

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend FINRA Fees

November 15, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on November 5, 2021, Nasdaq PHLX LLC (“Phlx” 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 Phlx’s Pricing Schedule at Equity 7, Section 4, Membership Fees, and Options 7, Section 9, Other Member Fees, to reflect adjustments to FINRA Registration Fees and Fingerprinting Fees.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on January 2, 2022.⁴

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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR-FINRA-2020-032) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adjust FINRA Fees To Provide Sustainable Funding for FINRA's Regulatory Mission).

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

This proposal amends Phlx's Schedule at Equity 7, Section 4, Membership Fees, and Options 7, Section 9, Other Member Fees, to reflect adjustments to FINRA Registration Fees and Fingerprinting Fees.⁵ The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of Phlx members that are not FINRA members ("Non-FINRA members"). The Exchange is merely listing these fees on its Pricing Schedule. The Exchange does not collect or retain these fees.

Options 7

Today, Phlx Options 7, Section 9C, provides a list of FINRA Fees. The Exchange proposes to amend Options 7, Section 9C to: (1) add the title "General Registration Fees:"; (2) indicate "CRD" is the "Central Registration Depository" or "CRD"; and (3) remove the numbering from (1) to (3).

With respect to the General Registration Fees, the Exchange proposes to increase the \$100 fee to \$125 for each initial Form U4 filed for the registration of a representative or principal. This amendment is made in accordance with a recent FINRA rule change to adjust to

⁵ FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

its fees.⁶ The Exchange also proposes to amend the description of the \$45 registration fee from “annually for each of the member's registered representatives and principals for system processing” to “FINRA Annual System Processing Fee Assessed only during Renewals.” The proposed new title is more precise.

With respect to the fingerprint processing fees, the Exchange notes that the current fees do not reflect the fees assessed by FINRA today. The Exchange proposes to amend the current fees to reflect the current fees that are assessed by FINRA. The proposed new rule text, with the title, “Fingerprint Processing Fees:” added, would provide,

Fingerprint Processing Fees:

\$29.50-Initial Submission (Electronic)

\$44.50-Initial Submission (Paper)

\$15.00-Second Submission (Electronic)

\$30.00-Second Submission (Paper)

\$29.50-Third Submission (Electronic)

\$44.50-Third Submission (Paper)

\$30.00-FINRA Processing Fee for Fingerprint Results Submitted by Self-Regulatory Organizations other than FINRA.

In 2012, FINRA only offered one set of fees (\$27.50 for the initial submission, \$13.00 for the second submission, and \$27.50 for the third submission). In 2013, FINRA amended its fingerprint fees and offered two sets of fees. For fingerprints submitted on paper card, the fees are \$44.50 per initial submission, \$30.00 per second submission, and \$44.50 per third submission. For fingerprints submitted electronically, the fees are \$29.50 per initial submission,

⁶ Id. FINRA noted in its rule change that it was adjusting its fees to provide sustainable funding for FINRA’s regulatory mission.

\$15.00 per second submission, and \$29.50 per third submission.⁷ By updating the fingerprinting fees, the Exchange would properly reflect the fees assessed today by FINRA.⁸

The Exchange is deleting the fees noted within current Options 7, Section 9C at (4) – (7).⁹ These fingerprint fees, which are proposed to be deleted, were superseded by the FINRA fingerprinting fees which were adopted in 2013.

⁷ See Securities Exchange Act Release No. 67247 (June 25, 2012) 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Sections 4 and 6 of Schedule A to the FINRA By-Laws Regarding Fees Relating to the Central Registration Depository). FINRA notes in this rule change that it is proposing a two-tiered fingerprint processing fee structure in part to reflect that the costs associated with processing fingerprints submitted via a hard copy fingerprint card are much higher than those that are submitted electronically. Specifically, fingerprints submitted by a hard copy card require additional processing by FINRA, including adding a barcode, if necessary, to the card for tracking purposes; scanning the fingerprints and converting them to a digital image for submission to the FBI; and, for first-time registrants, entering the individual's personal and demographic information into the CRD system. FINRA noted that members will be able to choose how they submit their associated persons' fingerprints and therefore will have some control over the fees they incur for fingerprint processing. FINRA also noted an FBI Fee of \$11.25 is assessed as well.

