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

File No.* SR - 2016 - * 33
Amendment No. (req. for Amendments *)

Filing by NASDAQ PHLX LLC

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

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☑ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 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 *).

Rebates and Fees for Adding and Removing Liquidity in SPY

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 * Angela
Last Name * Dunn
Title * Associate General Counsel
E-mail * angela.dunn@nasdaq.com
Telephone * (215) 496-5692
Fax

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.

Date 02/29/2016

By Edward S. Knight

(Name *)

(Title *)

Executive Vice President and General Counsel

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.

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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

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Exhibit Sent As Paper Document

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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 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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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 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 ("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 ("Commission") a proposal to amend the Exchange's Pricing Schedule at Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in SPY."

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2016.

A notice of the proposed rule change for publication in the Federal Register is at Exhibit 1 and the text of the amended Exchange Rule is at 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") 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.

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

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

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in SPY," to (i) amend the Specialist[3] and Market Maker[4] Rebate for Adding Liquidity in Simple Orders; and (ii) reduce all Fees for Removing Liquidity in Simple Orders. The amendments will be described in greater detail below.

Fees and rebates applicable to options overlying Standard and Poor's Depositary Receipts/SPDRs ("SPY")[5] are located in Section I of the Exchange's Pricing Schedule. The Exchange specifies which fees and rebates apply to Simple Orders and Complex

3 The term "Specialist" applies to transactions for the account of a Specialist (as defined in Exchange Rule 1020(a)).

4 The term "Market Maker" describes fees and rebates applicable to Registered Options Traders ("ROT"), Streaming Quote Traders ("SQT") and Remote Streaming Quote Traders ("RSQT"). A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes SQTs and RSQTs as well as on and off-floor ROTS. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO 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 Remote Streaming Quote Trader Organization or "RSQTO," which may also be referred to as a Remote Market Making Organization ("RMO"), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a).

5 Options overlying Standard and Poor's Depositary Receipts/SPDRs ("SPY") are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

Orders.[6] This proposal specifically applies to Simple Order pricing in SPY in Part A. The Exchange is not amending the Complex Order pricing in SPY in Part B.

Simple Order – Rebate For Adding Liquidity

Today, the Exchange pays a SPY Simple Order Rebate for Adding Liquidity of $0.20 per contract to Specialists and Market Makers. All other market participants do not receive a SPY Simple Order Rebate for Adding Liquidity. The Exchange proposes to replace the $0.20 per contract SPY Simple Order Rebate for Adding Liquidity with tiered rebates.

The Exchange proposes to pay a $0.15 per contract Specialist and Market Maker SPY Simple Order Rebate for Adding Liquidity to participants that add 1 to 2,499 electronically executed Simple Order contracts per day in a month in SPY. The Exchange proposes to pay a $0.20 per contract Specialist and Market Maker SPY Simple Order Rebate for Adding Liquidity to participants that add 2,500 to 4,999 electronically executed Simple Order contracts per day in a month in SPY. The Exchange proposes to pay a $0.25 per contract Specialist and Market Maker SPY Simple Order Rebate for Adding Liquidity to participants that add 5,000 to 19,999 electronically executed Simple Order contracts per day in a month in SPY. Finally, the Exchange proposes to pay a $0.30 per contract Specialist and Market Maker SPY Simple Order Rebate for Adding Liquidity to participants that add greater than 20,000 electronically executed Simple Order contracts per day in a month in SPY. The Exchange believes that the proposed

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[6] A Complex Order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as 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.

four tier rebate structure would incentive market participants to add more Specialist and Market Maker liquidity in SPY on the Exchange.

Today, if a SPY transaction originates from the Exchange floor, that transaction is subject to the Multiply Listed Options Fees.[7] However, if one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then the Section I fees apply to the transactions which originated on the Exchange floor and contracts that are executed electronically on all sides of the transaction.[8] The Exchange will continue to treat the one side of the transaction which originates on the Exchange floor in the same manner and will count the one side of the transaction which originates on the Exchange floor toward the number of contracts to qualify for the Simple Order Rebate for Adding Liquidity for Specialists and Market Makers in SPY.

