

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2:00 p.m. on Thursday, December 21, 2023.

**PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

#### MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;

- Institution and settlement of administrative proceedings;

- Resolution of litigation claims; and

- Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

#### CONTACT PERSON FOR MORE INFORMATION:

For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

(Authority: 5 U.S.C. 552b.)

Dated: December 14, 2023.

**Vanessa A. Countryman,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99141; File No. SR-Phlx-2023-55]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fees for Options on the Nasdaq 100 Index in the Exchange's Pricing Schedule at Options 7

December 12, 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 November 30, 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 the fees for Nasdaq 100 Index options in the Exchange's Pricing Schedule at Options 7, Section 5A. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on December 1, 2023.

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.

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

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

### 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 fees for NDX<sup>3</sup> and NDXP.<sup>4</sup> As set forth in Options 7, Section 5A, the Exchange currently charges all Non-Customer<sup>5</sup> orders in NDX and NDXP a \$0.75 per contract transaction fee. Customer<sup>6</sup> orders receive free executions in NDX and NDXP today. These transaction fees apply to electronic simple and complex executions as well as floor transactions.

The Exchange now proposes to begin assessing Customer NDX and NDXP orders a \$0.25 per contract transaction fee. The Exchange notes that the proposed fee amount is in line with customer transaction fees assessed on other index products.<sup>7</sup> The Exchange also proposes to assess a surcharge of \$0.50 per contract to all Non-Customer complex executions in NDX and NDXP, and a surcharge of 0.25 per contract to all Customer complex executions in NDX and NDXP.<sup>8</sup> The Exchange notes that the proposed surcharge amounts are within the range of various surcharges assessed at another options exchange.<sup>9</sup>

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5)

<sup>3</sup> NDX represents A.M.-settled options on the full value of the Nasdaq 100 Index traded under the symbol NDX.

<sup>4</sup> NDXP represents P.M.-settled options on the full value of the Nasdaq 100 Index traded under the symbol NDXP.

<sup>5</sup> The term "Non-Customer" applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs.

<sup>6</sup> The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(b)(45)).

<sup>7</sup> For example, Cboe Options ("Cboe") currently assesses a \$0.25 per contract customer transaction fee for MXEA and MXEF options, \$0.35 per contract for OEX and XEO options, and \$0.36 per contract (if premium < \$1.00) or \$0.45 per contract (if premium >= \$1.00) for SPX and SPESG options. See Cboe Fees Schedule.

<sup>8</sup> See proposed notes 5 and 6 of Options 7, Section 5.A.

<sup>9</sup> For example, Cboe currently assesses customers a \$0.25 per contract exotic surcharge and a \$0.21 per contract execution surcharge in SPX and SPESG options. Cboe also assesses non-customers a \$0.45 per contract license surcharge in RUT, and LEAPS surcharge fees in SPX ranging from \$1.00 to \$2.50 per contract, according to time-to-expiration. See Cboe Fees Schedule.

<sup>10</sup> 15 U.S.C. 78f(b).