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Page 1 of * 33

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2024 - * 21

Amendment No. (req. for Amendments *)

Filing by Nasdaq PHLX LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to amend Options 7, Sections 4 and 9.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Last Name *

Title *

E-mail *

Telephone * Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq PHLX LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date (Title *)

By
(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 Date: 2024.05.01 11:02:21 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

Add Remove View

SR-Phlx-2024-21 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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SR-Phlx-2024-21 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

SR-Phlx-2024-21 Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq Phlx LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Options 7, Sections 4 and 9.³

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Angela Saccomandi Dunn
Principal Associate General Counsel
Nasdaq, Inc.
(215) 496-5692

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed pricing changes on November 28, 2023 (SR-Phlx-2023-52) to be effective on December 1, 2023. On December 5, 2023, the Exchange withdrew SR-Phlx-2023-52 and replaced it with SR-Phlx-2023-56. On January 16, 2023, the Exchange withdrew SR-Phlx-2023-56 and submitted SR-Phlx-2024-02. On March 7, 2024, the Exchange withdrew SR-Phlx-2024-02 and submitted SR-Phlx-2024-10. On May 1, 2024, the Exchange withdrew SR-Phlx-2024-10 and submitted this filing.

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

a. Purpose

The Exchange proposes to amend Options 7, Section 4, Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A). The Exchange also proposes a technical amendment to Options 7, Section 9, B.

Today, Lead Market Makers and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)).⁴ All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) are excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap are assessed fees \$0.05 per contract Fee for Adding Liquidity in Penny Symbols, \$0.18 per contract Fee for Removing Liquidity in Penny Symbols, \$0.18 per contract in Non-Penny Symbols, and \$0.18 per contract in a non-Complex electronic auction,

⁴ The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations.

including the Quote Exhaust auction and, for purposes of this fee, the opening process.⁵ Today, the Monthly Market Maker Cap offers Lead Market Makers and Market Makers the ability to lower their costs provided they execute a certain amount of orders on Phlx.

At this time, the Exchange proposes to establish an increased SQF Fee Cap to Lead Market Makers and Market Makers that do not provide a minimum amount of liquidity on Phlx. This proposed increased SQF Fee Cap is intended to incentivize Lead Market Makers and Market Makers to add liquidity on Phlx for the benefit of other market participants in order to lower their fees. Phlx proposes to increase the SQF Port Fees cap to \$50,000 a month if a Lead Market Maker or Market Maker does not transact 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month.⁶ Today, Phlx assesses \$1,250 per port, per month up to a maximum of \$42,000 per month for an SQF Port that receives inbound quotes at any time within that month.⁷ With this proposal, the Exchange would not assess Lead Market Makers and Market Makers an SQF Port Fee beyond the monthly cap of \$50,000, instead of \$42,000, once the member organization has exceeded the proposed port cap for the respective month.

⁵ A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction ("COLA"). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

⁶ For purposes of this cap, "Total Customer Volume" shall be defined as a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products ("TCV").

⁷ An active port shall mean that the port was utilized to submit a quote to the System during a given month. See Options 7, Section 9, B. The Exchange proposes to add the words "active port" in parenthesis at the end of the description of SQF Port Fee in Options 7, Section 9, B to tie the definition of an active port to the description for the port. The Exchange also proposes a technical amendment to add a comma between "per port" and "per month" for the SQF Port Fee in Options 7, Section 9, B. Today, member organizations are not assessed an active SQF Port Fee for additional ports acquired for ten business days for the purpose of transitioning technology. The member organization is required to provide the Exchange with written notification of the transition and all additional ports, provided at no cost, will be removed at the end of the ten business days. See Options 7, Section 9, B.

Lead Market Makers and Market Makers who transacts 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month will continue to be subject to the \$42,000 SQF Fee Cap. The Exchange believes that Lead Market Makers and Market Makers will add liquidity to Phlx in order to decrease their costs of doing business on the Exchange by obtaining the benefits of the lower SQF Fee Cap similar to the manner in which Lead Market Maker and Market Makers today transact a certain quantity of orders to achieve the Monthly Market Maker Cap.

Pursuant to Options 3, Section 7(a)(i)(B), Market Makers may only enter quotes into SQF in their assigned options series to add liquidity on Phlx. Pursuant to Options 3, Section 7(a)(i)(B), the SQF interface allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. While a Phlx Market Maker may elect to obtain multiple SQF Ports to organize its business,⁸ only one SQF Port is necessary for a Phlx Market Maker to fulfill its regulatory quoting obligations.⁹

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and

⁸ For example, a Phlx Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that member organization.