Simple Order – Fee for Removing Liquidity

Today, the Exchange assesses a $0.44 per contract Customer[9] Simple Order Fee for Removing Liquidity in SPY and a $0.49 per contract Simple Order Fee for Removing Liquidity in SPY to Specialists, Market Makers, Firms,[10] Broker-Dealers[11] and

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[7] See Multiply Listed Options Fees in Section II of the Exchange's Pricing Schedule.

[8] See Part C of Section I of the Exchange's Pricing Schedule.

[9] 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 which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).

[10] The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

Professionals.[12] The Exchange proposes to decrease the Simple Order Fees for Removing Liquidity and assess a $0.43 per contract Customer Simple Order Fee for Removing Liquidity in SPY and a $0.47 per contract Simple Order Fee for Removing Liquidity in SPY to Specialists, Market Makers, Firms, Broker-Dealers and Professionals. The Exchange believes that the reduction of the Simple Order Fees for Removing Liquidity in SPY will encourage participants to send additional order flow to the Exchange.

Cross-Reference and Marketing Fee

The Exchange proposes to correct a typographical error related to a cross reference in the beginning of this section by removing the reference to Section "C" and properly adding the Section "I" reference.

The Exchange proposes to replace the words "Payment for Order Flow Fee" with the words "Marketing Fee" to conform this term throughout the Pricing Schedule. The Exchange recently amended this term throughout the Pricing Schedule in a prior rule change and inadvertently did not mark this term to be amended as well.[13]

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act[15]

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

12 The term "Professional" applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(14).

13 See SR-Phlx-2016-30 (not yet published).

14 15 U.S.C. § 78f(b).

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 the Exchange 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."[16] Likewise, in NetCoalition v. Securities and Exchange Commission[17] ("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.[18] 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."[19]

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15 15 U.S.C. § 78f(b)(4) and (5).

16 Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) ("Regulation NMS Adopting Release").

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

18 See NetCoalition, at 534.

19 Id. at 537.

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'…."[20] 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.

The Exchange continues to offer pricing specific to SPY because these options are currently the most actively traded options class. Pricing by symbol is a common practice on many U.S. options exchanges as a means to incentive order flow to be sent to an exchange for execution.[21]

Simple Order – Rebate For Adding Liquidity

The Exchange's proposal to replace the $0.20 per contract SPY Simple Order Rebate for Adding Liquidity with tiered rebates is reasonable because the Exchange desires to incentivize market participants to transact a greater number of SPY options. All participants will continue to receive a SPY Simple Order Rebate for Adding Liquidity for Specialists and Market Makers provided they execute one electronic Simple Order SPY contract. In some cases, the rebate will be lower, if 2,499 or less electronic Simple Order SPY contracts are added, the SPY Simple Order Rebate for Adding Liquidity for Specialists and Market Makers will be $0.15 as compared to $0.20 per contract (today's

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20 Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

21 See International Securities Exchange LLC's ("ISE") Schedule of Fees.

rebate). Despite this decrease, the Exchange believes that participants will continue to be incentivized to add SPY order flow to the Exchange to receive the rebate. With this proposal, the Exchange is also offering the opportunity to earn higher rebates provided the participant adds at least 5,000 electronic Simple Order SPY contracts.[22] In some cases the rebate will remain the same.[23] The Exchange believes that the rebate will continue to encourage participants to direct SPY order flow to the Exchange.

The Exchange's proposal to replace the $0.20 per contract SPY Simple Order Rebate for Adding Liquidity for Specialists and Market Makers with tiered rebates is equitable and not unfairly discriminatory because Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[24] They 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. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. An increase in the activity of these market participants in turn facilitates

[22] The Exchange will pay a $0.25 per contract rebate if participant adds 5,000 to 19,999 contracts per day in a month and a $0.30 per contract rebate if participant adds greater than 20,000 contracts per day in a month in SPY.

