proposed rule change.[5] On May 18, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On June 13, 2022, Exchange filed Amendment No. 1 to the proposed rule change, which supersedes the original filing in its entirety.[8] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[9] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[10] The proposed rule change was published for notice and comment in the **Federal Register** on February 23, 2022.[11] August 22, 2022, is 180 days from that date, and October 21, 2022, is 240 days from that date.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates October 21, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 1 (File No. SR–NASDAQ–2022–015).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–17221 Filed 8–10–22; 8:45 am]

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[5] *See* Securities Exchange Act Release No. 94471, 87 FR 16778 (March 24, 2022). The Commission designated May 24, 2022, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 94941, 87 FR 31594 (May 24, 2022).

[8] In Amendment 1, the Exchange: (i) clarified the purpose and rationale of the proposed rule change; and (ii) made technical changes to improve the structure, clarity and readability of the proposed rule. The full text of Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2022-015/srnasdaq2022015-20131121-301311.pdf.*

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] *See* Notice, *supra* note 3.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–95442; File No. SR–NYSE–2022–36]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the NYSE Equities Proprietary Market Data Fees To Adopt a Professional User Fee Cap and an Enterprise Fee for Broker-Dealer Subscribers of NYSE OpenBook

August 5, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 1, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 self-regulatory organization. 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 the NYSE Equities Proprietary Market Data Fees (''Fee Schedule'') to establish a Professional User Fee Cap and an Enterprise Fee for Broker-Dealer subscribers of NYSE OpenBook. The proposed rule change is available on the Exchange's website at *www.nyse.com,* 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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes changes to the Fee Schedule to establish a Professional User Fee Cap and an Enterprise Fee for Broker-Dealer subscribers of NYSE OpenBook. The Exchange proposes to make these fee changes operative on August 1, 2022.

The Exchange currently offers a Non-Professional User Fee Cap for broker-dealers that are subscribers of NYSE OpenBook at $25,000 per month.[4] To illustrate the application of the Non-Professional User Fee Cap, absent the fee cap, a broker-dealer with 2,500 external non-professional users who receives NYSE OpenBook would pay $37,500 per month in professional user fees (2,500 users at $15 per month).[5] This broker-dealer's fees, however, are currently capped at $25,000 per month.

With this proposed rule change, the Exchange proposes to establish a Professional User Fee Cap for broker-dealers that are subscribers of NYSE OpenBook at $35,000 per month for internal and external professional users to whom the broker-dealer may redistribute NYSE OpenBook data. To illustrate the application of the proposed Professional User Fee Cap, a broker-dealer with 5,000 professional users who receives NYSE OpenBook would pay $300,000 per month in professional user fees (5,000 users at $60 per month per user).[6] However, the operation of the proposed cap would cause this broker-dealer's professional user fees to drop to $35,000 per month. Subscribers with more than 583 professional users would significantly

[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. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (Order Approving Proposed Rule Change To Introduce a NYSE OpenBook Nonprofessional Subscriber Fee). The Non-Professional User Fee Cap applies to external users of a broker-dealer subscriber.

[5] The non-professional user fee for broker-dealer subscribers of NYSE OpenBook is $15 per month per user. *See* Fee Schedule, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.*

[6] The professional user fees for broker-dealer subscribers of NYSE OpenBook is $60 per month per user. *See* Fee Schedule, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.*

benefit as they would pay less than they would absent the proposed fee cap.

Subscribers whose fees are capped are required to count and report to the Exchange the total number of professional and non-professional users that are permissioned to receive the data.

Additionally, as part of the Exchange's efforts to ease administrative burdens on its customers, the Exchange proposes to adopt an Enterprise Fee for broker-dealers that are subscribers of NYSE OpenBook at $60,000 per month. The proposed fee is the sum of the Non-Professional User Fee Cap of $25,000 per month and the proposed Professional User Fee Cap of $35,000 per month. To illustrate the application of the proposed Enterprise Fee, a broker-dealer with a total of 5,000 internal professional users and 2,500 external non-professional users, would currently be capped at $60,000 per month ($25,000 per month under the Non-Professional User Fee Cap plus $35,000 per month under the proposed Professional User Fee Cap). This broker-dealer would also not be required to count and report to the Exchange the number of professional and non-professional users.

