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

File No.* SR - 2016 - * 43
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)(2)
- ☐ 19b-4(f)(3)
- ☐ 19b-4(f)(4)
- ☐ 19b-4(f)(5)
- ☐ 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 *).

Proposal to amend the Exchange Pricing Schedule at Section II, entitled Multiply Listed Options Fees.

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 04/01/2016

By Edward S. Knight

(Name *)

(Title *)

Executive Vice President and General Counsel

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.

edward.knight@nasdaq.com

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 * Add Remove View	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 * Add Remove View	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 * Add Remove View	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 Add Remove View 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 Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) NASDAQ PHLX LLC ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Exchange's Pricing Schedule at Section II, entitled "Multiply Listed Options Fees." Specifically, the Exchange is proposing to amend the Qualified Contingent Cross ("QCC") pricing.

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 II, entitled "Multiply Listed Options Fees." Specifically, the Exchange is proposing to amend QCC pricing. Today, the Exchange assesses a QCC Transaction Fee of $0.20 per contract to a Specialist,[3] Market Maker, [4] Professional,[5] Firm[6] and Broker-Dealer.[7] Customers are not assessed a QCC Transaction Fee. The

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

4 The term "Market Maker" includes Registered Options Traders ("ROT"). See Exchange Rule 1014 (b)(i) and (ii). A ROT includes a Streaming Quote Trader or "SQT," a Remote Streaming Quote Trader or "RSQT" and a Non-SQT, which by definition is neither a SQT nor a 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. An SQT is a ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. An SQT may only trade in a market making capacity in classes of options in which the SQT is assigned. See Rule 1014(b)(11)(A). An RSQT is an ROT that is a member affiliated with and Remote Streaming Quote Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Specialist upon Exchange approval. See Rule 1014(ii)(B).

5 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).

6 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.

7 The term "Broker-Dealer" applies to any transaction which is not subject to any

Exchange proposes to no longer assess Professionals a QCC Transaction Fee.

The Exchange also pays rebates on QCC Orders.[8] Rebates are paid for all qualifying executed QCC Orders, as defined in Rule 1080(o)[9] and Floor QCC Orders, as defined in Rule 1064(e),[10] except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend, merger, short stock interest or reversal or conversion strategy execution.[11] The maximum QCC Rebate to be paid in a given month will not exceed $450,000.[12] The Exchange proposes to no longer pay rebates where the transaction is Customer-to-Professional.

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of the other transaction fees applicable within a particular category.

8 See Section II of the Pricing Schedule.

9 A QCC Order is comprised of an order to buy or sell at least 1,000 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. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades ("QCTs") that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of Regulation NMS).

10 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 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. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. 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).

11 See Section II of the Pricing Schedule.

12 Id.

QCC Orders are orders to buy or sell at least 1,000 contracts.[13] These large-sized contingent orders are complex in nature and have a stock-tied component, which requires the option leg to be executed at the NBBO or better. The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (i.e., the net price of the entire contingent trade), rather than on the absolute price of any single component. Permitting Professionals to be treated similar to Customers with respect to this order type is reasonable because of the characteristics of the QCC Order. The differentiation as between a Customer and Professional is not necessary with respect to QCC Orders. Finally, the Exchange believes that treating Customers and Professionals in a similar manner when transacting QCC Orders will attract more QCC Orders to the Exchange.

b. Statutory Basis

The 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

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13 See notes 9 and 10 above.

14 15 U.S.C. 78f(b).

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

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 ("NetCoalition")[17] 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

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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.

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

and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

It is reasonable to no longer assess a QCC transaction fee for Professional orders and to not pay a QCC rebate on Customer-to-Professional orders because the distinction that necessitated the differentiation as between Customer and Professional Orders is not meaningful with respect to QCC Orders. QCC Orders are orders to buy or sell at least 1,000 contracts.[21] These large-sized contingent orders are complex in nature and have a stock-tied component, which requires the option leg to be executed at the NBBO or better. The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (i.e., the net price of the entire contingent trade), rather than on the absolute price of any single component. Permitting Professionals to be treated similar to Customers with respect to this order type will attract more QCC Orders to the Exchange.