[23] The Exchange will continue to pay a $0.20 per contract rebate if participant adds 2,500 to 4,999 contracts per day in a month in SPY.

[24] See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

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

The Exchange believes that continuing to pay the Simple Order Rebate for Adding Liquidity to all transactions executed within the Exchange's order book, including transactions where one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, is reasonable because the Exchange's treatment of these orders is consistent with its treatment of all other orders executed in the order book as compared to a floor order executed on the Exchange's trading floor. Further, the Exchange believes it is reasonable to count the one side of the transaction which originates on the Exchange floor toward the number of contracts to qualify for the Simple Order Rebate for Adding Liquidity for Specialists and Market Makers in SPY because this treatment of the floor order which executes in the order book is consistent with the treatment of all other electronically executed orders which qualify for the Section I pricing.

The Exchange believes that continuing to pay the Simple Order Rebate for Adding Liquidity to all transactions executed within the Exchange's order book, including transactions where one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, is equitable and not unfairly discriminatory because the Exchange is treating these orders similar to all other orders executed in the order book as compared to a floor order executed on the Exchange's trading floor. Further, the Exchange believes it is equitable and not unfairly discriminatory to count the one side of the transaction which originates on the Exchange floor toward the number of contracts to qualify for the Simple Order

Rebate for Adding Liquidity for Specialists and Market Makers because today all electronically executed orders qualify for the Section I pricing. The transaction where one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote will be treated in the same manner as all other orders executed in the order book.

Simple Order – Fee for Removing Liquidity

The Exchange's proposal to decrease the Customer Simple Order Fee in SPY for Removing Liquidity from $0.44 to $0.43 per contract and all other Simple Order Fees for Removing Liquidity in SPY for Specialists, Market Makers, Firms, Broker-Dealers and Professionals from $0.49 to $0.47 per contract is reasonable because the reduction of these fees will encourage participants to send additional order flow to the Exchange.

The Exchange's proposal to decrease the Customer Simple Order Fee for Removing Liquidity in SPY from $0.44 to $0.43 per contract and all other Simple Order Fees for Removing Liquidity in SPY for Specialists, Market Makers, Firms, Broker-Dealers and Professionals from $0.49 to $0.47 per contract is equitable and not unfairly discriminatory because all participants will be assessed the same lower Simple Order Fee for Removing Liquidity in SPY of $0.47 per contract, except for Customers. The Exchange believes that assessing Customers a lower fee is equitable and not unfairly discriminatory because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer 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.

Cross-Reference and Marketing Fee

The Exchange's proposal to correct a typographical error related to a cross reference is reasonable, equitable and not unfairly discriminatory because it will clarify the Pricing Schedule. This amendment is non-substantive.

The Exchange's proposal to replace the words "Payment for Order Flow Fee" with the words "Marketing Fee" is reasonable, equitable and not unfairly discriminatory because the proposal will conform the rule text to other parts of the Rulebook. The usage of the term Marketing Fee would be consistent throughout the Rulebook.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In terms of intra-market competition, the Exchange believes that its proposed rebates and fees continue to remain competitive in SPY, which is the most actively traded options class.[25] In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Simple Order – Rebate For Adding Liquidity

The Exchange's proposal to replace the $0.20 per contract SPY Simple Order Rebate for Adding Liquidity with tiered rebates does not impose an undue burden on intra-market competition because Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[26] The differentiation as between Specialists and Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. An increase in the

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[25] The Exchange continues to incentive market participants to transact SPY by offering rebates in this Penny Pilot Option similar to ISE which pays rebates on Penny Pilot Options. See ISE's Fee Schedule. ISE Gemini, LLC ("ISE Gemini") assesses a SPY tiered taker fee ranging from $0.44 to $0.45 for a priority customer and a tiered taker fee ranging from $0.48 to $0.49 per contract for all other market participants. See ISE Gemini's Fee Schedule. Also, the Exchange's Simple Order Fee for Removing Liquidity in SPY is lower as compared to pricing at C2 Options Exchange, Incorporated ("C2"). C2's penny pilot options pricing is $0.47 per contract for Priority Customers and $0.48 per contract for all other participants when removing liquidity. See C2's Fees Schedule.

