

Required fields are shown with yellow backgrounds and asterisks.

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| Page 1 of * <input type="text" value="43"/> | SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4 | File No.* SR - <input type="text" value="2016"/> - * <input type="text" value="24"/> | Amendment No. (req. for Amendments *) <input type="text"/> |
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Filing by **NASDAQ OMX PHLX LLC.**
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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| Initial * <input checked="" type="checkbox"/> | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input checked="" type="checkbox"/> | Section 19(b)(3)(A) * <input type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> |
| | | | Rule | | |
| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| | | | <input 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) | |

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| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 |
| Section 806(e)(1) * <input type="checkbox"/> | Section 806(e)(2) * <input type="checkbox"/> |
| Section 3C(b)(2) * <input type="checkbox"/> | |

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| Exhibit 2 Sent As Paper Document <input type="checkbox"/> | Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
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Description

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

Proposal to amend Pricing Schedule to exclude floor volume from the Monthly Market Maker Cap, increase assessment for select Firm electronic simple orders, and state that members that executed MARS Eligible Contracts may receive MARS Payment.

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 * <input type="text" value="Jurij"/> | Last Name * <input type="text" value="Trypupenko"/> |
| Title * <input type="text" value="Associate General Counsel"/> | |
| E-mail * <input type="text" value="jurij.trypupenko@nasdaq.com"/> | |
| Telephone * <input type="text" value="(301) 978-8132"/> | Fax <input type="text"/> |

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

| | |
|--|---|
| Date <input type="text" value="02/10/2016"/> | <input type="text" value="Executive Vice President and General Counsel"/> |
| By <input type="text" value="Edward S. Knight"/> | <input type="text" value="edward.knight@nasdaq.com"/> |

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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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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 Advance 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, security-based swap submission, or advance notice 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

Add Remove View

Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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 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

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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

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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 proposes to amend the Exchange’s Pricing Schedule (“Pricing Schedule”) at Section II, entitled “Multiply Listed Options Fees,”³ to: (1) exclude floor volume from the Monthly Market Maker Cap; (2) increase the assessment for select Firm electronic simple orders; and (3) state that Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment.⁴

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1 and a copy of applicable portion of the Pricing Schedule 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 of the Exchange (the “Board”) on July 1, 2015. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Multiply Listed Options Fees include options overlying equities, exchange traded funds (“ETFs”), exchange traded notes (“ETNs”) and indexes which are Multiply Listed.

⁴ Monthly Market Maker Cap and MARS are discussed below.

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

Jurij Trypupenko
Associate General Counsel
Nasdaq, Inc.
(301) 978-8132.

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

a. Purpose

The purpose of this filing is to amend the Exchange's Pricing Schedule at Section II to: (1) exclude floor volume from the Monthly Market Maker Cap; (2) increase the assessment for select Firm electronic simple orders; and (3) state that Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment.

Change 1 - Multiply Listed Options Fees – Monthly Market Maker Cap

In Change 1 the Exchange proposes to exclude floor volume from the calculation of the Monthly Market Maker Cap. Offering the Monthly Market Maker Cap as proposed, and as discussed below, will continue to incentivize market participants to bring liquidity and order flow to the Exchange for the benefit of all market participants. Liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Currently, the Monthly Market Maker Cap in Section II in the Pricing Schedule states:

- Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic and floor Option Transaction Charges; and (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as

defined in 1064(e)). The trading activity of separate Specialist 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 Section II) will be excluded from the Monthly Market Maker Cap.

Specialists 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 Pilot Options

\$0.18 per contract Fee for Removing Liquidity in Penny Pilot Options

\$0.18 per contract in Non-Penny Pilot Options

\$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.

Today, the Exchange applies certain caps⁵ on Multiply Listed Option Fees assessed to Customer,⁶ Professional,⁷ Specialist,⁸ Market Maker⁹, Broker-Dealer,¹⁰ and

⁵ These caps reflect different levels for different strategies. For example, there is a \$1,500 cap for certain dividend, merger and short stock interest strategies; and there is a \$700 cap for certain reversal and conversion, jelly roll and box spread floor option transaction strategies. The Exchange further separately caps each member organization for dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions in Multiply Listed

Firm.¹¹ Today, Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic and floor Option Transaction Charges; and (ii) qualified contingent cross ("QCC") Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders,¹² as defined in 1064(e)).¹³ The trading activity of

Options, combined in a month when trading in their own proprietary accounts ("Monthly Strategy Cap") at \$65,000 per member organization, per month.

⁶ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).

⁷ The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

⁸ A "Specialist" is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁹ A "Market Maker" includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (see Rule 1014(b)(ii)(B)). Directed Participants are also Market Makers.

¹⁰ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

¹¹ The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

¹² A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. A Floor QCC Order must: (i) be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the Qualified Contingent Trade ("QCT") Exemption, (iii) be executed at a price at or between the National Best Bid and Offer ("NBBO"); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. See Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56).

separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership¹⁴ between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll,¹⁵ and box spread strategy executions (as defined in Section II in the Pricing Schedule) are excluded from the Monthly Market Maker Cap (together the “excluded strategies”).¹⁶ The Exchange proposes to exclude floor volume from the Monthly Market Maker Cap.

¹³ Certain strategy executions, discussed below, will be excluded from the Monthly Market Maker Cap.