The Exchange believes that no longer assessing a QCC transaction fee for Professional orders and to not paying a QCC rebate on Customer-to-Professional orders is equitable and not unfairly discriminatory because QCC Orders are distinctive as compared to transactions executed within the Order Book in a fast moving market. The purpose for the distinction between a Customer and a Professional was to prevent market professionals[22] with access to sophisticated trading systems that contain functionality not

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21 See notes 9 and 10 above.

22 The Exchange noted in its filing that market professionals have access to functionality, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously and order and risk management tools. See Securities and Exchange Act Release No. 61426 (January 26, 2010), 75 FR 5360 (February 2, 2010) (SR-Phlx-2010-05).

available to retail customers, to take advantage of customer priority, where customer orders are given execution priority over non-customer orders. The Exchange noted at the time that it adopted the Professional designation that identifying professional accounts based upon the average number of orders entered for a beneficial account was an appropriate objective approach that would reasonably distinguish such persons and entities from retail investors.[23] QCC Orders are by definition large-sized contingent orders which have a stock-tied component.

With respect to QCC transactions, the Commission noted in an order approving a qualified contingent cross order type on International Securities Exchange, LLC that "The Commission believes that those customers participating in QCC Orders will likely be sophisticated investors who should understand that, without a requirement of exposure for QCC Orders, their order would not be given an opportunity for price improvement on the Exchange. These customers should be able to assess whether the net prices they are receiving for their QCC Order are competitive, and who will have the ability to choose among broker-dealers if they believe the net price one broker-dealer provides is not competitive. Further, broker-dealers are subject to a duty of best execution for their customers' orders, and that duty does not change for QCC Orders."[24]The intent behind the Professional designation does not apply in the context of transacting QCC Orders, because of the size of the order, sophistication of the investor and complexity of the transaction, and therefore the pricing differentiation is not necessary. For these reasons

23 See Securities and Exchange Act Release No. 61426 (January 26, 2010), 75 FR 5360 (February 2, 2010) (SR-Phlx-2010-05).

24 See Securities and Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 (March 2, 2011) (SR-ISE-2010-73).

the Exchange believes that distinguishing a Customer from a Professional is not necessary with respect to QCC Orders. Further, the Exchange's proposal would continue to assess all other market participants a similar fee of $0.20 per contract. Also, the Customer-to-Professional transactions will not be subject to a rebate for the reasons explained herein.

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, that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange believes that no longer assessing a QCC transaction fee for Professional orders and not paying a QCC rebate on Customer-to-Professional orders does not impose an undue burden on intra-market competition because QCC Orders are distinctive as compared to transactions executed within the Order Book in a fast moving market.

The initial purpose of the distinction between a Customer and a Professional was to prevent market professionals with access to sophisticated trading systems that contain functionality not available to retail customers, to take advantage of customer priority, where customer orders are given execution priority over non-customer orders. Professional orders are identified based upon the average number of orders entered for a beneficial account.

QCC Orders are by definition large-sized contingent orders which have a stock-tied component. The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (i.e., the net price of the entire contingent trade), rather than on the absolute price of any single component. Treating Customers and Professionals in the same manner in terms of pricing with respect to QCC Orders does not provide any advantage to a Professional. The distinction does not create an opportunity to burden competition. Further, the Exchange's proposal would continue to assess all other market participants a similar fee of $0.20 per contract. Also, the Customer-to-Professional transactions do not impose an undue burden on competition for the reasons explained herein.

The Exchange's proposal does not place on undue burden on inter-market competition because the lack of distinction discussed above with respect to Customer and Professional transactions involving QCC transactions would be similar on other options exchanges with a similar mechanism.

5. <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others</u>

No written comments were either solicited or received.