[26] See note 24. 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.

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

The Exchange believes that continuing to pay the SPY Simple Order Rebate for Adding Liquidity to all transactions executed within the Exchange's order book, including transactions where one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, does not impose an undue burden on intra-market competition because the Exchange is treating these orders similar to all other orders executed in the order book as compared to a floor order executed on the Exchange's trading floor. Further, the Exchange believes counting the one side of the transaction which originates on the Exchange floor toward the number of contracts to qualify for the SPY Simple Order Rebate for Adding Liquidity for Specialists and Market Makers does not impose an undue burden on intra-market competition because today all electronically executed orders qualify for the Section I pricing. The transaction where one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote will be treated in the same manner as all other orders executed in the order book.

Simple Order – Fee for Removing Liquidity

The Exchange's proposal to decrease the Customer Simple Order for Removing Liquidity in SPY from $0.44 to $0.43 per contract and all other Simple Order Fees for Removing Liquidity in SPY for Specialists, Market Makers, Firms, Broker-Dealers and Professionals from $0.49 to $0.47 per contract does not impose an undue burden on intra-market competition because all participants will be assessed the same lower Simple Order

Fee for Removing Liquidity in SPY of $0.47 per contract, except for Customers. Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer 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.

Cross-Reference and Marketing Fee

The Exchange's proposal to correct a typographical error related to a cross reference does not impose an undue burden on intra-market competition because the amendment is non-substantive.

The Exchange's proposal to replace the words "Payment for Order Flow Fee" with the words "Marketing Fee" does not impose an undue burden on intra-market competition because the proposal will conform the rule text to other parts of the Rulebook.

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,[27] The Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

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27 15 U.S.C. § 78s(b)(3)(A)(ii).

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.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. <u>Exhibits</u>

1. Notice of proposed rule for publication in the <u>Federal Register</u>.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-Phlx-2016-33)

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rebates and Fees for Adding and Removing Liquidity in SPY

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 29, 2016, NASDAQ PHLX LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange's Pricing Schedule at Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in SPY."

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2016.

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.

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

2 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in SPY," to (i) amend the Specialist[3] and Market Maker[4] Rebate for Adding Liquidity in

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3 The term "Specialist" applies to transactions for the account of a Specialist (as defined in Exchange Rule 1020(a)).

4 The term "Market Maker" describes fees and rebates applicable to Registered Options Traders ("ROT"), Streaming Quote Traders ("SQT") and Remote Streaming Quote Traders ("RSQT"). A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes SQTs and RSQTs as well as on and off-floor ROTS. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO 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 Remote Streaming Quote Trader Organization or "RSQTO," which may also be referred to as a Remote Market Making Organization ("RMO"), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a).

Simple Orders; and (ii) reduce all Fees for Removing Liquidity in Simple Orders. The amendments will be described in greater detail below.

Fees and rebates applicable to options overlying Standard and Poor's Depositary Receipts/SPDRs ("SPY")[5] are located in Section I of the Exchange's Pricing Schedule. The Exchange specifies which fees and rebates apply to Simple Orders and Complex Orders.[6] This proposal specifically applies to Simple Order pricing in SPY in Part A. The Exchange is not amending the Complex Order pricing in SPY in Part B.

Simple Order – Rebate For Adding Liquidity

Today, the Exchange pays a SPY Simple Order Rebate for Adding Liquidity of $0.20 per contract to Specialists and Market Makers. All other market participants do not receive a SPY Simple Order Rebate for Adding Liquidity. The Exchange proposes to replace the $0.20 per contract SPY Simple Order Rebate for Adding Liquidity with tiered rebates.