⁹ Phlx Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, Phlx Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on Phlx and only Market Makers may utilize SQF Ports.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

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 proposed pricing change to increase the SQF Fee Cap for Lead Market Makers and Market Makers to \$50,000 a month if Lead Market Makers or Market Makers do not transact 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month is reasonable because it will incentivize Lead Market Makers and Market Makers to add liquidity on Phlx to lower their costs. The Exchange believes that the total volume required to achieve the cap is reasonable as the Exchange has limited the volume to simple orders, as not all Market Makers transact complex orders. Additionally, the Exchange has limited the trading volume to electronic volume, as not all Market Makers transact business in open outcry and Floor Market Makers may enter orders verbally in the trading crowd. Further, 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month is an achievable number for Market Makers who currently add volume to the Exchange. Additionally, the Exchange believes that an SQF Fee cap of \$50,000, in lieu of \$42,000, is reasonable because Lead Market Makers and Market Makers are obligated, among other things, to maintain a two-sided market in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market and compete with other electronic Market Makers in all options in all capacities in which the electronic Market Maker is registered to trade.¹² The Exchange believes that it is reasonable to increase the SQF Port Fee Cap to \$50,000 for Lead Market Makers and Market Makers that do not transact 0.20% of Total Customer Volume in electronic simple orders that

¹² See Options 2, Section 5(a)(1) and (3).

adds liquidity in a month because the Exchange believes that Lead Market Makers and Market Makers that do not contribute a minimum amount of liquidity on Phlx should not be subject to the same opportunities to lower their costs as those Lead Market Makers and Market Makers that do contribute to liquidity and therefore provide the ability for other market participants to engage with that order flow. The Exchange believes that the increase is modest and would serve to encourage Lead Market Makers and Market Makers to submit order flow to Phlx in order to lower their cost and would result in additional order competition, which also benefits market participants. The Exchange believes this proposal promotes liquidity, quote competition, and trading opportunities.

SQF Ports are utilized by Lead Market Makers and Market Makers to quote on Phlx. The SQF Port is the only protocol available for quoting. A Phlx Market Maker may submit all quotes through one SQF Port and SQF Ports are only utilized in the Market Maker's assigned options series. While a Phlx Market Maker may elect to obtain multiple SQF Ports to organize its business,¹³ only one SQF Port is necessary for a Phlx Market Maker to fulfill its regulatory quoting obligations.¹⁴ For those Market Makers that elect to organize themselves by obtaining a greater number of SQF Ports, they will be subject to a cap.¹⁵ For Market Makers that only take 1 SQF Port or only a few SQF

¹³ For example, a Phlx Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that member organization.

¹⁴ Phlx Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, Phlx Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on Phlx and only Market Makers may utilize SQF Ports.

¹⁵ The number of ports that member organizations choose to purchase varies widely. Today, on Phlx, 2 Market Makers have 1 SQF Port, 5 Market Makers have 2-5 SQF Ports, 4 Market Makers have between 6-10 SQF Ports, and 11 Market Makers have more than 10 SQF Ports. Additionally, today, on Nasdaq GEMX, LLC no Market Makers have 1 SQF Port/SQF Purge Port, 1 Market Maker has 2-5 SQF Ports/SQF Purge Ports, 4 Market Makers have between 6-10 SQF Ports/SQF Purge Ports, and 8 Market Makers have more than 10 SQF Ports/SQF Purge Ports.

Ports, their costs would be far below the \$42,000 or \$50,000 threshold for the cap.

The proposed pricing change to increase the SQF Fee Cap for Lead Market Makers and Market Makers to \$50,000 a month if Lead Market Makers or Market Makers do not transact 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month is equitable and not unfairly discriminatory as all Lead Market Makers and Market Makers would be able to cap their SQF Port costs at \$42,000, provided they transacted the requisite volume, otherwise Lead Market Makers and Market Makers would be uniformly subject to the \$50,000 SQF Fee Cap. The Exchange notes that unlike other market participants, Lead Market Makers are obligated to quote in the Opening Process and intra-day.¹⁶ Additionally, Market Makers may enter quotes in the Opening Process to open an option series and they are required to quote intra-day.¹⁷ Further, unlike other market participants, Lead Market Makers and Market Makers have obligations to the market to maintain a two-sided market in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market and compete with other electronic Market Makers in all options in all capacities in which the electronic Market Maker is registered to trade, among other obligations.¹⁸ Finally, unlike other market participants, Lead Market Makers and Market Makers incur other costs related to their quoting obligations in addition to other fees paid by other market participants. Phlx assesses Streaming Quote

Finally, on Nasdaq MRX LLC (“MRX”), 2 Market Makers have 1 SQF Ports/SQF Purge Ports, no Market Makers have 2-5 SQF Ports/SQF Purge Ports, 2 Market Makers have between 6-10 SQF Ports/SQF Purge Ports, and 6 Market Makers have more than 10 SQF Ports/SQF Purge Ports.