Applicability of Proposed Rule Change

The purpose of the Professional User Fee Cap for broker-dealer subscribers who redistribute NYSE OpenBook to professional users is to offer an additional subscription method that would limit the amount of fees paid by such subscriber. The Exchange notes that fee caps have long been accepted as an economically efficient form of volume discount for the heaviest users of market data and would allow for a broad dissemination of the Exchange's market data product. The concept of adopting a fee cap applicable to broker-dealer subscribers is not novel.[7] The Exchange currently has a Non-Professional Fee Cap applicable to broker-dealers that subscribe to NYSE OpenBook.[8]

The purpose of the Enterprise Fee is to offer customers an additional subscription method without imposing any new or higher fees, and to lower the administrative burden on broker-dealer subscribers by not requiring the broker-dealer to count and report to the Exchange the number of professional users and non-professional users separately. The Exchange believes eliminating the distinction between professional users and non-professional users in a brokerage relationship will lessen current distinctions among broker-dealers. As proposed, all broker-dealers that choose to utilize the enterprise license will be treated the same in that each broker-dealer that chooses an enterprise license would pay the same amount of the fee without having to count and report the number of professional users and non-professional users separately. With the proposed fee change, a broker-dealer subscriber could choose an enterprise license and would continue to pay the same amount as it does today and would be able to provide NYSE OpenBook to internal and external professional and non-professional users at no additional cost. The proposed change will not increase any fee or charge to current subscribers.

The proposed Enterprise Fee for NYSE OpenBook will result in a fee reduction for broker-dealer subscribers with sufficiently large numbers of professional and non-professional users, as described in the example above. Broker-dealers that purchase NYSE OpenBook typically have thousands of users. If a broker-dealer subscriber has a smaller number of professional and/or non-professional users of NYSE OpenBook, then it may continue to use the per user fee structure and the fees it pays will not change. By providing an enterprise license for broker-dealers with a large number of professional and non-professional users, the Exchange believes that more broker-dealers may choose to offer NYSE OpenBook, thereby expanding the distribution of this market data for the benefit of investors. The Exchange also believes that offering an enterprise license expands the range of options for offering NYSE OpenBook and would allow broker-dealers greater choice in selecting the most appropriate level of data and fees for the professional and non-professional users they are servicing. As noted above, the concept of adopting an enterprise license fee is not novel.[9] In addition, the Exchange currently has an enterprise license applicable to subscribers to NYSE BBO and NYSE Trades market data feeds.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, 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.''[13]

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC* upheld the Commission's reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system ''evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed'' and that the SEC wield its regulatory power ''in those situations where competition may not be sufficient,'' such as in the creation of a ''consolidated transactional reporting system.''[14]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[15]

More recently, the Commission confirmed that it applies a ''market-

[7] *See e.g.,* Section 123(c) Enterprise License Fees for Nasdaq Depth-of-Book Data at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Equity%207.*

[8] *See* NYSE Equities Proprietary Market Data Fees at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.*

[9] *See e.g.,* Section 123(c) Enterprise License Fees for Nasdaq Depth-of-Book Data at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Equity%207.*

[10] *See* NYSE Equities Proprietary Market Data Fees at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4), (5).

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule).

[14] *NetCoalition* v. *SEC,* 615 F.3d 525, 535 (D.C. Cir. 2010) (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323).

[15] *Id.* at 535.

based'' test in its assessment of market data fees, and that under that test:

the Commission considers whether the exchange was subject to significant competitive forces in setting the terms of its proposal for [market data], including the level of any fees. If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless there is a substantial countervailing basis to find that the terms of the rule violate the Act or the rules thereunder.[16]

More specifically, the proposed rule change will expand competition by providing customers an additional subscription method (without imposing any new or higher fees) that would cap their fees and reduce the administrative burden of counting and reporting to the Exchange the number of professional and non-professional users. With this proposed rule change, customers will have the ability to choose which subscription options suits its needs best. For the broker-dealers who have a large user base of professionals and non-professionals, the ability to subscribe to an enterprise license would eliminate the burden of counting and reporting users, as well as the burden to validate the non-professional user status to ensure accurate non-professional user count. The enterprise license would also cap the broker-dealer's device fees for NYSE OpenBook at the enterprise rate. If a current broker-dealer subscriber has a smaller number of professional and/or non-professional users of NYSE OpenBook, then it may continue to use the per user fee structure and the fees it pays will not change or increase. As proposed, all broker-dealers that choose to utilize the proposed enterprise license would pay the same amount of the fee without having to count and report the number of professional users and non-professional users separately and will not need to validate non-professional user status.