¹⁴ The term “Common Ownership” means members or member organizations under 75% common ownership or control.

¹⁵ A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. A reversal or conversion strategies is a transaction that employ calls and puts of the same strike price and the underlying stock.

¹⁶ Specialists 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 separately. A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (“PIXL Order”) against principal interest or against any other order (except as provided in Rule 1080(n)(i)(F)) it represents as agent (“Initiating Order”) provided it submits the PIXL order for electronic execution into the PIXL Auction (“Auction”) pursuant to Rule 1080. See Exchange Rule 1080(n). Non-Initiating Order interest could be a PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction. PIXL is the Exchange’s price improvement mechanism known as Price Improvement XL or PIXL. See Rule 1080(n).

The Exchange's proposal to exclude floor volume from the calculation of the Monthly Market Maker Cap is reasonable and proper because, despite the change, the Exchange will, through the Monthly Market Maker Cap, continue to offer members an opportunity to pay lower fees. The trading activity of separate Specialist and Market Maker member organizations will continue to be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. Specialists and Market Makers will continue to be subject to the Monthly Market Maker Cap, and once the Monthly Market Maker Cap of \$500,000 is reached, the members to whom the cap applies will not have to pay for additional strategy executions (sans excluded strategies) for the remainder of that month as a result of the fee cap.

The Exchange is making the proposal to exclude floor volume from the calculation of the Monthly Market Maker Cap because the Exchange floor incurs additional costs (e.g., personnel, equipment, surveillance) related to a business model that includes floor-based trading. This proposal helps the Exchange to recover such costs while continuing to offer the Monthly Market Cap, which incentivizes market participants to bring liquidity and order flow to the Exchange.

Change 2 - Multiply Listed Options Fees – Firm Electronic Simple Orders

In Change 2 the Exchange proposes to increase the assessment for select Firm electronic simple (non-complex)¹⁷ orders because the Exchange is trying to keep up with rising expenses and this modest fee increase will help the Exchange to defray them.

¹⁷ A complex order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. A

The select symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF are high volume Penny Pilot¹⁸ Options listed on the Exchange. The Exchange is proposing a modest increase in the assessment from \$0.34 to \$0.37, so that as proposed Note 12 will read as follows:

“¹²Firm electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF will be assessed \$0.37.”

The proposed increase for the Firm electronic simple orders in the noted options is not an outlier; rather, it is similar to and competitive with what is offered by other options markets.¹⁹ The Exchange believes that the Multiply Listed Options Fees schedule continues as constructed to be competitive and encourage market participants to bring liquidity to the Exchange.

Change 3 – Other Transaction Fees – MARS Payment

The Exchange proposes to state that Phlx members that have executed the required MARS Eligible Contracts may receive the Market Access and Routing Subsidy

complex order can also be a stock-option order. See Exchange Rule 1080, Commentary .07(a)(i).

¹⁸ The Penny Pilot was established in January 2007 and was last extended in 2015. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74) (notice of filing and approval order establishing Penny Pilot); and 75286 (June 24, 2015), 80 FR 37333 (June 30, 2015) (SR-Phlx-2015-54) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016). Penny Pilot Options listed on the Exchange can be found at <http://www.nasdaqtrader.com/Micro.aspx?id=phlx>.

¹⁹ See, e.g., the pricing schedule of NYSE AMEX OPTIONS (AMEX) at https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf, and of MIAX OPTIONS (MIAX) at <http://www.miaxoptions.com/content/fees>. See also, e.g., the pricing schedule of NASDAQ PHLX LLC (“Phlx”) and NASDAQ Options Market (“NOM”).

(“MARS”) Payment on all their MARS Eligible Contracts. The Exchange believes that, as discussed below, expanding who is eligible to receive MARS Payment will incentivize market participants to bring liquidity and order flow to the Exchange for the benefit of all market participants. Liquidity benefits all market participants by providing more trading opportunities.

Currently, Section IV E. in the Pricing Schedule states:

MARS Payment

Phlx members that have System Eligibility and have executed the Eligible Contracts in a month may receive the MARS Payment of \$0.10 per contract. This MARS Payment will be paid only on executed Firm orders routed to Phlx through a participating Phlx member's System. No payment will be made with respect to orders that are routed to Phlx, but not executed.

Currently, a MARS Payment will be paid only on executed Firm orders routed to Phlx through a participating Phlx member's System.

Today, to qualify for MARS, a Phlx member's routing system ("System") would be required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx's application program interface (“API”) to access current Phlx match engine functionality. Further, the member's System would also need to cause Phlx to be the one of the top three default destination exchanges for individually executed marketable orders if Phlx is at the NBBO, regardless of size or time, but allow any user to manually override Phlx as a default destination on an order-by-order basis.²⁰ Today, MARS Payment is only on Firm

²⁰ Notwithstanding the above, complex orders would not be required to enable the electronic routing of orders to all of the U.S. options exchanges or provide current

orders routed to Phlx through a participating Phlx member's System. The Exchange proposes to expand the participant types besides Firm (BD, JBO, Professional) that are eligible for MARS Payment.²¹

The Exchange proposes to indicate what qualifying volume will be eligible for MARS Payment (no longer only Firm) and to state that Phlx members that have executed the prerequisite MARS Eligible Contracts may receive the MARS Payment of \$0.10 per contract. For the purpose of qualifying for the MARS Payment, Eligible Contracts include the following: Firm, Broker-Dealer, Joint Back Office or "JBO" or Professional equity option orders that are electronically delivered and executed.²² A MARS Payment will be made to Phlx members that have System Eligibility and have routed at least 30,000 Eligible Contracts daily in a month, which were executed on Phlx.

