

to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2021-052 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-CboeEDGX-2021-052. 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-CboeEDGX-2021-052, and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-27819 Filed 12-22-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93823; File No. SR-Phlx-2021-74]

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

December 17, 2021.

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 9, 2021, 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 Equity 7, Section 3 to restate the Exchange's schedule of transaction credits and charges, to eliminate the Qualified Market Maker Program (the "QMM Program"), and to eliminate the Enhanced Market Quality Program (the "EMQ Program"), as described further below. 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.

<sup>24</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.

#### 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 Equity 7, Section 3 to restate the Exchange's schedule of credits and charges, to eliminate the QMM Program, which the Exchange established in 2019 and amended in 2021,<sup>3</sup> and to eliminate the EMQ Program, which the Exchange both established and modified in 2021.<sup>4</sup> The Exchange also proposes to eliminate obsolete text from Equity 7, Section 3(a).

###### Restatement of Schedule of Credits and Charges

Pursuant to Equity 7, Section 3, and under the heading "Order Execution and Routing," the Exchange presently provides a series of credits to member organizations that enter displayed and non-displayed orders/quotes that execute on the Exchange and impose charges upon member organizations that remove liquidity from the Exchange. To the extent that member organizations satisfy additional volume-based criteria, they may qualify for credits that are higher than or charges that are lower than standard transaction rates. As part of its periodic efforts to invigorate and grow the Exchange by increasing the attractiveness and effectiveness of the incentives it offers to its member organizations, the Exchange proposes to substantially restate its schedule of credits and charges. These changes will provide increased overall rebate opportunities available to members that

<sup>3</sup> See Securities Exchange Act Release No. 34-91159 (February 18, 2021), 86 FR 11343 (February 24, 2021) (SR-Phlx-2021-09); Securities Exchange Act Release No. 34-85862 (May 15, 2019), 84 FR 23112 (May 21, 2019) (SR-Phlx-2019-19).

<sup>4</sup> See Securities Exchange Act Release No. 34-93406 (October 22, 2021), 86 FR 59767 (October 28, 2021) (SR-Phlx-2021-64); Securities Exchange Act Release No. 34-92754 (August 25, 2021), 86 FR 48789 (August 31, 2021) (SR-Phlx-2021-47).

add liquidity to the Exchange, while imposing a single flat fee for member organizations that remove liquidity from the Exchange.

Presently, member organizations that enter orders that execute on the Exchange pay the following fees: (i) \$0.0024 per share executed in securities entered by a member organization that accesses 0.055% or more of Consolidated Volume<sup>5</sup> during the month and adds 0.025% or more of Consolidated Volume during the month; (ii) \$0.0025 per share executed in securities entered by a member organization that accesses 0.01% or more of Consolidated Volume during the month and adds 5,000 shares or more to the Exchange during the month; and (iii) \$0.0030 per share executed for all other member organizations. The Exchange proposes to eliminate all but the last of these fee tiers, such that going forward, the Exchange will charge all member organizations that remove liquidity from the Exchange a flat fee of \$0.0030 per share executed. This change will allow the Exchange to reallocate its limited resources to increase incentives for adding liquidity to the Exchange—an activity it believes is needed to improve the quality of the Exchange's market.

The Exchange presently offers the following credits to member organizations that add displayed liquidity to the Exchange: (i) \$0.0026 per share executed for Quotes/Orders entered by a member organization that provides 0.10% or more of total Consolidated Volume during the month; (ii) \$0.0024 per share executed for Quotes/Orders entered by a member organization that provides 0.07% or more of total Consolidated Volume during the month; and (iii) \$0.0020 per share executed for all other quotes/orders. The Exchange proposes to restate this schedule, as follows, with the overall aims of increasing incentives for member organizations to add substantial volumes of displayed liquidity to the Exchange and providing a new incentive for member organizations to grow the extent of their liquidity adding activity relative to a baseline month.

