

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100135; File No. SR–Phlx–2024–20]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7, Section 3 To Increase SPY Rebates

May 14, 2024.

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, 2024, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, Section 3 to increase SPY rebates.

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

The purpose of the proposed rule change is to amend the Pricing Schedule

at Options 7, Section 3 to increase the Simple Order Rebate for Adding Liquidity in SPY that is currently provided to Lead Market Makers<sup>3</sup> and Market Makers.<sup>4</sup>

Today, the Exchange pays Lead Market Makers and Market Makers a Simple Order Rebate for Adding Liquidity in SPY. The rebate is paid based on a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products (“TCV”). Rebates are currently paid on electronically executed Lead Market Maker and Market Maker Simple Order contracts per day in a month in SPY. Today, Lead Market Makers and Market Makers are paid per the highest tier achieved as follows:

Tiers	Adds liquidity in SPY as a percentage of TCV	Rebate for adding liquidity
1	up to 0.02%	\$0.12
2	up to 0.04%	0.15
3	up to 0.10%	0.18
4	up to 0.20%	0.24
5	up to 0.40%	0.27
6	greater than 0.40%	0.32

The Exchange now proposes to increase the Tier 5 rebate from \$0.27 to \$0.28 per contract and the Tier 6 rebate from \$0.32 to \$0.34 per contract. The Exchange is increasing the Tier 5 and Tier 6 rebates without changing the current tier qualifications so that Lead Market Makers and Market Makers can submit the same amount of liquidity adding volume in SPY as they do today to receive the higher rebates proposed above. The Exchange believes that the proposed changes will incentivize Lead Market Makers and Market Makers to provide greater liquidity in SPY to receive the higher rebates, which benefits all market participants through the quality of order interaction.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

<sup>3</sup> The term “Lead Market Maker” applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). 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.

<sup>4</sup> The term “Market Maker” is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers.

of the Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</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 Exchange's 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 securities 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*,

the D.C. Circuit stated as follows: “[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>7</sup>

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>8</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>7</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

<sup>8</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

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

<sup>2</sup> 17 CFR 240.19b–4.

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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that its proposal to increase the Tier 5 and Tier 6 Simple Order Rebates for Adding Liquidity in SPY that will be provided to qualifying Lead Market Makers and Market Makers is reasonable because the proposed changes are designed to attract more liquidity in SPY to Phlx to the benefit of all market participants. As discussed above, the Exchange is proposing to increase the Tier 5 rebate from \$0.27 to \$0.28 per contract and the Tier 6 rebate from \$0.32 to \$0.34 per contract without changing the current tier qualifications so that Lead Market Makers and Market Makers can submit the same amount of liquidity adding volume in SPY as they do today to receive the higher proposed rebates. Because SPY is the most actively traded symbol on Phlx, the Exchange believes that further incentivizing Lead Market Makers and Market Makers to add liquidity in this symbol will have a significant and beneficial impact on market quality on Phlx.

The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory as all qualifying Lead Market Makers and Market Makers would be eligible to receive the increased Tier 5 and Tier 6 Simple Order Rebates for Adding Liquidity in SPY. Furthermore, the Exchange continues to believe that it is not unfairly discriminatory to offer certain incentive programs (like the rebates discussed in this proposal) to only Lead Market Makers and Market Makers. Lead Market Makers and Market Makers add value through continuous quoting<sup>9</sup> and are subject to additional requirements and obligations<sup>10</sup> that other market participants are not. Incentivizing Lead Market Makers and Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not believe that its proposal puts any category of market participant at a competitive disadvantage. As described above, while the proposed SPY rebates will apply to only Lead Market Makers and Market Makers, the Exchange believes that incentivizing Lead Market Makers and Market Makers to provide greater liquidity in SPY benefits all market participants through the quality of order interaction.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to 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. 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.<sup>11</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-2024-20 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-2024-20. 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

<sup>9</sup> See Options 2, Section 5.