As proposed Section IV E. in the Pricing Schedule will read as follows:

MARS Payment

Phlx members that have System Eligibility and have executed the Eligible Contracts in a month may receive the MARS Payment of \$0.10 per contract for all Eligible Contracts routed to Phlx through a participating Phlx member's System. No payment will be made with respect to orders that are routed to Phlx, but not executed.

consolidated market data from the U.S. options exchanges. Any Phlx member would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies Phlx that it appears to be robust and reliable. The member remains solely responsible for implementing and operating its system. Section IV E. in the Pricing Schedule.

²¹ To be eligible, as discussed, Eligible Contracts must be routed through a participating Phlx member's System.

²² The Exchange is removing the word "may" to tighten up the language regarding what Eligible Contracts qualify for MARS Payment. Eligible Contracts do not include floor-based orders, qualified contingent cross or "QCC" orders, price improvement or "PIXL" orders, Mini Option orders or Singly Listed Orders.

The Exchange believes that the fees and rebates in its Pricing Schedule are structured to attract liquidity. Despite the proposed changes, Phlx members and the Phlx market will continue to be encouraged to transact greater liquidity on the Exchange.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act²³ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act²⁴ 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 or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁵ Likewise, in NetCoalition v. Securities and Exchange Commission²⁶ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the

²³ 15 U.S.C. § 78f(b).

²⁴ 15 U.S.C. § 78f(b)(4), (5).

²⁵ Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

²⁶ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²⁷ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”²⁸

Further, “[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’ . . .”²⁹ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Change 1 - Multiply Listed Options Fees – Monthly Market Maker Cap

In Change 1 the Exchange proposes to exclude floor volume from the calculation of the Monthly Market Maker Cap that applies to Specialists and Market Makers when calculating the Monthly Market Maker Cap.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons.

²⁷ See id. at 534-535.

²⁸ See id. at 537.

²⁹ Id. at 539 (quoting Securities Exchange Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) at 73 FR at 74782-74783).

The Exchange's proposal to exclude floor volume from the calculation of the Monthly Market Maker Cap is reasonable because, despite the change, the Exchange will continue to offer members an opportunity to pay lower fees. The trading activity of separate Specialist and Market Maker member organizations will continue to be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. Specialists and Market Makers³⁰ will continue to be subject to the Monthly Market Maker Cap, and once the Monthly Market Maker Cap of \$500,000 is reached, the members to whom the cap applies will not have to pay for additional strategy executions for the remainder of that month as a result of the fee cap.

Excluding floor Options Transaction Charges from the Monthly Market Maker Cap is reasonable, equitable and not unfairly discriminatory because electronic Options Transaction Charges would continue to be capped as part of the Monthly Market Maker Cap, which applies only to Specialists and Market Makers. The Exchange would include floor option transaction charges related to reversal and conversion, jelly roll and box spread strategies in the Monthly Strategy Cap for Professionals, and Broker Dealers, when such members are trading in their own proprietary accounts, because these market participants are not subject to the Monthly Firm Fee Cap or other similar cap. While Specialists and Market Makers are subject to a Monthly Market Maker Cap on electronic options transaction charges, reversal and conversion, jelly roll and box spread

³⁰ Specialists and Market Makers on the Exchange are valuable market participants that provide liquidity in the marketplace. They also have obligations to the market and regulatory requirements, which normally do not apply to other market participants. These obligations include: to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

transactions, which are included in the Monthly Strategy Cap, are excluded from the Monthly Market Maker Cap. The Exchange believes also that its proposal to exclude floor transactions from the Monthly Market Maker Cap is reasonable because the Exchange floor incurs additional costs (e.g., personnel, equipment, surveillance) related to a business model that includes floor-based trading.

For the reasons described above, the Exchange believes that continuing to offer the Monthly Market Maker Cap as proposed will continue to incentivize market participants to bring liquidity and order flow to the Exchange for the benefit of all market participants. Liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Specialists and Market Makers have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. Moreover, the proposed change to the fee structure and rebate structure will be applied uniformly to all.

Change 2 - Multiply Listed Options Fees – Firm Electronic Simple Orders

In Change 2 the Exchange proposes to increase the assessment from \$0.34 to \$0.37 per contract for select Firm electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX, and XLF. The assessment for the noted simple orders is in the Multiply Listed Options Fees schedule for options overlying equities, ETFs, ETNs, and certain indexes.

The Exchange believes that the proposed change for the Firm electronic simple orders in the noted options, which are high volume Penny Pilot Options listed on the Exchange,³¹ is reasonable. This is because the proposed change is very modest and is not an outlier; rather, it is similar to and competitive with what is offered by other options markets.³² The the Multiply Listed Options Fees schedule continues as constructed to be competitive and encourage market participants to bring liquidity to the Exchange. The Exchange believes that despite the proposed increase, which will help the Exchange to recover costs, Firms will continue to be incentivized to transact electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX, and XLF on the Exchange.