First, the Exchange proposes modify its top \$0.0026 per share executed credit by increasing the amount of that credit to \$0.0035 per share executed. It also proposes to modify its \$0.0024 per share executed credit by: (i) Increasing the amount of the credit to \$0.0034 per share executed; (ii) decreasing the liquidity add volume threshold to qualify for the credit from 0.07% to 0.05% of Consolidated Volume; and (iii) by adding a requirement that the member organization must remove at least 0.02% of total Consolidated Volume during the month.<sup>6</sup> Third, the Exchange proposes to establish a new growth tier that will reward a member organization with a credit of \$0.0030 per share executed to the extent that it adds a daily average of at least 1 million shares of liquidity in all securities on the Exchange during the month and increases its average daily volume of quotes/orders added to the Exchange by 100% or more during the month relative to the month of October 2021. Finally, the Exchange notes that it will not change its existing baseline credit of \$0.0020 per share executed for the addition of displayed liquidity to the Exchange.

The Exchange presently offers the following credits to member organizations that add non-displayed liquidity to the Exchange: (i) A \$0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity; (ii) a \$0.0004 per share executed credit for orders entered by a member organization that provides 0.01% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; (iii) a \$0.0007 per share executed credit for orders entered by a member organization that provides 0.02% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; (iv) a \$0.0012 per share executed credit for orders entered by a member organization that provides 0.05% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; and (v) a \$0.0000 per share executed credit for other non-displayed orders that provide liquidity. The Exchange proposes to restate this schedule of credits with the aim of increasing overall incentives to

add non-displayed liquidity, while simplifying the credit structure by collapsing the schedule to three non-displayed tiers.

First, the Exchange will continue to provide a \$0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity. Second, the Exchange will continue to provide a credit to a member organization that provides 0.01% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity, but it will increase the amount of that credit from \$0.0004 to \$0.0015 per share executed. Third, the Exchange will increase from \$0.0000 to \$0.0005 the base credit it provides to member organizations that add non-displayed liquidity to the Exchange.

The proposed restatement of the Exchange's schedule of credits will focus the Exchange's limited resources to incenting member organizations to add and increase the extent to which they add liquidity to the Exchange. To the extent that this effort is successful, the Exchange hopes that additional liquidity will improve the quality of the market and help to grow it over time.

#### Elimination of the QMM Program

As set forth in Equity 7, Section 3, the QMM Program provides supplemental incentives to member organizations that qualify as "Qualified Market Makers" or "QMMs"<sup>7</sup> by making significant contribution to market quality by providing liquidity at the national best bid and offer ("NBBO")<sup>8</sup> in a large number of securities for a significant portion of the day. A QMM may be, but is not required to be, a registered market maker in any security; thus, the QMM designation does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker.

The QMM program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. In return for providing the required contribution of market-improving liquidity, the Exchange provides a QMM with the following non-cumulative supplemental credits for executions of displayed orders in securities priced at \$1 or more

<sup>5</sup> Pursuant to Equity 7, Section 3, the term "Consolidated Volume" means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member organization's trading activity, the date of the annual reconstitution of the Russell Investments Indexes is excluded from both total Consolidated Volume and the member organization's trading activity.

<sup>6</sup> By tying receipt of this liquidity adding credit to a member organization also achieving a baseline level of liquidity removal activity, the Exchange intends to continue incenting member organizations to remove liquidity even as it focuses more of its resources on adding liquidity to the Exchange.

<sup>7</sup> To be designated as a QMM, a member organization must quote at the NBBO at least 15% of the time during regular market hours in an average of at least 400 securities per day during a month.

<sup>8</sup> For purposes of the QMM Program, a member organization is deemed to quote at the NBBO in a security if one of its MPIDs has a displayed order at either the national best bid or the national best offer or both the national best bid and offer.

per share that provide liquidity on the Exchange:

1. \$0.0001 per share executed with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity; or

2. \$0.0002 per share executed with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity, provided that the QMM quotes the NBBO at least 10% of the time during Market Hours in an average of at least 650 securities per day during a month; or

3. \$0.0003 per share executed in Tape A securities and a credit of \$0.0002 per share executed in Tape B and Tape C securities with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity, provided that the QMM provides 0.12% or more of total Consolidated Volume during the month and quotes the NBBO at least 10% of the time during Market Hours in an average of at least 800 securities per day during a month.

The QMM credits are in addition to any credit that the Exchange provides under Equity 7, Section 3.

Through the use of the QMM Program, the Exchange hoped to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the QMM Program reflected an effort to use financial incentives to encourage a wider variety of members to make positive commitments to promote market quality.