¹⁶ See Options 3, Section 8 and Options 2, Section 5.

¹⁷ Id.

¹⁸ See Options 2, Section 5(a)(1) and (3).

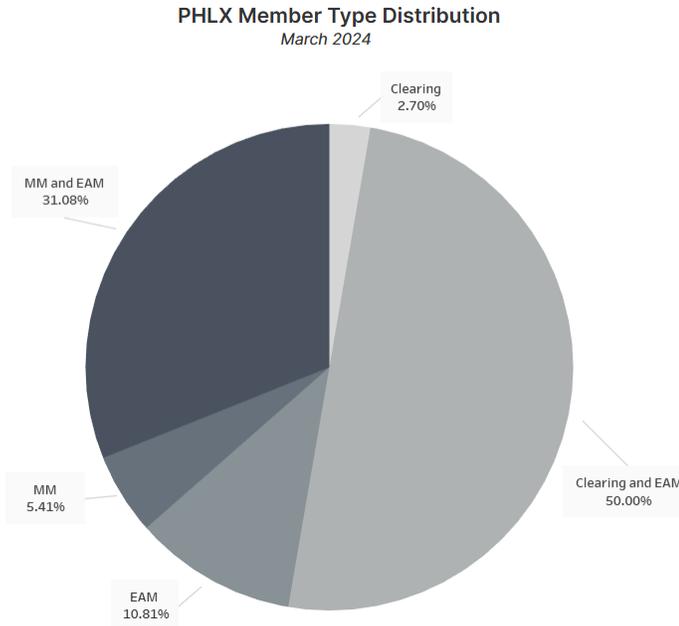
Trader¹⁹ Fees based on the number of option class assignments to Lead Market Makers and Market Makers.²⁰ Additionally, Phlx assesses Remote Market Maker²¹ Organization Fees and Remote Lead Market Maker Fees.²² These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to Phlx and are necessary for opening the market. Allowing Lead Market Makers and Market Makers to manage their costs by capping SQF Ports in addition to transaction fees enables these essential market participants to manage their business model more effectively and better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on Phlx. The following chart represents the classification of Phlx members and the percentage of Market Makers.

¹⁹ A “Streaming Quote Trader” or “SQT” means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. See Options 1, Section 1(b)(54).

²⁰ See Options 7, Section 8, B.

²¹ A “Remote Streaming Quote Trader” or “RSQT” means a Market Maker that is a member affiliated with an Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker (“RMM”) pursuant to Options 2, Section 11. A Remote Streaming Quote Organization (“RSQTO”) or Remote Market Maker Organization (“RMO”) are Exchange member organizations that have qualified pursuant to Options 2, Section 1. See Options 1, Section 1(b)(49).

²² See Options 7, Section 8, C and D.



Phlx believes Lead Market Makers and Market Makers should be eligible for certain incentives because they fulfill a unique role on the Exchange and are the only market participants required to submit quotes to the Exchange. The proposed SQF Port Cap is designed to ensure that Lead Market Makers and Market Makers add a certain amount of liquidity on Phlx in order to be able to cap their SQF Fees at the lower cap of \$42,000 as compared to the increased cap of \$50,000. The Exchange would apply the criteria uniformly when applying the SQF Fee Cap to Lead Market Makers and Market Makers.

Finally, Phlx believes the proposed SQF cap is constrained by competitive forces and reasonably designed in consideration of the competitive environment in which the Exchange operates. This fee structure incents Lead Market Makers and Market Makers to support increased liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all market participants.

3. Self-Regulatory Organization's Statement on Burden on Competition

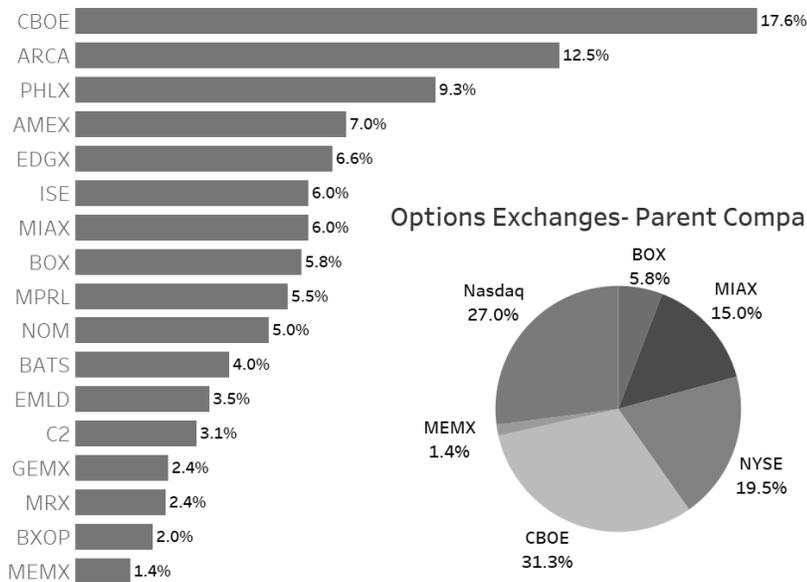
The Exchange does not believe that the proposed rule change will impose any

burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

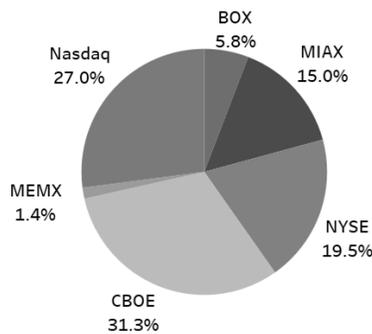
Intermarket Competition

The proposal does not impose an undue burden on intermarket 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. The chart below shows the February 2024 market share for multiply listed options by exchange. Of the 17 operating options exchanges, none currently has more than a 17.6% market share. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality.

Options Market Share by Exchange: February 2024



Options Exchanges- Parent Company



Source: OCC, Nadsaq Economic Research

Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and ports. In such an

environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own 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.

Intramarket Competition

The proposed pricing change to increase the SQF Fee Cap for Lead Market Makers and Market Makers to \$50,000 a month if Lead Market Makers or Market Makers do not transact 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month does not impose an undue burden on competition as all Lead Market Makers and Market Makers would be able to cap their SQF Port costs at \$42,000, provided they transacted the requisite volume, otherwise Lead Market Makers and Market Makers would be uniformly subject to the \$50,000 SQF Fee Cap. The Exchange notes that unlike other market participants, Lead Market Makers are obligated to quote in the Opening Process and intra-day.²³ Additionally, Market Makers may enter quotes in the Opening Process to open an option series and they are required to quote intra-day.²⁴ Further, unlike other market participants, Lead Market Makers and Market Makers have obligations to the market to maintain a two-sided market in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market and compete with other electronic Market Makers in all options in all capacities in which the electronic Market Maker is registered to trade,

²³ See Options 3, Section 8 and Options 2, Section 5.

²⁴ Id.

among other obligations.²⁵ Finally, unlike other market participants, Lead Market Makers and Market Makers incur other costs related to their quoting obligations in addition to other fees paid by other market participants. Phlx assesses Streaming Quote Trader²⁶ Fees based on the number of option class assignments to Lead Market Makers and Market Makers.²⁷ Additionally, Phlx assesses Remote Market Maker²⁸ Organization Fees and Remote Lead Market Maker Fees.²⁹ These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to Phlx and are necessary for opening the market. Allowing Lead Market Makers and Market Makers to manage their costs by capping SQF Ports in addition to transaction fees enables these essential market participants to manage their business model more effectively and better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on Phlx. The Exchange believes that Lead Market Makers and Market Makers should be eligible for certain incentives because they fulfill a unique role on the

²⁵ See Options 2, Section 5(a)(1) and (3).

²⁶ A “Streaming Quote Trader” or “SQT” means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. See Options 1, Section 1(b)(54).

²⁷ See Options 7, Section 8, B.

²⁸ A “Remote Streaming Quote Trader” or “RSQT” means a Market Maker that is a member affiliated with an Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker (“RMM”) pursuant to Options 2, Section 11. A Remote Streaming Quote Organization (“RSQTO”) or Remote Market Maker Organization (“RMO”) are Exchange member organizations that have qualified pursuant to Options 2, Section 1. See Options 1, Section 1(b)(49).

²⁹ See Options 7, Section 8, C and D.

Exchange and are the only market participants required to submit quotes to the Exchange. The proposed SQF Port Cap is designed to ensure that Lead Market Makers and Market Makers add a certain amount of liquidity on Phlx in order to be able to cap their SQF Fees at the lower cap of \$42,000 as compared to the increased cap of \$50,000. The Exchange would apply the SQF Fee Cap criteria uniformly to Lead Market Makers and Market Makers.

4. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,³⁰ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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.

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2024-21)

May __, 2024

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Sections 4 and 9

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, 2024, 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 Options 7, Sections 4 and 9.³

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed pricing changes on November 28, 2023 (SR-Phlx-2023-52) to be effective on December 1, 2023. On December 5, 2023, the Exchange withdrew SR-Phlx-2023-52 and replaced it with SR-Phlx-2023-56. On January 16, 2023, the Exchange withdrew SR-Phlx-2023-56 and submitted SR-Phlx-2024-02. On March 7, 2024, the Exchange withdrew SR-Phlx-2024-02 and submitted SR-Phlx-2024-10. On May 1, 2024, the Exchange withdrew SR-Phlx-2024-10 and submitted this filing.