The Exchange proposes to pay a $0.15 per contract Specialist and Market Maker SPY Simple Order Rebate for Adding Liquidity to participants that add 1 to 2,499 electronically executed Simple Order contracts per day in a month in SPY. The Exchange proposes to pay a $0.20 per contract Specialist and Market Maker SPY Simple Order Rebate for Adding Liquidity to participants that add 2,500 to 4,999 electronically

5 Options overlying Standard and Poor's Depositary Receipts/SPDRs ("SPY") are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

6 A Complex Order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as 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.

executed Simple Order contracts per day in a month in SPY. The Exchange proposes to pay a $0.25 per contract Specialist and Market Maker SPY Simple Order Rebate for Adding Liquidity to participants that add 5,000 to 19,999 electronically executed Simple Order contracts per day in a month in SPY. Finally, the Exchange proposes to pay a $0.30 per contract Specialist and Market Maker SPY Simple Order Rebate for Adding Liquidity to participants that add greater than 20,000 electronically executed Simple Order contracts per day in a month in SPY. The Exchange believes that the proposed four tier rebate structure would incentive market participants to add more Specialist and Market Maker liquidity in SPY on the Exchange.

Today, if a SPY transaction originates from the Exchange floor, that transaction is subject to the Multiply Listed Options Fees.[7] However, if one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then the Section I fees apply to the transactions which originated on the Exchange floor and contracts that are executed electronically on all sides of the transaction.[8] The Exchange will continue to treat the one side of the transaction which originates on the Exchange floor in the same manner and will count the one side of the transaction which originates on the Exchange floor toward the number of contracts to qualify for the Simple Order Rebate for Adding Liquidity for Specialists and Market Makers in SPY.

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7 See Multiply Listed Options Fees in Section II of the Exchange's Pricing Schedule.

8 See Part C of Section I of the Exchange's Pricing Schedule.

Simple Order – Fee for Removing Liquidity

Today, the Exchange assesses a $0.44 per contract Customer[9] Simple Order Fee for Removing Liquidity in SPY and a $0.49 per contract Simple Order Fee for Removing Liquidity in SPY to Specialists, Market Makers, Firms,[10] Broker-Dealers[11] and Professionals.[12] The Exchange proposes to decrease the Simple Order Fees for Removing Liquidity and assess a $0.43 per contract Customer Simple Order Fee for Removing Liquidity in SPY and a $0.47 per contract Simple Order Fee for Removing Liquidity in SPY to Specialists, Market Makers, Firms, Broker-Dealers and Professionals. The Exchange believes that the reduction of the Simple Order Fees for Removing Liquidity in SPY will encourage participants to send additional order flow to the Exchange.

Cross-Reference and Marketing Fee

The Exchange proposes to correct a typographical error related to a cross reference in the beginning of this section by removing the reference to Section "C" and properly adding the Section "I" reference.

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9 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 which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).

10 The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

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

12 The term "Professional" applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(14).

The Exchange proposes to replace the words "Payment for Order Flow Fee" with the words "Marketing Fee" to conform this term throughout the Pricing Schedule. The Exchange recently amended this term throughout the Pricing Schedule in a prior rule change and inadvertently did not mark this term to be amended as well.[13]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act[15] 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 the Exchange 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."[16] Likewise,

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13 See SR-Phlx-2016-30 (not yet published).

14 15 U.S.C. § 78f(b).

15 15 U.S.C. § 78f(b)(4) and (5).

16 Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) ("Regulation NMS Adopting Release").

in NetCoalition v. Securities and Exchange Commission[17] ("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.[18] 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."[19]

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'…."[20] 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.