Unfortunately, the QMM Program did not accomplish its objectives, as it did not meaningfully improve market quality on the Exchange. Accordingly, and because the Exchange has limited resources to allocate to incentive programs like this one, the Exchange proposes to eliminate the QMM Program. Going forward, it plans to develop new incentive programs that it hopes will be more impactful.

## Elimination of the Enhanced Market Quality Program

The EMQ Program provides supplemental incentives to member organizations that meet certain quality standards in acting as market makers for securities on the Exchange. It rewards member organizations that make significant contributions to market quality by providing liquidity at the NBBO in a large number of securities for a significant portion of the day.<sup>9</sup>

Specifically, the Exchange makes a lump sum payment at the end of each month (a "Fixed Payment") to a member organization to the extent that the member organization, through one or more of its MPIDs, quotes at the NBBO for at least a threshold percentage of the time during Market Hours in an average number of qualifying securities per day during the month, as specified below (satisfying the "NBBO requirement").

On a daily basis, the Exchange determines the number of securities in which each of a member organization's MPIDs satisfies the NBBO requirement. The Exchange aggregates a member organization's MPIDs to determine the number of securities for purposes of the NBBO requirement.

The Exchange determines the amount of the Fixed Payment that it pays to a qualifying member organization, as follows. First, it determines which of five Tiers a member organization meets by virtue of the average daily number of qualifying securities for which it meets the NBBO requirement during the month (rounded to the nearest whole number) in Tapes A and B. Qualifying securities are limited to the top 1,500 securities in each of these Tapes, as determined by their total value traded during the second month prior to the current month. A member organization meets the NBBO requirement for a qualifying Tape A security on a given day to the extent that it quotes at the

NBBO for at least 30% of the time during Market Hours on that day, and for a qualifying Tape B security, a member organization must quote such security at the NBBO for at least 50% of the time during Market Hours on that day.

For each tier of the EMQ Program, the Exchange has three groupings or "Classes." The Exchange establishes the Classes by dividing the qualifying 1,500 securities into three equal groups for each Tape, with the top 500 ranked securities placed in Class 3, the middle 500 ranked securities placed in Class 2, and the lowest ranked 500 securities placed in Class 1.

The Exchange assigns Fixed Payment amounts to each of the three Classes in each Tape and in each of five Tiers, with these amounts generally increasing from Class 1 to Class 3, and from Tiers 1–5.

In sum, a member organization that meets the NBBO requirement for a requisite number of qualifying securities during a month to qualify for a particular Tier is entitled to receive the Fixed Payment that corresponds to the combination of: (i) That Tier; and (ii) the Class in which the Exchange has placed the qualifying securities for that month.

A member organization that qualifies for a Fixed Payment for securities in each of Tapes A and B and in multiple Classes within each Tape receive Fixed Payments covering qualifying securities in both Tapes, and within each Tape, for the each of the applicable Classes, but within each Tape and Class, a member organization may only qualify for one Tier during a month. The Exchange makes the Fixed Payment in addition to other rebates or fees provided under Equity 7, Sections 3 (a)–(c).

The existing schedules of Tiers, Classes, and Fixed Payments are as follows:

### TAPE A SECURITIES

Tiers	Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month	Fixed payment for securities in Tape A in Class 1	Fixed payment for securities in Tape A in Class 2	Fixed payment for securities in Tape A in Class 3
1 .....	0–24 .....	\$0 per qualified security per month	\$0 per qualified security per month	\$0 per qualified security per month.
2 .....	25–49 .....	\$0 per qualified security per month	\$0 per qualified security per month	\$200 per qualified security over 24 per month.

<sup>9</sup>For purposes of the Enhanced Market Quality Program, a member organization is deemed to quote at the NBBO in a security if it quotes a displayed

order of at least 100 shares in the security and prices the order at either the national best bid or

the national best offer or both the national best bid and offer for the security.

