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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99268; File No. SR-Phlx-2023-58]

### **Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Schedule of Fees at Equity 7, Section 3**

January 3, 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 December 21, 2023, 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 the Exchange’s schedule of fees at Equity 7, Section 3.

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

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

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*

On December 13, 2023, PHLX experienced a technical issue with its RASH order handling system. The issue involved a duplication of an internal order identification numbers, which impacted a subset of orders for some members, including unacknowledged orders, an inability to cancel open orders, intermittent port disconnects, missing execution reports, and mismatched execution reports.

Because PHLX's fee and rebate schedule in Equity 7, Section 3 provide that member organizations may achieve better pricing if they achieve certain specified volumes of activity during a given month (as measured by Consolidated Volume (defined below) and Average Daily Volume ("ADV")), the RASH issue may have impacted the ability of affected member organizations to reach the required volumes. By way of illustration, a member with shares of liquidity provided in all securities through one of its

market participant identifiers (“MPIDs”) that represent more than 0.15% of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities in equity securities of at least one round lot (“Consolidated Volume”) during a month receives a rebate of \$0.0033 per share executed with respect to liquidity that it provides during the month through displayed orders. By contrast, member organizations providing lower volumes of liquidity receive lower rebates ranging from \$0.0032-\$0.0020 per share executed. If a member organization had provided liquidity that represented slightly in excess of 0.15% of Consolidated Volume on each day of December 2023 other than December 13, but was prevented from reaching comparable levels on that date due to the RASH issue, it is possible that the rebate it would ultimately earn for the entire month would be lower than would otherwise have been the case.

Accordingly, in order to ensure that fees and rebates are not adversely impacted by the RASH issue, PHLX proposes to exclude December 13, 2023 from calculations of Consolidated Volume and ADV made under Equity 7, Section 3 if doing so would allow a member organization to achieve more favorable pricing than would be the case if the day were included. Thus, member organizations that are unaffected by the RASH issue would not have the day arbitrarily excluded from their calculations. PHLX will perform all calculations needed to implement the change.

## 2. *Statutory Basis*

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>4</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among member organizations and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

PHLX believes that the proposed change is reasonable because it will allow member organizations to receive December 2023 pricing that is based on either the exclusion, or the inclusion, of December 13, whichever is more favorable to the member organization. The proposed change is equitable and not unfairly discriminatory, because it will ensure that the fees and rebates applicable to member organizations that were subject to the RASH issue are not adversely affected by the issue.

### 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. The change will help to ensure that member organizations that were affected by the RASH issue are not required to pay higher fees, or receive lower rebates, during December 2023 than would otherwise be the case. Accordingly, PHLX believes that the

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<sup>3</sup> 15 U.S.C. 78f(b).

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

proposed changes will protect member organizations from incurring unanticipated charges.

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>5</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:

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

*Electronic Comments:*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-Phlx-2023-58 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-2023-58. 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-Phlx-2023-58 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.<sup>6</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024-00177 Filed: 1/8/2024 8:45 am; Publication Date: 1/9/2024]

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<sup>6</sup> 17 CFR 200.30-3(a)(12).