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 Options 7, Section 4, Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A). The Exchange also proposes a technical amendment to Options 7, Section 9, B.

Today, Lead Market Makers and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)).⁴ All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) are

⁴ The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations.

excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap are assessed fees \$0.05 per contract Fee for Adding Liquidity in Penny Symbols, \$0.18 per contract Fee for Removing Liquidity in Penny Symbols, \$0.18 per contract in Non-Penny Symbols, and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process.⁵ Today, the Monthly Market Maker Cap offers Lead Market Makers and Market Makers the ability to lower their costs provided they execute a certain amount of orders on Phlx.

At this time, the Exchange proposes to establish an increased SQF Fee Cap to Lead Market Makers and Market Makers that do not provide a minimum amount of liquidity on Phlx. This proposed increased SQF Fee Cap is intended to incentivize Lead Market Makers and Market Makers to add liquidity on Phlx for the benefit of other market participants in order to lower their fees. Phlx proposes to increase the SQF Port Fees cap to \$50,000 a month if a Lead Market Maker or Market Maker does not transact 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month.⁶ Today, Phlx assesses \$1,250 per port, per month up to a maximum of \$42,000 per month for an SQF Port that receives inbound quotes at any time within that month.⁷

⁵ A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction ("COLA"). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

⁶ For purposes of this cap, "Total Customer Volume" shall be defined as a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products ("TCV").

⁷ An active port shall mean that the port was utilized to submit a quote to the System during a given month. See Options 7, Section 9, B. The Exchange proposes to add the words "active port" in parenthesis at the end of the description of SQF Port Fee in Options 7, Section 9, B to tie the definition of an active port to the description for the port. The Exchange also proposes a technical

With this proposal, the Exchange would not assess Lead Market Makers and Market Makers an SQF Port Fee beyond the monthly cap of \$50,000, instead of \$42,000, once the member organization has exceeded the proposed port cap for the respective month. Lead Market Makers and Market Makers who transacts 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month will continue to be subject to the \$42,000 SQF Fee Cap. The Exchange believes that Lead Market Makers and Market Makers will add liquidity to Phlx in order to decrease their costs of doing business on the Exchange by obtaining the benefits of the lower SQF Fee Cap similar to the manner in which Lead Market Maker and Market Makers today transact a certain quantity of orders to achieve the Monthly Market Maker Cap.

Pursuant to Options 3, Section 7(a)(i)(B), Market Makers may only enter quotes into SQF in their assigned options series to add liquidity on Phlx. Pursuant to Options 3, Section 7(a)(i)(B), the SQF interface allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. While a Phlx Market Maker may elect to obtain multiple SQF Ports to organize its business,⁸ only one SQF Port is necessary for a Phlx Market Maker to fulfill its regulatory quoting obligations.⁹

amendment to add a comma between “per port” and “per month” for the SQF Port Fee in Options 7, Section 9, B. Today, member organizations are not assessed an active SQF Port Fee for additional ports acquired for ten business days for the purpose of transitioning technology. The member organization is required to provide the Exchange with written notification of the transition and all additional ports, provided at no cost, will be removed at the end of the ten business days. See Options 7, Section 9, B.

⁸ For example, a Phlx Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that member organization.

⁹ Phlx Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, Phlx Market Makers have certain quoting requirements with respect to their assigned

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ 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 proposed pricing change to increase the SQF Fee Cap for Lead Market Makers and Market Makers to \$50,000 a month if Lead Market Makers or Market Makers do not transact 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month is reasonable because it will incentivize Lead Market Makers and Market Makers to add liquidity on Phlx to lower their costs. The Exchange believes that the total volume required to achieve the cap is reasonable as the Exchange has limited the volume to simple orders, as not all Market Makers transact complex orders. Additionally, the Exchange has limited the trading volume to electronic volume, as not all Market Makers transact business in open outcry and Floor Market Makers may enter orders verbally in the trading crowd. Further, 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month is an achievable number for Market Makers who currently add volume to the Exchange. Additionally, the Exchange believes that an SQF Fee cap of \$50,000, in lieu of \$42,000, is reasonable because Lead Market Makers and Market Makers are obligated, among other things, to maintain a two-

options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on Phlx and only Market Makers may utilize SQF Ports.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

sided market in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market and compete with other electronic Market Makers in all options in all capacities in which the electronic Market Maker is registered to trade.¹² The Exchange believes that it is reasonable to increase the SQF Port Fee Cap to \$50,000 for Lead Market Makers and Market Makers that do not transact 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month because the Exchange believes that Lead Market Makers and Market Makers that do not contribute a minimum amount of liquidity on Phlx should not be subject to the same opportunities to lower their costs as those Lead Market Makers and Market Makers that do contribute to liquidity and therefore provide the ability for other market participants to engage with that order flow. The Exchange believes that the increase is modest and would serve to encourage Lead Market Makers and Market Makers to submit order flow to Phlx in order to lower their cost and would result in additional order competition, which also benefits market participants. The Exchange believes this proposal promotes liquidity, quote competition, and trading opportunities.