The Exchange believes that the modest change from \$0.34 to \$0.37 in Note 12 is equitable and not unfairly discriminatory because the assessment is modest and will be applied uniformly to all Firms that send in electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX, and XLF.³³

Change 3 – Other Transaction Fees – MARS Payment

In Change 3 the Exchange proposes to state that Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment.

³¹ The high volume in the noted options is present across other options exchanges.

³² See, e.g., the pricing schedule of NYSE AMEX OPTIONS (AMEX) at https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf, and of MIAX OPTIONS (MIAX) at <http://www.miaxoptions.com/content/fees>. See also, e.g., the pricing schedule of NASDAQ PHLX LLC (“Phlx”) and NASDAQ Options Market (“NOM”).

³³ The Exchange notes that, as discussed, Note 12 continues to apply only to certain Firm orders. Note 12 does not apply to other fee liable members (e.g., Broker Dealer, Specialist and Market Maker, Professional, Customer), and as such the proposed change does not effectively change the fee relationship between Firms and such members.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory.

Where currently a MARS Payment will be paid only on executed Firm orders, the proposed change would allow all qualifying MARS volume to receive a MARS Payment. With the proposed change, all Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment of \$0.10 per contract. The Exchange believes that this is reasonable because it incentivizes more Phlx members to route Eligible Contracts for execution on the Exchange.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the increased ability to receive MARS Payment will be applied uniformly to all. Thus, a MARS Payment will be made to Phlx members that have System Eligibility and have routed at least 30,000 Eligible Contracts daily in a month, which were executed on Phlx.³⁴

The Exchange desires to continue to incentivize members and member organizations, through the Exchange's rebate and fee structure, to select Phlx as a venue for bringing liquidity and trading by offering competitive pricing. Such competitive, differentiated pricing exists today on other options exchanges. The Exchange's goal is creating and increasing incentives to attract orders to the Exchange that will, in turn, benefit all market participants through increased liquidity at the Exchange.

³⁴ For the purpose of qualifying for the MARS Payment, Eligible Contracts include the following: Firm, Broker-Dealer, Joint Back Office or "JBO" or Professional equity option orders that are electronically delivered and executed. Eligible Contracts must be routed through a participating Phlx member's System and do not include floor-based orders, qualified contingent cross or "QCC" orders, price improvement or "PIXL" orders, Mini Option orders or Singly Listed Orders.

4. 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. The Exchange believes that its proposal to exclude floor volume from the Monthly Market Maker Cap, increase the assessment for select Firm electronic simple orders, and state that all Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment does not impose a burden on competition. The Exchange's proposal will continue to encourage eligible market participants to transact orders on the Exchange in order to obtain the Monthly Market Maker Cap and MARS Payments.

The Exchange operates in a highly competitive market, comprised of at least twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

5. 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,³⁵ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed 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.

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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

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 for publication in the Federal Register.

5. Applicable portion of the Exchange's Pricing Schedule.

³⁵ 15 U.S.C. § 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2016-24)

February __, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change to Amend Section II of the Exchange's Pricing Schedule

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 February 10, 2016, 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 ("Pricing Schedule") at Section II, entitled "Multiply Listed Options Fees,"³ to: (1) exclude floor volume from the Monthly Market Maker Cap; (2) increase the assessment for select Firm electronic simple orders; and (3) state that Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment.⁴

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ Multiply Listed Options Fees include options overlying equities, exchange traded funds ("ETFs"), exchange traded notes ("ETNs") and indexes which are Multiply Listed.

⁴ Monthly Market Maker Cap and MARS are discussed below.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this filing is to amend the Exchange's Pricing Schedule at Section II to: (1) exclude floor volume from the Monthly Market Maker Cap; (2) increase the assessment for select Firm electronic simple orders; and (3) state that Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment.

Change 1 - Multiply Listed Options Fees – Monthly Market Maker Cap

In Change 1 the Exchange proposes to exclude floor volume from the calculation of the Monthly Market Maker Cap. Offering the Monthly Market Maker Cap as proposed, and as discussed below, will continue to incentivize market participants to bring liquidity and order flow to the Exchange for the benefit of all market participants. Liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market

participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Currently, the Monthly Market Maker Cap in Section II in the Pricing Schedule states:

- Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic and floor Option Transaction Charges; and (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)). The trading activity of separate Specialist 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 Section II) will be excluded from the Monthly Market Maker Cap. Specialists 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 Pilot Options

\$0.18 per contract Fee for Removing Liquidity in Penny Pilot Options

\$0.18 per contract in Non-Penny Pilot Options

\$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.

Today, the Exchange applies certain caps⁵ on Multiply Listed Option Fees assessed to Customer,⁶ Professional,⁷ Specialist,⁸ Market Maker⁹, Broker-Dealer,¹⁰ and Firm.¹¹ Today, Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic and floor Option Transaction Charges; and (ii) qualified contingent cross ("QCC") Transaction Fees (as defined in Exchange Rule

⁵ These caps reflect different levels for different strategies. For example, there is a \$1,500 cap for certain dividend, merger and short stock interest strategies; and there is a \$700 cap for certain reversal and conversion, jelly roll and box spread floor option transaction strategies. The Exchange further separately caps each member organization for dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions in Multiply Listed Options, combined in a month when trading in their own proprietary accounts ("Monthly Strategy Cap") at \$65,000 per member organization, per month.