The Exchange continues to offer pricing specific to SPY because these options are currently the most actively traded options class. Pricing by symbol is a common practice on many U.S. options exchanges as a means to incentive order flow to be sent to an exchange for execution.[21]

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

18 See NetCoalition, at 534.

19 Id. at 537.

20 Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

21 See International Securities Exchange LLC's ("ISE") Schedule of Fees.

Simple Order – Rebate For Adding Liquidity

The Exchange's proposal to replace the $0.20 per contract SPY Simple Order Rebate for Adding Liquidity with tiered rebates is reasonable because the Exchange desires to incentivize market participants to transact a greater number of SPY options. All participants will continue to receive a SPY Simple Order Rebate for Adding Liquidity for Specialists and Market Makers provided they execute one electronic Simple Order SPY contract. In some cases, the rebate will be lower, if 2,499 or less electronic Simple Order SPY contracts are added, the SPY Simple Order Rebate for Adding Liquidity for Specialists and Market Makers will be $0.15 as compared to $0.20 per contract (today's rebate). Despite this decrease, the Exchange believes that participants will continue to be incentivized to add SPY order flow to the Exchange to receive the rebate. With this proposal, the Exchange is also offering the opportunity to earn higher rebates provided the participant adds at least 5,000 electronic Simple Order SPY contracts.[22] In some cases the rebate will remain the same.[23] The Exchange believes that the rebate will continue to encourage participants to direct SPY order flow to the Exchange.

The Exchange's proposal to replace the $0.20 per contract SPY Simple Order Rebate for Adding Liquidity for Specialists and Market Makers with tiered rebates is equitable and not unfairly discriminatory because Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to

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22 The Exchange will pay a $0.25 per contract rebate if participant adds 5,000 to 19,999 contracts per day in a month and a $0.30 per contract rebate if participant adds greater than 20,000 contracts per day in a month in SPY.

23 The Exchange will continue to pay a $0.20 per contract rebate if participant adds 2,500 to 4,999 contracts per day in a month in SPY.

other market participants.[24] They 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. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. 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.

The Exchange believes that continuing to pay the Simple Order Rebate for Adding Liquidity to all transactions executed within the Exchange's order book, including transactions where one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, is reasonable because the Exchange's treatment of these orders is consistent with its treatment of all other orders executed in the order book as compared to a floor order executed on the Exchange's trading floor. Further, the Exchange believes it is reasonable to count the one side of the transaction which originates on the Exchange floor toward the number of contracts to qualify for the Simple Order Rebate for Adding Liquidity for Specialists and Market Makers in SPY because this treatment of the floor order which executes in the order book is consistent with the treatment of all other electronically executed orders which qualify for the Section I pricing.

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24 See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

The Exchange believes that continuing to pay the Simple Order Rebate for Adding Liquidity to all transactions executed within the Exchange's order book, including transactions where one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, is equitable and not unfairly discriminatory because the Exchange is treating these orders similar to all other orders executed in the order book as compared to a floor order executed on the Exchange's trading floor. Further, the Exchange believes it is equitable and not unfairly discriminatory to count the one side of the transaction which originates on the Exchange floor toward the number of contracts to qualify for the Simple Order Rebate for Adding Liquidity for Specialists and Market Makers because today all electronically executed orders qualify for the Section I pricing. The transaction where one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote will be treated in the same manner as all other orders executed in the order book.

Simple Order – Fee for Removing Liquidity

The Exchange's proposal to decrease the Customer Simple Order Fee in SPY for Removing Liquidity from $0.44 to $0.43 per contract and all other Simple Order Fees for Removing Liquidity in SPY for Specialists, Market Makers, Firms, Broker-Dealers and Professionals from $0.49 to $0.47 per contract is reasonable because the reduction of these fees will encourage participants to send additional order flow to the Exchange.

The Exchange's proposal to decrease the Customer Simple Order Fee for Removing Liquidity in SPY from $0.44 to $0.43 per contract and all other Simple Order Fees for Removing Liquidity in SPY for Specialists, Market Makers, Firms, Broker-

Dealers and Professionals from $0.49 to $0.47 per contract is equitable and not unfairly discriminatory because all participants will be assessed the same lower Simple Order Fee for Removing Liquidity in SPY of $0.47 per contract, except for Customers. The Exchange believes that assessing Customers a lower fee is equitable and not unfairly discriminatory because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer 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.