⁸ See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

⁹ The Exchange proposes to delete the following rule text:

(4) \$15 for processing and posting to the CRD system each set of fingerprints submitted electronically by the member, plus a pass-through of any other charge imposed by the United States Department of Justice for processing each set of fingerprints;

(5) \$30 for processing and posting to the CRD system each set of fingerprint cards submitted in non-electronic format by the member to FINRA, plus any other charge that may be imposed by the United States Department of Justice for processing each set of fingerprints;

(6) \$30 for processing and posting to the CRD system each set of fingerprint results and identifying information that has been processed through a self-regulatory organization other than FINRA; and

(7) \$110 for the additional processing of each initial or amended Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings.

The FINRA Web CRD Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

The Exchange also proposes to update a rule citation within the Continuing Education Fees from “General 4, Section 1.1240” to “General 4, Section 1240.”

Equity 7

The Exchange also proposes to amend Equity 7, Section 4, Membership Fees, to add a new section “B” titled “Regulatory, Registration, and Processing Fees.” This new section “B” would inform PSX members that applicable FINRA fees are located within Options 7, Section 9C. Members of Phlx may elect to become PSX only members, therefore this new rule text would provide information to those members regarding FINRA Fees. The Exchange proposes to state, “A list of fees that will be collected and retained by FINRA via the Web CRD registration system for the registration of associated persons of Exchange members that are not also FINRA members is available within Options 7, Section 9C.”

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Options 7

The Exchange believes it is reasonable to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 in accordance with an adjustment

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

to FINRA's fees.¹² The Exchange's rule text will reflect the current registration rate that will be assessed by FINRA as of January 2, 2022. Amending the title of the \$45 fee to be more precise will provide greater transparency to this fee. Updating FINRA's fingerprint processing fees to reflect the current charges will bring greater transparency to these charges that are currently assessed and collected by FINRA. The proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons. These costs are borne by FINRA when a Non-FINRA member uses Web CRD.

The Exchange believes that its proposal to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 is equitable and not unfairly discriminatory as the amendment will reflect the current fee that will be assessed by FINRA to all members who require Form U4 filings as of January 2, 2022. Amending the title of the \$45 fee to be more precise will provide greater transparency to this fee. Updating the fingerprint processing fees to reflect the current fees is equitable and not unfairly discriminatory as FINRA currently assesses these rates to all members. Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Equity 7

The Exchange's proposal to amend Equity 7, Section 4, Membership Fees, to add a new section "B" titled "Regulatory, Registration, and Processing Fees" that informs members of applicable FINRA Fees is reasonable. This new section "B" would inform PSX members that applicable FINRA fees are located within Options 7, Section 9C. Members of Phlx may elect to become PSX only members. The proposed rule text would provide information to those members regarding FINRA Fees.

¹² See note 3 above.

The Exchange's proposal to amend Equity 7, Section 4, Membership Fees, to add a new section "B" titled "Regulatory, Registration, and Processing Fees" that informs members of applicable FINRA Fees is equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

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.

Options 7

The Exchange believes that its proposal to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 does not impose an undue burden on competition as the amendment will reflect the current fee that will be assessed by FINRA to all members who require Form U4 filings as of January 2, 2022. Amending the title of the \$45 fee to be more precise will provide greater transparency to this fee. Updating the fingerprint processing fees to reflect the current fees does not impose an undue burden on competition as FINRA currently assesses these rates to all members. Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Equity 7

The Exchange's proposal to amend Equity 7, Section 4, Membership Fees, to add a new section "B" titled "Regulatory, Registration, and Processing Fees" that informs members of applicable FINRA Fees does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

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.¹³

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 e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2021-68 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-Phlx-2021-68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2021-68, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-25229 Filed: 11/18/2021 8:45 am; Publication Date: 11/19/2021]

¹⁴ 17 CFR 200.30-3(a)(12).