Additionally, 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.'' [23] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* 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'. . . .''.[24] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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 [25] and Rule 19b–4(f)(2) [26] thereunder.

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 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 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2023–08 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–MEMX–2023–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–MEMX–2023–08 and should be submitted on or before June 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10246 Filed 5–12–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97465; File No. SR–Phlx–2023–16]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 3(a)(1)

May 9, 2023.

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 May 1, 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 Equity 7, Section 3(a)(1) to exclude certain days for purposes of calculating Consolidated Volume and trading activity, 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.

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

[23] *See supra* note 20.

[24] *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–NYSE–2006–21)).

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

[26] 17 CFR 240.19b–4(f)(2).

[27] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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(a)(1) to exclude certain days for purposes of calculating Consolidated Volume and trading activity. Specifically, the Exchange also proposes to amend Equity 7, Section 3(a)(1) to exclude the following from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives: (1) the dates on which stock options, stock index options, and stock index futures expire (*i.e.,* the third Friday of March, June, September, and December) (''Triple Witch Dates''); (2) the dates on which the MSCI Equity Indexes are rebalanced (*i.e.,* on a quarterly basis) (''MSCI Rebalance Dates''); (3) the dates on which the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced (*i.e.,* on a quarterly basis) (''S&P Rebalance Dates''); and (4) the date of the annual reconstitution of the Nasdaq-100 and Nasdaq Biotechnology Indexes (''Nasdaq Reconstitution Date''). Currently, the Exchange excludes the date of the annual reconstitution of the Russell Investments Indexes from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives.

For the same reasons that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from these calculations, the Exchange believes it is appropriate to exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from these calculations in the same manner, as trading volumes on such days are generally far in excess of volumes on other days during the month, and market participants that are not otherwise active on the Exchange to a great extent often participate on the Exchange on such dates to rebalance holdings, or in the case of Triple Witch Dates, to close out or roll over positions prior to expiration. The Exchange believes this change to normal activity may affect a member's ability to meet the applicable volume thresholds under its volume-based tiers. The Exchange notes that the proposed exclusion of Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from the relevant calculations would be applied in the same manner that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from such calculations.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[4] 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 Exchange believes it is reasonable, equitable, and not unfairly discriminatory to exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives. As described above, Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date typically have extraordinarily high and/or abnormally distributed trading volumes which, in turn, may affect a member's ability to meet the applicable volume thresholds under its transaction pricing tiers/incentives, and the Exchange believes that excluding such days from the relevant calculations for purposes of determining a member's qualification for such tiers/incentives would help to avoid penalizing members that might otherwise have met the requirements to qualify for such tiers/incentives. The Exchange believes that the proposal is reasonable because it will diminish the likelihood of a *de facto* price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month.

The Exchange further believes that the change is consistent with an equitable allocation of fees and is not unfairly discriminatory. Specifically, because trading activity on Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date will be excluded from determinations of a member's percentage of Consolidated Volume, the Exchange believes it will be easier for members to determine the volume required to meet a certain percentage of participation than would otherwise be the case. To the extent that a member has been active on the Exchange at a significant level throughout the month, excluding the Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date, on which its percentage of Consolidated Volume is likely to be lower than on other days, will increase its overall percentage for the month. Conversely, even if a member was more active on Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date than on other dates, it is unlikely that its activity on one day would be able to increase its overall monthly percentage to a meaningful extent. Thus, the Exchange believes that the change will benefit members that are in a position to achieve volume levels required by the Exchange's pricing schedule but without harming the ability of any members to reach such levels.

Finally, the Exchange believes that the change does not unfairly burden competition because it will help to preserve or improve the pricing status that would apply to members' trading activity in the absence of Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date, and therefore will not impact the ability of such members to compete. The proposed rule change would apply to all members uniformly, in that each member's volume activities for purposes of pricing tiers/incentives would continue to be calculated in a uniform manner and would now exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date.

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 participant at a competitive disadvantage.

The Exchange intends for its proposed changes to amend the calculation of Consolidated Volume and trading activity at Equity 7, Section 3(a)(1) to avoid penalizing members that might otherwise have met the applicable volume thresholds to qualify for the Exchange's transaction pricing tiers/incentives if not for the abnormal

[3] 15 U.S.C. 78f(b).

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

trading volumes and market conditions typically experienced in the equities markets on the Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date. The proposed exclusion of such dates from the relevant calculations would apply to all members uniformly and in the same manner that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from such calculations.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposal 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

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 credits and 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 credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 50% of industry volume.

The Exchange believes the proposal to exclude certain dates from calculating Consolidated Volume and trading activity is not concerned with competitive issues, but rather relates to calculation methodologies applicable to its pricing tiers/incentives.

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.[5]

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PHLX–2023–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PHLX–2023–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–PHLX–2023–16 and should be submitted on or before June 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

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[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97466; File No. SR–NASDAQ–2023–013]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118

May 9, 2023.

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 May 2, 2023, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed

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

[2] 17 CFR 240.19b–4.