Cross-Reference and Marketing Fee

The Exchange's proposal to correct a typographical error related to a cross reference is reasonable, equitable and not unfairly discriminatory because it will clarify the Pricing Schedule. This amendment is non-substantive.

The Exchange's proposal to replace the words "Payment for Order Flow Fee" with the words "Marketing Fee" is reasonable, equitable and not unfairly discriminatory because the proposal will conform the rule text to other parts of the Rulebook. The usage of the term Marketing Fee would be consistent throughout the Rulebook.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In terms of intra-market competition, the Exchange believes that its proposed rebates and fees continue to remain competitive in SPY, which is the most actively traded options class.[25] In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

25 The Exchange continues to incentive market participants to transact SPY by offering rebates in this Penny Pilot Option similar to ISE which pays rebates on Penny Pilot Options. See ISE's Fee Schedule. ISE Gemini, LLC ("ISE Gemini") assesses a SPY tiered taker fee ranging from $0.44 to $0.45 for a priority customer and a tiered taker fee ranging from $0.48 to $0.49 per contract for all other market participants. See ISE Gemini's Fee Schedule. Also, the Exchange's Simple Order Fee for Removing Liquidity in SPY is lower as compared to pricing at C2 Options Exchange, Incorporated ("C2"). C2's penny pilot options pricing is $0.47 per contract for Priority Customers and $0.48 per contract for all other participants when removing liquidity. See C2's Fees Schedule.

Simple Order – Rebate For Adding Liquidity

The Exchange's proposal to replace the $0.20 per contract SPY Simple Order Rebate for Adding Liquidity with tiered rebates does not impose an undue burden on intra-market competition because Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[26] The differentiation as between Specialists and Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. 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.

The Exchange believes that continuing to pay the SPY Simple Order Rebate for Adding Liquidity to all transactions executed within the Exchange's order book, including transactions where one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, does not impose an undue burden on intra-market competition because the Exchange is treating these orders similar to all other orders executed in the order book as compared to a floor order executed on the Exchange's trading floor. Further, the Exchange believes counting the one side of the transaction which originates on the Exchange floor toward the number of contracts to qualify for the SPY Simple Order Rebate for Adding Liquidity for Specialists and Market Makers does not impose an

[26] See note 24. 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.

undue burden on intra-market competition because today all electronically executed orders qualify for the Section I pricing. The transaction where one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote will be treated in the same manner as all other orders executed in the order book.

Simple Order – Fee for Removing Liquidity

The Exchange's proposal to decrease the Customer Simple Order for Removing Liquidity in SPY from $0.44 to $0.43 per contract and all other Simple Order Fees for Removing Liquidity in SPY for Specialists, Market Makers, Firms, Broker-Dealers and Professionals from $0.49 to $0.47 per contract does not impose an undue burden on intra-market competition because all participants will be assessed the same lower Simple Order Fee for Removing Liquidity in SPY of $0.47 per contract, except for Customers. Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer 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.

Cross-Reference and Marketing Fee

The Exchange's proposal to correct a typographical error related to a cross reference does not impose an undue burden on intra-market competition because the amendment is non-substantive.

The Exchange's proposal to replace the words "Payment for Order Flow Fee" with the words "Marketing Fee" does not impose an undue burden on intra-market competition because the proposal will conform the rule text to other parts of the Rulebook.

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.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or

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[27] 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2016-33 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-2016-33. 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-2016-33 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.[28]

Robert W. Errett
Deputy Secretary

[28] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

NASDAQ PHLX LLC 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 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.

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I. Rebates and Fees for Adding and Removing Liquidity in SPY
With respect to Section [C]I of this Pricing Schedule, the order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity, except with respect to orders that trigger an order exposure alert. Customer volume attributable to this section will be included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program in Section B. However, the rebates defined in Section B will not apply to electronic executions in SPY.