SQF Ports are utilized by Lead Market Makers and Market Makers to quote on Phlx. The SQF Port is the only protocol available for quoting. A Phlx Market Maker may submit all quotes through one SQF Port and SQF Ports are only utilized in the Market Maker's assigned options series. While a Phlx Market Maker may elect to obtain multiple SQF Ports to organize its business,¹³ only one SQF Port is necessary for a Phlx

¹² See Options 2, Section 5(a)(1) and (3).

¹³ For example, a Phlx Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that member organization.

Market Maker to fulfill its regulatory quoting obligations.¹⁴ For those Market Makers that elect to organize themselves by obtaining a greater number of SQF Ports, they will be subject to a cap.¹⁵ For Market Makers that only take 1 SQF Port or only a few SQF Ports, their costs would be far below the \$42,000 or \$50,000 threshold for the cap.

The proposed pricing change to increase the SQF Fee Cap for Lead Market Makers and Market Makers to \$50,000 a month if Lead Market Makers or Market Makers do not transact 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month is equitable and not unfairly discriminatory as all Lead Market Makers and Market Makers would be able to cap their SQF Port costs at \$42,000, provided they transacted the requisite volume, otherwise Lead Market Makers and Market Makers would be uniformly subject to the \$50,000 SQF Fee Cap. The Exchange notes that unlike other market participants, Lead Market Makers are obligated to quote in the Opening Process and intra-day.¹⁶ Additionally, Market Makers may enter quotes in the Opening Process to open an option series and they are required to quote intra-day.¹⁷ Further, unlike other market participants, Lead Market Makers and Market Makers have

¹⁴ Phlx Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, Phlx Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on Phlx and only Market Makers may utilize SQF Ports.

¹⁵ The number of ports that member organizations choose to purchase varies widely. Today, on Phlx, 2 Market Makers have 1 SQF Port, 5 Market Makers have 2-5 SQF Ports, 4 Market Makers have between 6-10 SQF Ports, and 11 Market Makers have more than 10 SQF Ports. Additionally, today, on Nasdaq GEMX, LLC no Market Makers have 1 SQF Port/SQF Purge Port, 1 Market Maker has 2-5 SQF Ports/SQF Purge Ports, 4 Market Makers have between 6-10 SQF Ports/SQF Purge Ports, and 8 Market Makers have more than 10 SQF Ports/SQF Purge Ports. Finally, on Nasdaq MRX LLC (“MRX”), 2 Market Makers have 1 SQF Ports/SQF Purge Ports, no Market Makers have 2-5 SQF Ports/SQF Purge Ports, 2 Market Makers have between 6-10 SQF Ports/SQF Purge Ports, and 6 Market Makers have more than 10 SQF Ports/SQF Purge Ports.

¹⁶ See Options 3, Section 8 and Options 2, Section 5.

¹⁷ Id.

obligations to the market to maintain a two-sided market in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market and compete with other electronic Market Makers in all options in all capacities in which the electronic Market Maker is registered to trade, among other obligations.¹⁸ Finally, unlike other market participants, Lead Market Makers and Market Makers incur other costs related to their quoting obligations in addition to other fees paid by other market participants. Phlx assesses Streaming Quote Trader¹⁹ Fees based on the number of option class assignments to Lead Market Makers and Market Makers.²⁰ Additionally, Phlx assesses Remote Market Maker²¹ Organization Fees and Remote Lead Market Maker Fees.²² These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to Phlx and are necessary for opening the market. Allowing Lead Market Makers and Market Makers to manage their costs by capping SQF Ports in addition to transaction fees enables these essential market participants to manage their business model more

¹⁸ See Options 2, Section 5(a)(1) and (3).