## TAPE A SECURITIES—Continued

Tiers	Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month	Fixed payment for securities in Tape A in Class 1	Fixed payment for securities in Tape A in Class 2	Fixed payment for securities in Tape A in Class 3
3 .....	50–149 .....	\$50 per qualified security [sic] per month.	\$200 per qualified security over 49 per month.	\$5,000 + (\$450 per qualified security over 49) per month.
4 .....	150–249 .....	\$5,000 + (\$100 per qualified security over 149) per month.	\$20,000 + (\$300 per qualified security over 149) per month.	\$50,000 + (\$600 per qualified security over 149) per month.
5 .....	250 or greater .....	\$15,000 + (\$150 per qualified security over 249) per month.	\$50,000 + (\$350 per qualified security over 249) per month.	\$50,000 + (\$600 per qualified security over 149) per month.

## TAPE B SECURITIES

Tiers	Average daily number of securities quoted at the NBBO for at least 50% of the time during Market Hours during the month	Fixed payment for securities in Tape B in Class 1	Fixed payment for securities in Tape B in Class 2	Fixed payment for securities in Tape B in Class 3
1 .....	0–24 .....	\$0 per qualified security per month	\$0 per qualified security per month	\$0 per qualified security per month.
2 .....	25–49 .....	\$0 per qualified security per month	\$0 per qualified security per month	\$100 per qualified security over 24 per month.
3 .....	50–149 .....	\$0 per qualified security per month	\$25 per qualified security over 49 per month.	\$2,500 + (\$150 per qualified security over 49) per month.
4 .....	150–249 .....	\$50 per qualified security over 149 per month.	\$2,500 + (\$50 per qualified security over 149) per month.	\$17,500 + (\$300 per qualified security over 149) per month.
5 .....	250 or greater .....	\$5,000 + (\$75 per qualified security over 249) per month.	\$7,500 + (\$150 per qualified security over 249) per month.	\$17,500 + (\$300 per qualified security over 149) per month.

A member organization may, but is not required to be, a registered market maker in any security to qualify for the EMQ Program; thus, the EMQ Program does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. Accordingly, the EMQ Program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO.

In establishing the EMQ Program, the Exchange hoped to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the EMQ Program reflected an effort by the Exchange to use its financial incentives to encourage a wider variety of member organizations other than market makers to make positive commitments to promote market quality.

Unfortunately, the Exchange's hopes for the EMQ Program have not been realized, notwithstanding refinements

made to the EMQ Program earlier this year in an attempt to enhance its effectiveness. Indeed, while the EMQ Program has succeeded in incenting market participants to increase their quoting at the NBBO in qualifying securities, the number of EMQ Program participants has been small, as has been the corresponding impact on the market quality. Because the EMQ Program has not been effective in achieving its intended purposes, and because the Exchange has limited resources to allocate to incentive programs like this one, the Exchange proposes to eliminate the Enhanced Market Quality Program. Going forward, it plans to develop new incentive programs that it hopes will be more impactful.

## Deletion of Obsolete Text

Finally, the Exchange proposes to eliminate text from this Rule that has become obsolete as it applied solely to Consolidated Volume calculations during the month of October 2020. The text that the Exchange proposes to delete is as follows:

*(For purposes of determining which of the execution charges and credits listed below a member organization qualifies for during the month of October 2020, the Exchange will calculate the member organization's total Consolidated Volume on the Exchange for the full month of October as well as for the month of October excluding the week of October 26–30, 2020. The Exchange will then assess which total Consolidated Volume calculations would qualify the member organization for the most advantageous credits and charges for the month of October and then it will apply those credits and charges to the member organization.)*

## 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) of the Act,<sup>11</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

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

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

unfair discrimination between customers, issuers, brokers, or dealers.

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>12</sup>

Likewise, in *NetCoalition v. Securities and Exchange Commission*<sup>13</sup> (“NetCoalition”) 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>14</sup>

The Exchange believes that the proposed elimination of the QMM and EMQ Programs is reasonable and is an equitable allocation of Exchange credits because neither program has proven to be effective in meeting its objectives, which include increasing the extent to which member organizations quote securities on the Exchange at the NBBO and improving overall market quality. Insofar as the Exchange has limited resources to devote to its incentive programs, the Exchange believes that it is reasonable and equitable for it to eliminate these two Programs and to reallocate its resources for other, more productive purposes. For similar reasons, the proposal is not unfairly discriminatory. The Exchange does not believe that the benefits enjoyed by the member organizations that participate in the QMM and EMQ Program are sufficient to justify maintaining them, as the resources the Exchange allocates to

it could be put to broader and more productive use.