⁶ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).

⁷ The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

⁸ A "Specialist" is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁹ A "Market Maker" includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (see Rule 1014(b)(ii)(B)). Directed Participants are also Market Makers.

¹⁰ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

¹¹ The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

1080(o) and Floor QCC Orders,¹² as defined in 1064(e)).¹³ The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership¹⁴ between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll,¹⁵ and box spread strategy executions (as defined in Section II in the Pricing Schedule) are excluded from the Monthly Market Maker Cap (together the “excluded

¹² A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. A Floor QCC Order must: (i) be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the Qualified Contingent Trade (“QCT”) Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (“NBBO”); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. See Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56).

¹³ Certain strategy executions, discussed below, will be excluded from the Monthly Market Maker Cap.

¹⁴ The term “Common Ownership” means members or member organizations under 75% common ownership or control.

¹⁵ A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. A reversal or conversion strategies is a transaction that employ calls and puts of the same strike price and the underlying stock.

strategies”).¹⁶ The Exchange proposes to exclude floor volume from the Monthly Market Maker Cap.

The Exchange’s proposal to exclude floor volume from the calculation of the Monthly Market Maker Cap is reasonable and proper because, despite the change, the Exchange will, through the Monthly Market Maker Cap, continue to offer members an opportunity to pay lower fees. The trading activity of separate Specialist and Market Maker member organizations will continue to be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. Specialists and Market Makers will continue to be subject to the Monthly Market Maker Cap, and once the Monthly Market Maker Cap of \$500,000 is reached, the members to whom the cap applies will not have to pay for additional strategy executions (sans excluded strategies) for the remainder of that month as a result of the fee cap.

The Exchange is making the proposal to exclude floor volume from the calculation of the Monthly Market Maker Cap because the Exchange floor incurs additional costs (e.g., personnel, equipment, surveillance) related to a business model that includes floor-based trading. This proposal helps the Exchange to recover such costs

¹⁶ Specialists 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 separately. A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity ("PIXL Order") against principal interest or against any other order (except as provided in Rule 1080(n)(i)(F)) it represents as agent ("Initiating Order") provided it submits the PIXL order for electronic execution into the PIXL Auction ("Auction") pursuant to Rule 1080. See Exchange Rule 1080(n). Non-Initiating Order interest could be a PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction. PIXL is the Exchange’s price improvement mechanism known as Price Improvement XL or PIXL. See Rule 1080(n).

while continuing to offer the Monthly Market Cap, which incentivizes market participants to bring liquidity and order flow to the Exchange.

Change 2 - Multiply Listed Options Fees – Firm Electronic Simple Orders

In Change 2 the Exchange proposes to increase the assessment for select Firm electronic simple (non-complex)¹⁷ orders because the Exchange is trying to keep up with rising expenses and this modest fee increase will help the Exchange to defray them.

The select symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF are high volume Penny Pilot¹⁸ Options listed on the Exchange. The Exchange is proposing a modest increase in the assessment from \$0.34 to \$0.37, so that as proposed Note 12 will read as follows:

“¹²Firm electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF will be assessed \$0.37.”

The proposed increase for the Firm electronic simple orders in the noted options is not an outlier; rather, it is similar to and competitive with what is offered by other

¹⁷ A complex order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. A complex order can also be a stock-option order. See Exchange Rule 1080, Commentary .07(a)(i).

¹⁸ The Penny Pilot was established in January 2007 and was last extended in 2015. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74) (notice of filing and approval order establishing Penny Pilot); and 75286 (June 24, 2015), 80 FR 37333 (June 30, 2015) (SR-Phlx-2015-54) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016). Penny Pilot Options listed on the Exchange can be found at <http://www.nasdaqtrader.com/Micro.aspx?id=phlx>.

options markets.¹⁹ The Exchange believes that the Multiply Listed Options Fees schedule continues as constructed to be competitive and encourage market participants to bring liquidity to the Exchange.

Change 3 – Other Transaction Fees – MARS Payment

The Exchange proposes to state that Phlx members that have executed the required MARS Eligible Contracts may receive the Market Access and Routing Subsidy (“MARS”) Payment on all their MARS Eligible Contracts. The Exchange believes that, as discussed below, expanding who is eligible to receive MARS Payment will incentivize market participants to bring liquidity and order flow to the Exchange for the benefit of all market participants. Liquidity benefits all market participants by providing more trading opportunities.

Currently, Section IV E. in the Pricing Schedule states:

MARS Payment

Phlx members that have System Eligibility and have executed the Eligible Contracts in a month may receive the MARS Payment of \$0.10 per contract. This MARS Payment will be paid only on executed Firm orders routed to Phlx through a participating Phlx member's System. No payment will be made with respect to orders that are routed to Phlx, but not executed.

Currently, a MARS Payment will be paid only on executed Firm orders routed to Phlx through a participating Phlx member's System.

¹⁹ See, e.g., the pricing schedule of NYSE AMEX OPTIONS (AMEX) at https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf, and of MIAX OPTIONS (MIAX) at <http://www.miaxoptions.com/content/fees>. See also, e.g., the pricing schedule of NASDAQ PHLX LLC (“Phlx”) and NASDAQ Options Market (“NOM”).