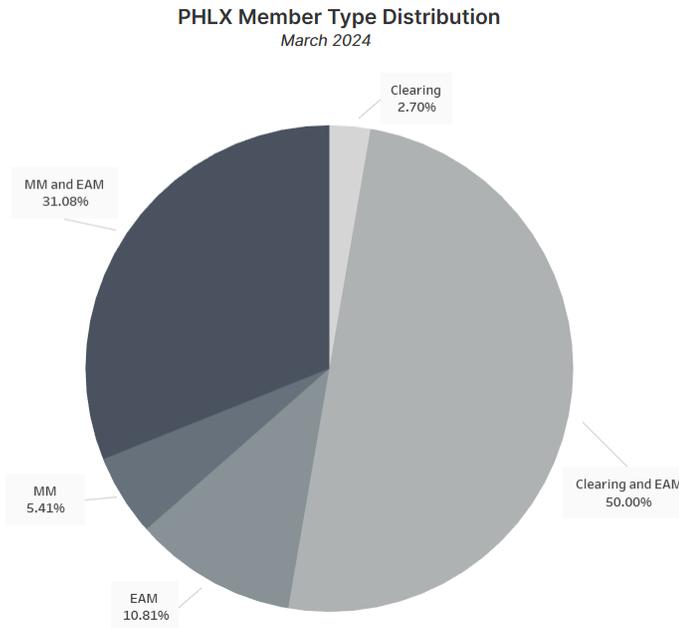
¹⁹ A “Streaming Quote Trader” or “SQT” means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. See Options 1, Section 1(b)(54).

²⁰ See Options 7, Section 8, B.

²¹ A “Remote Streaming Quote Trader” or “RSQT” means a Market Maker that is a member affiliated with an Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker (“RMM”) pursuant to Options 2, Section 11. A Remote Streaming Quote Organization (“RSQTO”) or Remote Market Maker Organization (“RMO”) are Exchange member organizations that have qualified pursuant to Options 2, Section 1. See Options 1, Section 1(b)(49).

²² See Options 7, Section 8, C and D.

effectively and better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on Phlx. The following chart represents the classification of Phlx members and the percentage of Market Makers.



Phlx believes Lead Market Makers and Market Makers should be eligible for certain incentives because they fulfill a unique role on the Exchange and are the only market participants required to submit quotes to the Exchange. The proposed SQF Port Cap is designed to ensure that Lead Market Makers and Market Makers add a certain amount of liquidity on Phlx in order to be able to cap their SQF Fees at the lower cap of \$42,000 as compared to the increased cap of \$50,000. The Exchange would apply the criteria uniformly when applying the SQF Fee Cap to Lead Market Makers and Market Makers.

Finally, Phlx believes the proposed SQF cap is constrained by competitive forces and reasonably designed in consideration of the competitive environment in which the Exchange operates. This fee structure incents Lead Market Makers and Market Makers

to support increased liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all market participants.

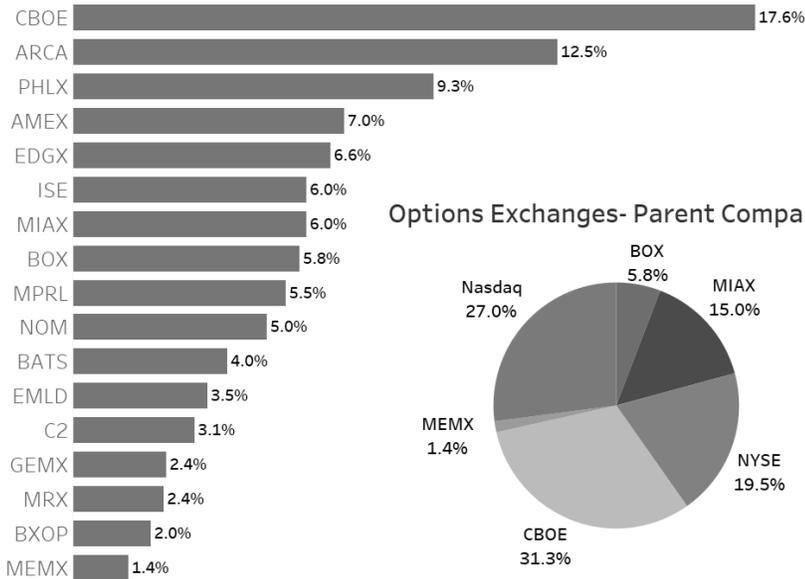
B. Self-Regulatory Organization's Statement on Burden on Competition

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.

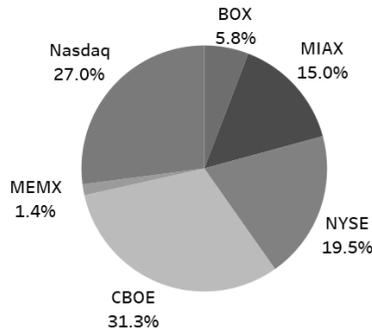
Intermarket Competition

The proposal does not impose an undue burden on intermarket 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. The chart below shows the February 2024 market share for multiply listed options by exchange. Of the 17 operating options exchanges, none currently has more than a 17.6% market share. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality.