The Exchange notes that NYSE OpenBook is entirely optional. The Exchange is not required to make NYSE OpenBook available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE OpenBook. Unlike some other data products (*e.g.,* the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,[17] a customer's decision whether to purchase any of the Exchange's proprietary market data feeds is entirely discretionary. Firms that do purchase NYSE OpenBook do so for the primary goals of using the data feed to increase profits, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE OpenBook or any other similar products are attractively priced or not.

Firms that do not wish to purchase NYSE OpenBook have a variety of alternative market data products from which to choose. For example, the Nasdaq Stock Market (''Nasdaq'') provides an enterprise license for the dissemination of Nasdaq TotalView, which competes with NYSE OpenBook. More specifically, Nasdaq provides broker-dealer subscribers an enterprise license that permits internal and external distribution to both professional and non-professional users for a monthly fee of $500,000.[18] Alternatively, if NYSE OpenBook does not provide sufficient value to firms as offered based on the uses those firms have or planned to make of it, such firms may simply choose to conduct their business operations in ways that do not use NYSE OpenBook or use them at different levels or in different configurations.

In setting the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The existence of numerous alternatives to the Exchange's offering, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees when subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular data recipient would achieve through the purchase.

*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 that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the proposed rule change will expand competition by providing customers with an additional subscription method that would reduce their administrative burden and cap their fees. Customers that choose to purchase the proposed enterprise license will benefit from the ability to grow their use base without paying additional incremental fees, reduced administrative burden by eliminating the need to validate non-professional user status, and eliminating the need to count and report the number of professional and/or non-professional users. Customers with a small number of professional and non-professional users can continue to use the per user fee structure and the fees it pays will not change.

*Intramarket Competition.* The Exchange believes that the proposed rule change does not put any market participant at a relative disadvantage compared to other market participants. As noted above, the proposed fee schedule would apply to all subscribers of NYSE OpenBook, and customers may not only choose whether to subscribe to the feed at all but may tailor their subscription to include only the products and uses that they deem suitable for their business needs. The Exchange also believes that the proposed rule change neither favors nor penalizes one or more categories of market participants in a manner that would impose an undue market on competition.

*Intermarket Competition.* The Exchange believes that the proposed rule change does not impose a burden on competition on other exchanges that is not necessary or appropriate; indeed, the Exchange believes the proposal would have the effect of increasing competition by offering customers additional subscription choices. In setting fees at issue here, the Exchange is constrained by the fact that, if its pricing is unattractive to customers, customers will have their pick of an increasing number of alternative venues to use instead of the Exchange. Given this competition, no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

[16] *See* Securities Exchange Act Release No. 34–90217 (October 16, 2020), 85 FR 67392 (October 22, 2020) (SR–NYSENAT–2020–05) (Order Approving a Proposed Rule Change to Establish Fees for the NYSE National Integrated Feed) (internal quotation marks omitted), quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (NYSE ArcaBook Approval Order).

[17] The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. *See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations,* Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

[18] *See* Nasdaq TotalView, Enterprise License Option, available at *http://www.nasdaqtrader.com/Trader.aspx?id=DPUSData.*

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [19] of the Act and subparagraph (f)(2) of Rule 19b–4 [20] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change 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.* Please include File Number SR–NYSE–2022–36 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–NYSE–2022–36. 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. 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–NYSE–2022–36 and should be submitted on or before September 1, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–17226 Filed 8–10–22; 8:45 am]

**BILLING CODE 8011–01–P**

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(2).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–95435; File No. SR–Phlx–2022–32]**

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Expiration Date of the Temporary Amendments Concerning Video Conference Hearings

August 5, 2022.

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 July 26, 2022, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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 extend the expiration date of the temporary amendments in SR–Phlx–2020–53 from July 31, 2022, to October 31, 2022.[4] The proposed rule change would not make any changes to the text of the Exchange rules.

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 Exchange proposes to continue to harmonize Exchange Rule General 3, Section 16 with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA'') to its Rule 1015 in response to the COVID–19 global health crisis and the corresponding need to restrict in-person

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] If the Exchange seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond October 31, 2022, the Exchange will submit a separate rule filing to further extend the temporary extension of time. The amended Exchange rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.