Today, to qualify for MARS, a Phlx member's routing system ("System") would be required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx's application program interface ("API") to access current Phlx match engine functionality. Further, the member's System would also need to cause Phlx to be the one of the top three default destination exchanges for individually executed marketable orders if Phlx is at the NBBO, regardless of size or time, but allow any user to manually override Phlx as a default destination on an order-by-order basis.²⁰ Today, MARS Payment is only on Firm orders routed to Phlx through a participating Phlx member's System. The Exchange proposes to expand the participant types besides Firm (BD, JBO, Professional) that are eligible for MARS Payment.²¹

The Exchange proposes to indicate what qualifying volume will be eligible for MARS Payment (no longer only Firm) and to state that Phlx members that have executed the prerequisite MARS Eligible Contracts may receive the MARS Payment of \$0.10 per contract. For the purpose of qualifying for the MARS Payment, Eligible Contracts include the following: Firm, Broker-Dealer, Joint Back Office or "JBO" or Professional

²⁰ Notwithstanding the above, complex orders would not be required to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. Any Phlx member would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies Phlx that it appears to be robust and reliable. The member remains solely responsible for implementing and operating its system. Section IV E. in the Pricing Schedule.

²¹ To be eligible, as discussed, Eligible Contracts must be routed through a participating Phlx member's System.

equity option orders that are electronically delivered and executed.²² A MARS Payment will be made to Phlx members that have System Eligibility and have routed at least 30,000 Eligible Contracts daily in a month, which were executed on Phlx.

As proposed Section IV E. in the Pricing Schedule will read as follows:

MARS Payment

Phlx members that have System Eligibility and have executed the Eligible Contracts in a month may receive the MARS Payment of \$0.10 per contract for all Eligible Contracts routed to Phlx through a participating Phlx member's System. No payment will be made with respect to orders that are routed to Phlx, but not executed.

The Exchange believes that the fees and rebates in its Pricing Schedule are structured to attract liquidity. Despite the proposed changes, Phlx members and the Phlx market will continue to be encouraged to transact greater liquidity on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act²³ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act²⁴ 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 or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

²² The Exchange is removing the word "may" to tighten up the language regarding what Eligible Contracts qualify for MARS Payment. Eligible Contracts do not include floor-based orders, qualified contingent cross or "QCC" orders, price improvement or "PIXL" orders, Mini Option orders or Singly Listed Orders.

²³ 15 U.S.C. § 78f(b).

²⁴ 15 U.S.C. § 78f(b)(4), (5).

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.”²⁵ Likewise, in NetCoalition v. Securities and Exchange Commission²⁶ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²⁷ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”²⁸

Further, “[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

²⁵ Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

²⁶ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²⁷ See id. at 534-535.

²⁸ See id. at 537.

otherwise, in the execution of order flow from broker dealers'"²⁹ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Change 1 - Multiply Listed Options Fees – Monthly Market Maker Cap

In Change 1 the Exchange proposes to exclude floor volume from the calculation of the Monthly Market Maker Cap that applies to Specialists and Market Makers when calculating the Monthly Market Maker Cap.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons.

The Exchange's proposal to exclude floor volume from the calculation of the Monthly Market Maker Cap is reasonable because, despite the change, the Exchange will continue to offer members an opportunity to pay lower fees. The trading activity of separate Specialist and Market Maker member organizations will continue to be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. Specialists and Market Makers³⁰ will continue to be subject to the Monthly Market Maker Cap, and once the Monthly Market Maker Cap of

²⁹ Id. at 539 (quoting Securities Exchange Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) at 73 FR at 74782-74783).

³⁰ Specialists and Market Makers on the Exchange are valuable market participants that provide liquidity in the marketplace. They also have obligations to the market and regulatory requirements, which normally do not apply to other market participants. These obligations include: to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

\$500,000 is reached, the members to whom the cap applies will not have to pay for additional strategy executions for the remainder of that month as a result of the fee cap.

Excluding floor Options Transaction Charges from the Monthly Market Maker Cap is reasonable, equitable and not unfairly discriminatory because electronic Options Transaction Charges would continue to be capped as part of the Monthly Market Maker Cap, which applies only to Specialists and Market Makers. The Exchange would include floor option transaction charges related to reversal and conversion, jelly roll and box spread strategies in the Monthly Strategy Cap for Professionals, and Broker Dealers, when such members are trading in their own proprietary accounts, because these market participants are not subject to the Monthly Firm Fee Cap or other similar cap. While Specialists and Market Makers are subject to a Monthly Market Maker Cap on electronic options transaction charges, reversal and conversion, jelly roll and box spread transactions, which are included in the Monthly Strategy Cap, are excluded from the Monthly Market Maker Cap. The Exchange believes also that its proposal to exclude floor transactions from the Monthly Market Maker Cap is reasonable because the Exchange floor incurs additional costs (e.g., personnel, equipment, surveillance) related to a business model that includes floor-based trading.

For the reasons described above, the Exchange believes that continuing to offer the Monthly Market Maker Cap as proposed will continue to incentivize market participants to bring liquidity and order flow to the Exchange for the benefit of all market participants. Liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an

additional corresponding increase in order flow from other market participants.