<sup>10</sup> See Options 2, Section 4.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

SR–Phlx–2024–20 and should be submitted on or before June 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100138; File No. SR–MRX–2024–11]

### Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 6

May 14, 2024.

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, 2024, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the Securities and Exchange Commission (“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 Rules at Options 7, Section 6.<sup>3</sup>

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/mrx/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

The Exchange proposes to amend Options 7, Section 6, Ports and Other Services. Specifically, the Exchange proposes to amend the monthly caps for SQF Ports<sup>4</sup> and SQF Purge Ports.<sup>5</sup>

Today, MRX assesses \$1,250 per port, per month for an SQF Port as well as an SQF Purge Port. Today, MRX waives one SQF Port fee per Market Maker per month. Also, today, SQF Ports and SQF Purge Ports are subject to a monthly cap of \$17,500, which cap is applicable to Market Makers.

At this time, the Exchange proposes to establish an increased SQF Fee and SQF Purge Port Cap to Primary Market Makers and Market Makers that do not

<sup>4</sup> “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying and complex instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the (i) Order Price Protection, Market Order Spread Protection, and Size Limitation Protection in Options 3, Section 15(a)(1)(A), (1)(B), and (2)(B) respectively, for single leg orders, or (ii) Complex Order Price Protection as defined in Options 3, Section 16(c)(1) for Complex Orders. See Supplementary Material .03(c) to Options 3, Section 7.

<sup>5</sup> SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. Dedicated SQF Purge Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be utilized by a Market Maker in the event that the Member has a system issue and determines to purge its quotes from the order book.

provide a minimum amount of liquidity on MRX. This proposed increased SQF Fee and SQF Purge Port Cap is intended to incentivize Primary Market Makers and Market Makers to add liquidity on MRX for the benefit of other market participants in order to lower their fees. MRX proposes to increase the SQF Port and SQF Purge Port Cap to \$27,500 a month if a Primary Market Maker or Market Maker does not transact 0.50% of Total Customer Volume in electronic simple orders that adds liquidity in a month.<sup>6</sup> Today, MRX caps an SQF Port and SQF Purge Port at \$17,500 a month. With this proposal, the Exchange would not assess Primary Market Makers and Market Makers an SQF Port and SQF Purge Port Cap beyond the monthly cap of \$27,500, instead of \$17,500, once the Member has exceeded the proposed port cap for the respective month. Primary Market Makers and Market Makers who transacts 0.50% of Total Customer Volume in electronic simple orders that adds liquidity in a month will continue to be subject to the \$17,500 SQF Port and SQF Purge Port Cap.

Pursuant to Supplementary Material .03(c) to Options 3, Section 7, Market Makers may only enter interest into SQF in their assigned options series.

Pursuant to Supplementary Material .03(c) to Options 3, Section 7, the SQF interface allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. An SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. A MRX Market Maker requires only one SQF Port to submit quotes in its assigned options series into MRX. While a Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,<sup>7</sup> only one SQF Port and SQF Purge Port is necessary for a Market Maker to fulfill its regulatory quoting obligations.<sup>8</sup>

<sup>6</sup> For purposes of this cap, “Total Customer Volume” shall be defined as a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products (“TCV”).

<sup>7</sup> For example, a Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

<sup>8</sup> MRX Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, MRX Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on MRX and only Market Makers may utilize SQF Ports. The same is true for SQF Purge Ports.

<sup>12</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> The Exchange initially filed the proposed pricing changes on November 28, 2023 (SR–MRX–2023–23) to be effective on December 1, 2023. On December 5, 2023, the Exchange withdrew SR–MRX–2023–23 and replaced it with SR–MRX–2023–25. On January 16, 2023, the Exchange withdrew SR–MRX–2023–25 and submitted SR–MRX–2024–02. On March 7, 2024, the Exchange withdrew SR–MRX–2024–02 and submitted SR–MRX–2024–07. On May 1, 2024, the Exchange withdrew SR–MRX–2024–07 and submitted this filing.