Options Market Share by Exchange: February 2024



Options Exchanges- Parent Company



Source: OCC, Nadsaq Economic Research

Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and ports. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own 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.

Intramarket Competition

The proposed pricing change to increase the SQF Fee Cap for Lead Market Makers and Market Makers to \$50,000 a month if Lead Market Makers or Market Makers do not transact 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month does not impose an undue burden on competition as all Lead Market Makers and Market Makers would be able to cap their SQF Port costs at \$42,000,

provided they transacted the requisite volume, otherwise Lead Market Makers and Market Makers would be uniformly subject to the \$50,000 SQF Fee Cap. The Exchange notes that unlike other market participants, Lead Market Makers are obligated to quote in the Opening Process and intra-day.²³ Additionally, Market Makers may enter quotes in the Opening Process to open an option series and they are required to quote intra-day.²⁴ Further, unlike other market participants, Lead Market Makers and Market Makers have obligations to the market to maintain a two-sided market in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market and compete with other electronic Market Makers in all options in all capacities in which the electronic Market Maker is registered to trade, among other obligations.²⁵ Finally, unlike other market participants, Lead Market Makers and Market Makers incur other costs related to their quoting obligations in addition to other fees paid by other market participants. Phlx assesses Streaming Quote Trader²⁶ Fees based on the number of option class assignments to Lead Market Makers and Market Makers.²⁷ Additionally, Phlx assesses Remote Market Maker²⁸ Organization

²³ See Options 3, Section 8 and Options 2, Section 5.

²⁴ Id.

²⁵ See Options 2, Section 5(a)(1) and (3).

²⁶ A “Streaming Quote Trader” or “SQT” means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. See Options 1, Section 1(b)(54).

²⁷ See Options 7, Section 8, B.

²⁸ A “Remote Streaming Quote Trader” or “RSQT” means a Market Maker that is a member affiliated with an Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker (“RMM”) pursuant to Options 2, Section 11. A Remote Streaming Quote Organization (“RSQTO”) or Remote Market Maker Organization (“RMO”) are Exchange

Fees and Remote Lead Market Maker Fees.²⁹ These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to Phlx and are necessary for opening the market. Allowing Lead Market Makers and Market Makers to manage their costs by capping SQF Ports in addition to transaction fees enables these essential market participants to manage their business model more effectively and better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on Phlx. The Exchange believes that Lead Market Makers and Market Makers should be eligible for certain incentives because they fulfill a unique role on the Exchange and are the only market participants required to submit quotes to the Exchange. The proposed SQF Port Cap is designed to ensure that Lead Market Makers and Market Makers add a certain amount of liquidity on Phlx in order to be able to cap their SQF Fees at the lower cap of \$42,000 as compared to the increased cap of \$50,000. The Exchange would apply the SQF Fee Cap criteria uniformly to Lead Market Makers and Market Makers.

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.

member organizations that have qualified pursuant to Options 2, Section 1. See Options 1, Section 1(b)(49).

²⁹ See Options 7, Section 8, C and D.

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.³⁰

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-2024-21 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.

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to file number SR-Phlx-2024-21. 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 a.m. and 3 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-2024-21 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Sherry R. Haywood,

Assistant Secretary.

³¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq Phlx LLC Rules

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Options Rules

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Options 7 Pricing Schedule

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Section 4. Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A)

* * * * *

Monthly Market Maker Cap

• Lead Market Makers and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The trading activity of separate Lead Market Maker and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows:

Fee per contract

\$0.05 per contract Fee for Adding Liquidity in Penny Symbols

\$0.18 per contract Fee for Removing Liquidity in Penny Symbols

\$0.18 per contract in Non-Penny Symbols

\$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction ("COLA"). Transactions which execute against an order for which the

Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

Additionally, Lead Market Makers and Market Makers that do not transact 0.20% of Total Customer Volume in electronic simple orders that adds liquidity in a month will be assessed a maximum SQF Port Fee of \$50,000 per month. For purposes of this fee cap, "Total Customer Volume" or "TCV" shall be defined as a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products.

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Section 9. Other Member Fees

* * * * *

B. Port Fees

A port is a logical connection or session that enables a market participant to send inbound messages and/or receive outbound messages from the Exchange using various communication protocols. Port Fees are prorated for the first month of service under this section. Upon cancellation, market participants are required to pay for service for the remainder of the month, regardless of whether it is the first month of service.

(i) The following order and quote protocols are available on Phlx:

* * * * *

(2) SQF Port Fee for ports that receive inbound quotes at any time within that month ("active port") \$1,250 per port, per month up to a maximum of \$42,000 per month

* * * * *