Specialists and Market Makers have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. Moreover, the proposed change to the fee structure and rebate structure will be applied uniformly to all.

Change 2 - Multiply Listed Options Fees – Firm Electronic Simple Orders

In Change 2 the Exchange proposes to increase the assessment from \$0.34 to \$0.37 per contract for select Firm electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX, and XLF. The assessment for the noted simple orders is in the Multiply Listed Options Fees schedule for options overlying equities, ETFs, ETNs, and certain indexes.

The Exchange believes that the proposed change for the Firm electronic simple orders in the noted options, which are high volume Penny Pilot Options listed on the Exchange,³¹ is reasonable. This is because the proposed change is very modest and is not an outlier; rather, it is similar to and competitive with what is offered by other options markets.³² The the Multiply Listed Options Fees schedule continues as constructed to be competitive and encourage market participants to bring liquidity to the Exchange. The Exchange believes that despite the proposed increase, which will help the Exchange to

³¹ The high volume in the noted options is present across other options exchanges.

³² See, e.g., the pricing schedule of NYSE AMEX OPTIONS (AMEX) at https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf, and of MIAX OPTIONS (MIAX) at <http://www.miaxoptions.com/content/fees>. See also, e.g., the pricing schedule of NASDAQ PHLX LLC (“Phlx”) and NASDAQ Options Market (“NOM”).

recover costs, Firms will continue to be incentivized to transact electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX, and XLF on the Exchange.

The Exchange believes that the modest change from \$0.34 to \$0.37 in Note 12 is equitable and not unfairly discriminatory because the assessment is modest and will be applied uniformly to all Firms that send in electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX, and XLF.³³

Change 3 – Other Transaction Fees – MARS Payment

In Change 3 the Exchange proposes to state that Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory.

Where currently a MARS Payment will be paid only on executed Firm orders, the proposed change would allow all qualifying MARS volume to receive a MARS Payment. With the proposed change, all Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment of \$0.10 per contract. The Exchange believes that this is reasonable because it incentivizes more Phlx members to rout Eligible Contracts for execution on the Exchange.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the increased ability to receive MARS Payment will be applied uniformly to all. Thus, a MARS Payment will be made to Phlx members that have

³³ The Exchange notes that, as discussed, Note 12 continues to apply only to certain Firm orders. Note 12 does not apply to other fee liable members (e.g., Broker Dealer, Specialist and Market Maker, Professional, Customer), and as such the proposed change does not effectively change the fee relationship between Firms and such members.

System Eligibility and have routed at least 30,000 Eligible Contracts daily in a month, which were executed on Phlx.³⁴

The Exchange desires to continue to incentivize members and member organizations, through the Exchange's rebate and fee structure, to select Phlx as a venue for bringing liquidity and trading by offering competitive pricing. Such competitive, differentiated pricing exists today on other options exchanges. The Exchange's goal is creating and increasing incentives to attract orders to the Exchange that will, in turn, benefit all market participants through increased liquidity at the Exchange.

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. The Exchange believes that its proposal to exclude floor volume from the Monthly Market Maker Cap, increase the assessment for select Firm electronic simple orders, and state that all Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment does not impose a burden on competition. The Exchange's proposal will continue to encourage eligible market participants to transact orders on the Exchange in order to obtain the Monthly Market Maker Cap and MARS Payments.

The Exchange operates in a highly competitive market, comprised of at least twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be

³⁴ For the purpose of qualifying for the MARS Payment, Eligible Contracts include the following: Firm, Broker-Dealer, Joint Back Office or "JBO" or Professional equity option orders that are electronically delivered and executed. Eligible Contracts must be routed through a participating Phlx member's System and do not include floor-based orders, qualified contingent cross or "QCC" orders, price improvement or "PIXL" orders, Mini Option orders or Singly Listed Orders.

excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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.³⁵

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:

³⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2016-24 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2016-24. This file number should be included on the subject line if e-mail 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 Web site (<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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2016-24 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Robert W. Errett
Deputy Secretary

³⁶ 17 CFR. 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

**NASDAQ OMX PHLX LLC¹ PRICING SCHEDULE
THE EXCHANGE CALCULATES FEES ON A TRADE DATE BASIS.**

**POLICY FOR AMENDING BILLING INFORMATION: CORRECTIONS
SUBMITTED AFTER TRADE DATE AND PRIOR TO THE ISSUANCE OF AN
INVOICE BY THE EXCHANGE MUST BE SUBMITTED TO THE EXCHANGE
IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING
DOCUMENTATION. ONLY MEMBERS MAY SUBMIT TRADE
CORRECTIONS.**

**ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN
WRITING AND MUST BE ACCOMPANIED BY SUPPORTING
DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER
THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT
FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY
DATA FEED FEES AND CO-LOCATION SERVICES FEES. THE EXCHANGE
CALCULATES FEES ON A TRADE DATE BASIS. ONLY MEMBERS MAY
SUBMIT BILLING DISPUTES.**

¹PHLX[®] is a registered trademark of Nasdaq, Inc.

* * * * *

A. Mini Options Fees

No Change.