6. <u>Extension of Time Period for Commission Action</u>

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,[25] The Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-Phlx-2016-43)

April __, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Qualified Contingent Cross Pricing

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 April 1, 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 at Section II, entitled "Multiply Listed Options Fees." Specifically, the Exchange is proposing to amend the Qualified Contingent Cross ("QCC") pricing.

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 II, entitled "Multiply Listed Options Fees." Specifically, the Exchange is proposing to amend QCC pricing. Today, the Exchange assesses a QCC Transaction Fee of $0.20 per contract to a Specialist,[3] Market Maker, [4] Professional,[5]

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

4 The term "Market Maker" includes Registered Options Traders ("ROT"). See Exchange Rule 1014 (b)(i) and (ii). A ROT includes a Streaming Quote Trader or "SQT," a Remote Streaming Quote Trader or "RSQT" and a Non-SQT, which by definition is neither a SQT nor a 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. An SQT is a ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. An SQT may only trade in a market making capacity in classes of options in which the SQT is assigned. See Rule 1014(b)(11)(A). An RSQT is an ROT that is a member affiliated with and Remote Streaming Quote Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Specialist upon Exchange approval. See Rule 1014(ii)(B).

Firm[6] and Broker-Dealer.[7] Customers are not assessed a QCC Transaction Fee. The Exchange proposes to no longer assess Professionals a QCC Transaction Fee.

The Exchange also pays rebates on QCC Orders.[8] Rebates are paid for all qualifying executed QCC Orders, as defined in Rule 1080(o)[9] and Floor QCC Orders, as defined in Rule 1064(e),[10] except where the transaction is either: (i) Customer-to-

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5 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).

6 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.

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

8 See Section II of the Pricing Schedule.

9 A QCC Order is comprised of an order to buy or sell at least 1,000 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. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades ("QCTs") that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of Regulation NMS).

10 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 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. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. 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).

Customer; or (ii) a dividend, merger, short stock interest or reversal or conversion strategy execution.[11] The maximum QCC Rebate to be paid in a given month will not exceed $450,000.[12] The Exchange proposes to no longer pay rebates where the transaction is Customer-to-Professional.

QCC Orders are orders to buy or sell at least 1,000 contracts.[13] These large-sized contingent orders are complex in nature and have a stock-tied component, which requires the option leg to be executed at the NBBO or better. The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (i.e., the net price of the entire contingent trade), rather than on the absolute price of any single component. Permitting Professionals to be treated similar to Customers with respect to this order type is reasonable because of the characteristics of the QCC Order. The differentiation as between a Customer and Professional is not necessary with respect to QCC Orders. Finally, the Exchange believes that treating Customers and Professionals in a similar manner when transacting QCC Orders will attract more QCC Orders to the Exchange.

2. Statutory Basis

The 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

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[11] See Section II of the Pricing Schedule.

[12] Id.

[13] See notes 9 and 10 above.

[14] 15 U.S.C. 78f(b).

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

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 ("NetCoalition")[17] 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

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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.

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.

It is reasonable to no longer assess a QCC transaction fee for Professional orders and to not pay a QCC rebate on Customer-to-Professional orders because the distinction that necessitated the differentiation as between Customer and Professional Orders is not meaningful with respect to QCC Orders. QCC Orders are orders to buy or sell at least 1,000 contracts.[21] These large-sized contingent orders are complex in nature and have a stock-tied component, which requires the option leg to be executed at the NBBO or better. The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (i.e., the net price of the entire contingent trade), rather than on the absolute price of any single component. Permitting Professionals to be treated similar to Customers with respect to this order type will attract more QCC Orders to the Exchange.