Part A. Simple Order

	Customer	Specialist	Market Maker	Firm	Broker-Dealer	Professional
Rebate for Adding Liquidity	$0.00	$0.[20]*	$0.[20]*	$0.00	$0.00	$0.00

Fee for Removing Liquidity	$0.[44]43	$0.[49]47	$0.[49]47	$0.[49]47	$0.[49]47	$0.[49]47

* The Simple Order Rebate for Adding Liquidity for Specialists and Market Makers will be paid as noted below:

Tiers	**Monthly Volume**	**Rebate for Adding Liquidity**
1	Participant adds 1 to 2,499 electronically executed Simple Order contracts per day in a month in SPY	$0.15
2	Participant adds 2,500 to 4,999 electronically executed Simple Order contracts per day in a month in SPY	$0.20
3	Participant adds 5,000 to 19,999 electronically executed Simple Order contracts per day in a month in SPY	$0.25
4	Participant adds greater than 20,000 electronically executed Simple Order contracts per day in a month in SPY	$0.30

Part B. Complex Order

	Customer	Specialist	Market Maker	Firm	Broker-Dealer	Professional
Fee for Adding Liquidity	$0.00	$0.10	$0.10	$0.10	$0.10	$0.10
Fee for Removing Liquidity	$0.00	$0.40	$0.40	$0.50	$0.50	$0.50

• Complex Order Fees for Removing Liquidity, applicable to Specialists and Market Makers, will be decreased by $0.02 per contract when the Specialist or Market Maker transacts against a Customer Order directed to that Specialist or Market Maker for execution.

• Simple Orders that are executed against the individual components of Complex Orders will be assessed the fees and rebates in Part A. However, the individual components of such a Complex Order will be assessed the fees in Part B.

- Customers will be assessed $0.00 per contract and all other market participants will be assessed $0.15 per contract for executions against an order for which the Exchange broadcasts an order exposure alert in SPY.

Part C. The following will apply to fees in Parts A and B:

- The Monthly Market Maker Cap on transaction fees that are currently applicable to Market Makers and Specialists transacting Multiply Listed Options will not be applicable to electronic transactions in the SPY, except for QCC Transaction Fees.

- The Monthly Firm Fee Cap will apply to floor transactions and QCC electronic and QCC floor transactions in SPY.

- [Payment for Order Flow fees]<u>Marketing Fees</u> defined in Section II will not be collected on transactions in SPY.

- The Cancellation Fee for each cancelled electronically delivered Professional AON order will continue to apply to the SPY. The Cancellation Fee will not apply for each cancelled electronically delivered Customer order in SPY.

- Transactions in SPY originating on the Exchange floor will be subject to the Multiply Listed Options Fees (see Multiply Listed Options Fees in Section II). However, if one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then these fees will apply to the transactions which originated on the Exchange floor and contracts that are executed electronically on all sides of the transaction. <u>The one side of the transaction which originates on the Exchange floor will count toward the volume which qualifies a participant for the Simple Order Rebate for Adding Liquidity for Specialists and Market Makers in SPY.</u>

- A non-Complex electronic auction includes the Quote Exhaust auction and, for purposes of these fees, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (“COLA”).

  - Customer executions that occur as part of a Complex electronic auction will be assessed $0.00 per contract.

  - Customer executions that occur as part of a non-Complex electronic auction will be assessed $0.00 per contract.

  - Professional, Firm, Broker-Dealer, Specialist and Market Maker executions that occur as part of a Complex electronic auction will be assessed the Fees for Removing Liquidity in Part B. Professional, Firm, Broker-Dealer, Specialist and Market Maker executions that occur as part of a non-Complex electronic auction will be assessed the Fees for Adding Liquidity in Part B.

- The QCC Transaction fees and rebates, defined in Section II, are applicable to this Section C.

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