B. Customer Rebate Program

The Customer Rebate Tiers described below will be calculated by totaling Customer volume in Multiply Listed Options (including SPY) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o). Rebates will be paid on Customer Rebate Tiers according to the below categories. Members and member organizations under Common Ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates.

No Change.

I. Rebates and Fees for Adding and Removing Liquidity in SPY

No Change.

II. Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed⁹)

| | Customer | Professional | Specialist and Market Maker | | Broker-Dealer | | Firm | Electronic | Floor |
|---|----------|--------------------------|-----------------------------|----------------------|---------------|--------------------------|--------|------------------------------|--------|
| | | | Electronic | Floor | Electronic | Floor | | | |
| Options Transaction Charge (Penny Pilot) | \$0.00 | \$0.48 ¹³ | \$0.25 | \$0.22 | \$0.30 | \$0.48 ¹³ | \$0.25 | \$0.48 ^{12, 13} | \$0.25 |
| Options Transaction Charge (non-Penny Pilot) | \$0.00 | \$0.75 ^{13, 14} | \$0.25 | \$0.25 ¹⁵ | \$0.30 | \$0.75 ^{13, 14} | \$0.25 | \$0.75 ^{12, 13, 14} | \$0.25 |
| Options Surcharge in MNX and NDX | N/A | \$0.25 | \$0.25 | \$0.25 | \$0.25 | \$0.25 | \$0.25 | \$0.25 | \$0.25 |
| Options Surcharge in BKK | N/A | \$0.10 | \$0.10 | \$0.10 | \$0.10 | \$0.10 | \$0.10 | \$0.10 | \$0.10 |
| Cabinet Options | \$0.00 | N/A | \$0.10 | N/A | \$0.10 | N/A | \$0.10 | N/A | \$0.10 |

- These fees are per contract.

⁹The following symbols will be assessed the fees in Section III for Singly Listed Options: SOX, HGX and OSX.

¹²Firm electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF will be assessed \$0.[34]37.

¹³Electronic Complex Orders will be assessed \$0.35 per contract.

¹⁴Any member or member organization under Common Ownership with another member or member organization that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed \$0.60 per contract.

¹⁵Any member or member organization under Common Ownership with another member or member organization that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed \$0.23 per contract.

- The Cabinet Fees above are not in addition to the Options Transaction Charges.
- QCC Transaction Fees for a Specialist, Market Maker, Professional, Firm and Broker-Dealer are \$0.20 per contract. QCC Transaction Fees apply to QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e). A rebate, as specified in the below QCC Rebate Schedule, will be paid for all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend, merger, short stock interest or reversal or conversion strategy execution (as defined in Section II).

QCC Rebate Schedule

| Tier | Threshold | Rebate per Contract |
|-------------|---|----------------------------|
| Tier 1 | 0 to 299,999 contracts in a month | \$0.00 |
| Tier 2 | 300,000 to 499,999 contracts in a month | \$0.07 |
| Tier 3 | 500,000 to 699,999 contracts in a month | \$0.08 |
| Tier 4 | 700,000 to 999,999 contracts in a month | \$0.09 |
| Tier 5 | Over 1,000,000 contracts in a month | \$0.11 |

The maximum QCC Rebate to be paid in a given month will not exceed \$450,000.

- Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic [and floor]Option Transaction Charges; and (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)). The trading activity of separate Specialist 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 Section II) will be excluded from the Monthly Market Maker Cap. Specialists 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 Pilot Options

\$0.18 per contract Fee for Removing Liquidity in Penny Pilot Options

\$0.18 per contract in Non-Penny Pilot Options

\$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.

* * * * *

IV. Other Transaction Fees

A. – D. No Change.

E. Market Access and Routing Subsidy ("MARS")

MARS System Eligibility

To qualify for MARS, a Phlx member's routing system ("hereinafter System") would be required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx's API to access current Phlx match engine functionality. Further, the member's System would also need to cause Phlx to be the one of the top three default destination exchanges for individually executed marketable orders if Phlx is at the national best bid or offer ("NBBO"), regardless of size or time, but allow any user to manually override Phlx as a default destination on an order-by-order basis. Notwithstanding the above, Complex Orders would not be required to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. Any Phlx member would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies Phlx that it appears to be robust and reliable. The member remains solely responsible for implementing and operating its system.

MARS Eligible Contracts

MARS Payment would be made to Phlx members that have System Eligibility and have routed at least 30,000 Eligible Contracts daily in a month, which were executed on Phlx. For the purpose of qualifying for the MARS Payment, Eligible Contracts [may]include the following: Firm, Broker-Dealer, Joint Back Office or "JBO" or Professional equity option orders that are electronically delivered and executed. Eligible Contracts do not include floor-based orders, qualified contingent cross or "QCC" orders, price improvement or "PIXL" orders, Mini Option orders or Singly Listed Orders.

MARS Payment

Phlx members that have System Eligibility and have executed the Eligible Contracts in a month may receive the MARS Payment of \$0.10 per contract for all Eligible Contracts[. This MARS Payment will be paid only on executed Firm orders] routed to Phlx through a participating Phlx member's System. No payment will be made with respect to orders that are routed to Phlx, but not executed.

A Phlx member will not be entitled to receive any other revenue for the use of its System specifically with respect to orders routed to Phlx with the exception of Payment for Order Flow or "PFOF".

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