The Exchange believes that no longer assessing a QCC transaction fee for Professional orders and to not paying a QCC rebate on Customer-to-Professional orders is equitable and not unfairly discriminatory because QCC Orders are distinctive as

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

21 See notes 9 and 10 above.

compared to transactions executed within the Order Book in a fast moving market. The purpose for the distinction between a Customer and a Professional was to prevent market professionals[22] with access to sophisticated trading systems that contain functionality not available to retail customers, to take advantage of customer priority, where customer orders are given execution priority over non-customer orders. The Exchange noted at the time that it adopted the Professional designation that identifying professional accounts based upon the average number of orders entered for a beneficial account was an appropriate objective approach that would reasonably distinguish such persons and entities from retail investors.[23] QCC Orders are by definition large-sized contingent orders which have a stock-tied component.

With respect to QCC transactions, the Commission noted in an order approving a qualified contingent cross order type on International Securities Exchange, LLC that "The Commission believes that those customers participating in QCC Orders will likely be sophisticated investors who should understand that, without a requirement of exposure for QCC Orders, their order would not be given an opportunity for price improvement on the Exchange. These customers should be able to assess whether the net prices they are receiving for their QCC Order are competitive, and who will have the ability to choose among broker-dealers if they believe the net price one broker-dealer provides is not competitive. Further, broker-dealers are subject to a duty of best execution for their

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[22] The Exchange noted in its filing that market professionals have access to functionality, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously and order and risk management tools. See Securities and Exchange Act Release No. 61426 (January 26, 2010), 75 FR 5360 (February 2, 2010) (SR-Phlx-2010-05).

[23] See Securities and Exchange Act Release No. 61426 (January 26, 2010), 75 FR 5360 (February 2, 2010) (SR-Phlx-2010-05).

customers' orders, and that duty does not change for QCC Orders."[24] The intent behind the Professional designation does not apply in the context of transacting QCC Orders, because of the size of the order, sophistication of the investor and complexity of the transaction, and therefore the pricing differentiation is not necessary. For these reasons the Exchange believes that distinguishing a Customer from a Professional is not necessary with respect to QCC Orders. Further, the Exchange's proposal would continue to assess all other market participants a similar fee of $0.20 per contract. Also, the Customer-to-Professional transactions will not be subject to a rebate for the reasons explained herein.

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, that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

[24] See Securities and Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 (March 2, 2011) (SR-ISE-2010-73).

The Exchange believes that no longer assessing a QCC transaction fee for Professional orders and not paying a QCC rebate on Customer-to-Professional orders does not impose an undue burden on intra-market competition because QCC Orders are distinctive as compared to transactions executed within the Order Book in a fast moving market.

The initial purpose of the distinction between a Customer and a Professional was to prevent market professionals with access to sophisticated trading systems that contain functionality not available to retail customers, to take advantage of customer priority, where customer orders are given execution priority over non-customer orders. Professional orders are identified based upon the average number of orders entered for a beneficial account.

QCC Orders are by definition large-sized contingent orders which have a stock-tied component. The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (i.e., the net price of the entire contingent trade), rather than on the absolute price of any single component. Treating Customers and Professionals in the same manner in terms of pricing with respect to QCC Orders does not provide any advantage to a Professional. The distinction does not create an opportunity to burden competition. Further, the Exchange's proposal would continue to assess all other market participants a similar fee of $0.20 per contract. Also, the Customer-to-Professional transactions do not impose an undue burden on competition for the reasons explained herein.

The Exchange's proposal does not place on undue burden on inter-market competition because the lack of distinction discussed above with respect to Customer and

Professional transactions involving QCC transactions would be similar on other options exchanges with a similar mechanism.

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.[25]

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

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2016-43 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-2016-43. 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-2016-43 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.[26]

Robert W. Errett
Deputy Secretary

[26] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is bracketed.

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

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• QCC Transaction Fees for a Specialist, Market Maker[, Professional,] Firm and Broker-Dealer are $0.20 per contract. <u>Customers and Professionals are not assessed a QCC Transaction Fee.</u> 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; <u>(ii) Customer-to-Professional</u> or (<u>i</u>ii) a dividend, merger, short stock interest or reversal or conversion strategy execution (as defined in Section II).

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