The Exchange also believes that its proposal is reasonable, equitable, and not unfairly discriminatory to restate its schedule of transaction credits and charges. As discussed above, the Exchange assesses a particular need to increase the extent to which its member organizations add liquidity to the Exchange as a means of improving market quality. The proposals serve that purpose by directly increasing credits for adding displayed and non-displayed liquidity, and by reallocating some resources that it currently devotes to providing discounted fees to member organizations which remove liquidity from the Exchange. Although the proposals will benefit net adders of liquidity at the expense of net removers of liquidity, the Exchange believes that this is equitable and not unfairly discriminatory because all market participants stand to benefit to the extent that the proposals are successful in increasing liquidity on the Exchange and improving market quality. The Exchange also believes that it is reasonable, equitable, and not unfairly discriminatory to simplify its schedule of credits and charges insofar as the Exchange believes that a simpler credit/fee structure may be more comprehensible and administrable and thus, more appealing to, member organizations.

Finally, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to delete text from the Rule that has become obsolete insofar as it applied only to calculations of Consolidated Volume for the month of October 2020. Deletion of obsolete rule text ensures that the Rulebook remains current and free from extraneous and potentially confusing text.

#### *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 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 credits and 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 this instance, the proposals do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. Thus, the proposed restatement of the Exchange's schedule of credits and charges will not unduly burden competition, even as it will increase overall incentives to net adders of liquidity to the Exchange and reduce overall incentives to net removers of liquidity from the Exchange. The Exchange believes that its need to refocus its limited resources on increasing liquidity on the Exchange as a means of improving its overall market quality justifies the costs of this proposal to member organizations that are net liquidity removers.

Additionally, given that neither the QMM nor the EMQ Program has been utilized as extensively as the Exchange expected, the proposed elimination of those two Programs will not impact more than a handful of its member organizations. To the extent that elimination of the EMQ and QMM Programs do impact these member organizations, the Exchange notes that it continues to provide other financial incentives for member organizations to participate on the Exchange.

The Exchange does not believe that any competitive impact will ensue from its proposal to eliminate obsolete rule text relating to the calculation of Consolidated Volume in October 2020. Given that the text no longer applies, its deletion will have no effect on member organizations or the Exchange whatsoever.

In sum, the proposals are designed to render the Exchange more efficient in the allocation of its limited resources and more effective in improving the quality of the Exchange's market; however, 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 member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

<sup>12</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>13</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>14</sup> *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

*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>15</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 (<http://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-2021-74 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-2021-74. 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-Phlx-2021-74 and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-27808 Filed 12-22-21; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-93819; File No. SR-CBOE-2021-071]

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt a New Trading Session That Will Operate After the Close of the Regular Trading Hours Session**

December 17, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 15, 2021, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to adopt a new trading session that will operate after the close of the Regular Trading Hours session. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, 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 the Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange proposes to amend its Rules to allow trading on the Exchange during a new forty-five-minute trading session called the "Curb Trading Hours" or "Curb" session. The proposed rule change to adopt a third trading session aims to increase the overlap in time that SPX, VIX and Mini-SPX Index ("XSP") options are open alongside the related futures contracts.<sup>3</sup>

<sup>3</sup> For example, related futures products such as Cboe Volatility Index (VX) Futures are currently available for trading on Cboe Futures Exchange, LLC ("CFE") during an extended trading hours session from 4:00 p.m. to 5:00 p.m. Eastern Time (ET) Monday through Friday. See CFE Rule 1202, which sets forth the trading hours for VX futures (times referenced in CFE Rule 1202 are Central Standard Time (CT)). Related future contracts are also offered on the Chicago Mercantile Exchange ("CME") during the proposed hours of Curb. See <https://www.cmegroup.com/trading-hours.html#equityIndex> and <https://www.cmegroup.com/markets/equities/sp/e-mini-sandp500.html> which reflects, among other things, that E-mini S&P 500 Futures trade between 6:00 p.m. Sunday through 5:00 p.m. Friday ET (5:00 p.m.-4:00 p.m. CT) with a daily maintenance period from 5:00 p.m.-6:00 p.m. ET (4:00 p.m.-5:00 p.m. CT).

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