Section 8A. A Phlx member or member organization has the option of acquiring multiple Phlx House Accounts depending on a member’s or member organization’s business model and how they elect to organize their business.

QCC Growth Tier Rebate. A member’s or member organization’s Open Outcry Floor Transaction volume<sup>5</sup> in a given month must exceed 500,000 contracts. In addition to the aforementioned criteria, a member’s or member organization’s respective Phlx House Account must execute QCC transaction volume of 2,500,000 or more contracts in excess of the member’s or member organization’s QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 2,500,000 or more contracts in a given month.

Today, the Exchange pays a \$0.20 per contract QCC Growth Tier Rebate on a QCC Order 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. Further, the Exchange pays a \$0.26 per contract QCC Growth Tier Rebate on a QCC Order 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 pays the QCC Growth Tier Rebate 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). Finally, members and member organizations are entitled to one QCC Rebate in a given month, either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both.<sup>6</sup>

At this time, the Exchange proposes to increase the QCC Growth Tier Rebates. The Exchange proposes to increase the current \$0.20 per contract rebate to \$0.22 per contract provided the QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the

<sup>5</sup> The term “Open Outcry Floor Transaction” includes all transactions executed in open outcry on Phlx’s trading floor except: (1) dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions as defined in this Options 7, Section 4; (2) Cabinet Transactions as defined in Options 8, Section 33; and (3) Customer-to-Customer transactions.

<sup>6</sup> The QCC Growth Tier Rebate is available through July 31, 2023.

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

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

other side. Further, the Exchange proposes to increase the current \$0.26 per contract rebate to \$0.27 per contract provided the QCC Order 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 increased rebates will incentivize members and member organizations to engage in substantial amounts of trading activity which would serve to bring additional open outcry liquidity to the trading floor and additional QCC Order Flow to Phlx. Also, this incentive should continue to encourage members and member organizations to commence sending such order flow to Phlx for the opportunity to earn this rebate until the program expires.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</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 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.”<sup>9</sup>

Likewise, in *NetCoalition v. Securities and Exchange Commission*<sup>10</sup> (“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.<sup>11</sup> 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.”<sup>12</sup>

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’ . . . .”<sup>13</sup> 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 increase the current \$0.20 per contract rebate to \$0.22 per contract, provided the QCC Order 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 reasonable because the Exchange believes that the increased rebate will encourage members and member organizations to earn larger QCC rebates by executing a larger amount of floor transactions, QCC transaction volume, and Open Outcry Floor Transaction volume on Phlx’s trading floor during the remaining months of the program.

The Exchange’s proposal to increase the current \$0.20 per contract rebate to \$0.22 per contract, provided the QCC Order 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 equitable and not unfairly discriminatory because all members and member organizations may qualify for this rebate, provided they transact the requisite volume.

The Exchange’s proposal to increase the current \$0.26 per contract rebate to \$0.27 per contract, provided the QCC Order 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 believes that the increased rebate will encourage members and member

organizations to earn larger QCC rebates by executing a larger amount of floor transactions, QCC transaction volume, and Open Outcry Floor Transaction volume on Phlx’s trading floor during the remaining months of the program.

The Exchange’s proposal to increase the current \$0.26 per contract rebate to \$0.27 per contract, provided the QCC Order 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 all members and member organizations may qualify for this rebate, provided they transact the requisite volume.

## 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 increase the current \$0.20 per contract rebate to \$0.22 per contract, provided the QCC Order 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, does not impose an undue burden on intra-market competition because all members and

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>9</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>10</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>11</sup> See *NetCoalition*, at 534–535.

<sup>12</sup> *Id.* at 537.

<sup>13</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)).

member organizations may qualify for this rebate, provided they transact the requisite volume.

The Exchange's proposal to increase the current \$0.26 per contract rebate to \$0.27 per contract, provided the QCC Order 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 intra-market competition because all members and member organizations may qualify for this rebate, provided they transact the requisite volume.

*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>14</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-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-PHLX-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 (<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 business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-PHLX-2023-15 and should be submitted on or before May 30, 2023.

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

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-09756 Filed 5-8-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2023-0003]

### Notice of Fee Increase for Our Electronic Consent Based Social Security Number Verification Service

**AGENCY:** Social Security Administration.

**ACTION:** Notice of fee increase.

**SUMMARY:** The Social Security Administration (SSA) is announcing a change in the subscription tier structure and associated fees for the electronic Consent Based Social Security Number (SSN) Verification (eCBSV) service. In

accordance with statutory requirements, a permitted entity (PE) is required to provide payment to reimburse SSA for the development and support of the eCBSV system.

**DATES:** *Applicability date for fee increase:* The revised subscription tier structure and associated fees will go into effect for subscription payments made on or after July 10, 2023.

**FOR FURTHER INFORMATION CONTACT:** Christopher David, Office of Data Exchange, Policy Publications, and International Negotiations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (866) 395-8801, email [eCBSV@ssa.gov](mailto:eCBSV@ssa.gov).

For information on eligibility or filing for benefits, call SSA's national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit SSA's internet site, Social Security Online, at <https://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** Section 215 of the Economic Growth, Regulatory Relief, and Consumer Protection Act<sup>1</sup> (the Banking Bill) directs SSA to modify or develop a database for accepting and comparing fraud protection data<sup>2</sup> provided electronically by a PE.<sup>3</sup> In response to this statutory directive, SSA created eCBSV, a fee-based SSN verification service. eCBSV allows PEs to submit, based on the number holder's consent,<sup>4</sup> the SSN, name, and date of birth of the number holder in connection with a credit transaction or a circumstance described in section 604 of the Fair Credit Reporting Act to SSA

<sup>1</sup> Public Law 115-174, codified at 42 U.S.C. 405b.

<sup>2</sup> The Banking Bill defines "Fraud Protection Data" to mean a combination of an individual's name (including the first name and any family forename or surname), SSN, and date of birth (including month, day, and year). Public Law 115-174, title II, 215(b)(3), codified at 42 U.S.C. 405b(b)(3).

<sup>3</sup> The Banking Bill defines a "permitted entity" to mean a financial institution or service provider, subsidiary, affiliate, agent, subcontractor, or assignee of a financial institution. Public Law 115-174, title II, 215(b)(4), codified at 42 U.S.C. 405b(b)(4). They must possess an Employer Identification Number and a Dun and Bradstreet number.

<sup>4</sup> Under the eCBSV User Agreement, valid Written Consent must meet the requirements of applicable Federal law, SSA's regulations, and section IV of the eCBSV User Agreement. Valid Written consent must include a wet or electronic signature. Section IV.A.1. eCBSV User Agreement. Electronic signatures must meet the definition in section 106 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006). 42 U.S.C. 405b(f)(2); section IV.E. eCBSV User Agreement. The written consent must clearly specify to whom the information may be disclosed, the information you want us to disclose (e.g., SSN verification) and, where applicable, during which timeframe the information may be disclosed (e.g., whenever the subject individual is receiving specific services). 20 CFR 401.100.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 200.30-3(a)(12).