

investors, or otherwise in furtherance of the purposes of the Act.

#### 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-MSRB-2021-03 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-MSRB-2021-03. 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 MSRB. 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-MSRB-2021-03 and should be submitted on or before June 16, 2021.

For the Commission, pursuant to delegated authority.<sup>16</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-11084 Filed 5-25-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91960; File No. SR-Phlx-2021-31]

### 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

May 20, 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 May 12, 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 the Exchange's pricing schedule at Equity 7, Section 3, as described further below.

The Exchange originally filed the proposal pricing change on May 3, 2021 (SR-Phlx-2021-29). On May 12, 2021, the Exchange withdrew that filing and submitted this filing.

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 amend its pricing schedule, at Equity 7, Section 3, to make a change to its fees for routing of orders using the SCAR routing option in all securities. Specifically, the Exchange proposes to lower the \$0.0025 per share executed credit that is given to a member that enters an order in any of the three tapes using the "SCAR" routing option<sup>3</sup> which ultimately executes on Nasdaq BX ("BX").

BX recently revised its pricing schedule to lower its existing credits.<sup>4</sup> Currently, all credits provided to members on BX are lower than \$0.0025 per share executed. As a result, the Exchange is proposing to lower its existing \$0.0025 per share credit to \$0.0016 per share executed for SCAR orders that execute on BX in order to better align this amount with the credit amount provided by BX on its fee schedule.

##### 2. Statutory Basis

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

#### The Proposal Is Reasonable

The Exchange's proposed changes to its SCAR routing rebate are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction

<sup>3</sup> Pursuant to Equity 4, Section 3315(a)(1)(A)(x), "SCAR" is a routing option under which orders will check the System for available shares and simultaneously route to BX and Nasdaq in accordance with the System routing table. If shares remain unexecuted after routing, they are posted on the book or cancelled. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

<sup>4</sup> Securities Exchange Act Release No. 91639 (April 22, 2021), 80 FR 22500, (April 28, 2021).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>16</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.

services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, 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>7</sup>

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>8</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The Exchange believes it is reasonable to lower the \$0.0025 per share executed credit that it provides to a member that enters a SCAR routed order that executes on BX because the proposal will better align this credit with corresponding credits that BX provides to its own members that remove liquidity from that exchange.<sup>9</sup> The

Exchange also believes that it is appropriate to periodically reassess and recalibrate its fees. In this instance, better aligning the credits will help to ensure that market participants will not use the Exchange’s SCAR order routing strategy solely to obtain a higher rebate on orders that are routed and executed on BX.

#### The Proposal Is an Equitable Allocation of Credits and Not Unfairly Discriminatory

The Exchange believes its proposal to lower its credit for SCAR routed orders that execute on BX to \$0.0016 per share executed credit is an equitable allocation because the proposed amended credit amount is better aligned with the liquidity removal credits that BX provides to its members. Additionally, the proposal is not unfairly discriminatory because the proposed amended credit is available to all members.

Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

#### 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.

#### Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participants at a competitive disadvantage. The proposal will merely ensure that the amount of the SCAR credit is better aligned with the recently lowered corresponding credits that BX provides to its own members that remove liquidity from that exchange.

As noted above, all members of the Exchange will benefit from the protection of the overall quality of the equity market. Moreover, members are free to trade on other venues to the extent they believe that the proposed credit amount is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

#### Intermarket Competition

The Exchange’s proposal is pro-competitive in that the proposal will result in competitive alignment between the SCAR credit and the amounts of liquidity removal credits that BX

provides to its own members that remove liquidity from that exchange.

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 members or competing order execution venues to maintain their competitive standing in the financial markets.

#### 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>10</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-2021-31 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-2021-31*. This file number should be included on the subject line if email is used. To help the Commission process and review your

<sup>7</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>8</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>9</sup> See Nasdaq BX Equity 7 (Pricing Schedule), available at <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Equity%207> [sic].

<sup>10</sup> 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-2021-31 and should be submitted on or before June 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-11076 Filed 5-25-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91949; File No. SR-NYSEArca-2021-28]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade the Shares of ConvexityShares Daily 1.5x SPIKES Futures ETF Under NYSE Arca Rule 8.200-E (Trust Issued Receipts)

May 20, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on May 13, 2021, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission

("Commission") the proposed rule change as described in Items I and II 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 list and trade the shares of the following under NYSE Arca Rule 8.200-E, Commentary .02 ("Trust Issued Receipts"): ConvexityShares Daily 1.5x SPIKES Futures ETF. The proposed change is available on the Exchange's website at [www.nyse.com](http://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 to list and trade shares ("Shares") of the following under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts: ConvexityShares Daily 1.5x SPIKES Futures ETF (the "Fund").<sup>4</sup>

The Fund is a series of the ConvexityShares Trust (the "Trust"), a Delaware statutory trust.<sup>5</sup> The Fund is

<sup>4</sup> Commentary .02 to NYSE Arca Rule 8.200-E applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200-E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

<sup>5</sup> On December 15, 2020, ConvexityShares Trust submitted to the Commission its draft registration statement, with respect to the Trust, on Form S-1 ("Registration Statement") under the Securities Act of 1933 ("1933 Act"). The Jumpstart Our Business Startups Act, enacted on April 5, 2012, added Section 6(e) to the 1933 Act. Section 6(e) of the

managed and controlled by its sponsor and investment manager, ConvexityShares, LLC (the "Sponsor"). The Fund is a commodity pool and the Sponsor is a commodity pool operator subject to regulation by the Commodity Futures Trading Commission ("CFTC") and the National Futures Association under the Commodity Exchange Act, as amended. U.S. Bank, a national banking association, will provide custody and fund accounting to the Trust and the Fund. Its affiliate, U.S. Bancorp Fund Services, will be the transfer agent ("Transfer Agent") for Fund Shares and administrator for the Fund. Foreside will serve as the distributor for the Fund ("Distributor").

According to the Registration Statement, the Fund is benchmarked to the T3 SPIKE Front 2 Futures Index (the "Index"), an investable index of SPIKES futures contracts. The Fund will seek to offer exposure to forward equity market volatility by obtaining exposure to the components of the Index. The Index, as described further below, is intended to reflect the returns that are potentially available through an unleveraged investment in the SPIKES futures contracts comprising the Index.<sup>6</sup> The Index consists of short-term SPIKES

1933 Act provides that an "emerging growth company" may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in 1933 Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the 1933 Act as an issuer with less than \$1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently has submitted its Registration Statement on a confidential basis with the Commission. The Exchange will not commence trading in Shares of the Fund until the Registration Statement becomes effective.

<sup>6</sup> The Index is sponsored by Triple Three Partners Pty Ltd, which licenses the use of the Index to its affiliated company, T3i Pty Ltd (Triple Three Partners Pty Ltd and T3i Pty Ltd. are collectively referred to herein as "T3 Index" or the "Index Sponsor"). T3 Index maintains a website at <https://t3index.com/>. The Index Sponsor is affiliated with the Sponsor. The Index Sponsor has implemented and will maintain a fire wall regarding access to information concerning the composition and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index. The Index Sponsor is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealers. The Sponsor is not registered as a broker-dealer or affiliated with a broker-dealer. In the event the Sponsor becomes registered as a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to and dissemination of material non-public information regarding the Index.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.