| OMB APPROVAL |
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| OMB Number: 3235-0045<br>Estimated average burden<br>hours per response............38 |

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Page 1 of * 37

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

File No.* SR - 2017 - * 108
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) * |
|---|---|---|---|---|---|
| ☑ | ☐ | ☐ | ☐ | ☑ | ☐ |

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)

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

**Description**

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

A proposal to amend the Exchange Pricing Schedule.

**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 * Brett
Last Name * Kitt
Title * Senior Associate General Counsel
E-mail * Brett.Kitt@nasdaq.com
Telephone * (301) 978-8132
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 12/21/2017

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** * <br> 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** * <br> 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** * <br> 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** <br> Add Remove View <br> 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** <br> Add Remove View <br> 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** <br> 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** <br> 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** <br> 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 in the following respects: (i) modify the Simple Order rebate applicable to Specialists[3] and Market Makers[4] for adding liquidity in SPY;[5] (ii) establish a new $0.05 per contract surcharge for Customers[6] whose SPY Complex Orders execute against simple Market Maker or Specialist orders resting on the Simple Order Book; (iii) reduce the per contract credit that certain member organizations are entitled to receive when routing away more than 5,000 Customer contracts per day in a

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

2 17 CFR 240.19b-4.

3 The term "Specialist" applies to transactions for the account of a Specialist (as defined in Exchange Rule 1020(a)). A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

4 The term "ROT, SQT and RSQT" applies to transactions for the accounts of Registered Option Traders ("ROTs"), Streaming Quote Traders ("SQTs"), and Remote Streaming Quote Traders ("RSQTs"). For purposes of the Pricing Schedule, the term "Market Maker" will be utilized to describe fees and rebates applicable to ROTs, SQTs and RSQTs. RSQTs may also be referred to as Remote Market Markers ("RMMs").

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

given month; and (iv) increase permit fees for Floor Brokers and Floor Specialists and Market Makers.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 2, 2018.

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

(b) "Not applicable."

(c) "Not applicable."

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the "Board") on September 19, 2017. 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:

Brett Kitt
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8132.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule in the following respects: (i) modify the Simple Order rebate applicable to Specialists and Market Makers for adding liquidity in SPY; (ii) establish a new $0.05 per contract surcharge for Customers whose SPY Complex Orders execute against simple Market Maker or Specialist orders resting on the Simple Order Book; (iii) reduce the per contract credit that certain member organizations are entitled to receive when routing away more than 5,000 Customer contracts per day in a given month; and (iv) increase permit fees for Floor Brokers and Floor Specialists and Market Makers.

Simple Order Rebate for Adding Liquidity in SPY

The Exchange first proposes to amend Section I.A. of the Exchange's Pricing Schedule, which sets forth a schedule of rebates and fees for adding and removing liquidity in SPY with respect to Simple Orders. Presently, the Pricing Schedule provides that Customers and Specialists are entitled to a rebate to the extent that they add a requisite amount of electronically executed Simple Order contracts per day in a given month in SPY. The existing rebate varies on a five tier basis, which each tier corresponding to a range of average daily volumes ("ADV") of Simple Order contracts in SPY added per month. The Exchange now proposes to add a sixth tier to this Pricing Schedule. Specifically, it proposes to amend Tier 4 by adjusting the applicable ADV range from 20,000 to 49,999 to 20,000 to 34,999 contracts per day in SPY in a month and by decreasing the applicable per contract rebate from $0.31 to $0.27 per contract. The Exchange also proposes to establish a new Tier 5, which will provide for a $0.30 per contract rebate that Customers and Specialists will receive for adding an ADV of between 35,000 and 49,999 contracts per day in SPY in a month. Finally, the Exchange proposes to rename the existing Tier 5 as Tier 6. The rebate applicable to the new Tier 6 will remain $0.35 per contract for an ADV of greater than 49,999 contracts per day in SPY in a month.

The Exchange proposes the foregoing amendments, which will reduce the rebate amount from that which applies to existing Tier 4 to that which will apply to new Tiers 4 and 5, so as to provide a greater incentive to Specialists and Market Makers to seek to qualify for the top tier of rebates (new Tier 6). The Exchange also proposes to split the existing Tier 4 into two tiers to provide for a more graduated transition among tiers in the Pricing Schedule.

Customer Complex Order Surcharge

Second, the Exchange proposes to amend Section I.B of the Pricing Schedule, which sets forth a schedule of rebates and fees for adding and removing liquidity in SPY with respect to Complex Orders. Presently, the Pricing Schedule charges Customers no fees for adding or removing Complex Orders in SPY even as it charges fees to other categories of member organizations for doing the same, including Market Makers and Specialists.

Customers submit Complex Orders to the Exchange because often, Customers are able to execute such Complex Orders immediately by executing the individual components thereof through interactions with Market Maker and Specialist quotes that rest on the Exchange's Simple Order Book. These Customers benefit from not having to wait for counterparties that are willing to execute against their Complex Orders in the Complex Order Book.

Going forward, the Exchange proposes to impose a $0.05 per contract surcharge on Customers that execute Complex Orders against Market Maker or Specialist quotes resting on the Simple Order Book. The Exchange proposes this surcharge to reduce the costs to it of such transactions. Not only does the Exchange receive no fees from Customers for engaging in these transactions, but the Exchange also pays rebates to the Market Makers and Specialists whose quotes execute against the Customers' Complex

Orders. Pursuant to Section I.A. of the Exchange's Pricing Schedule, these rebates range from $0.15 to $0.35 per contact.

Routing Credit

Third, the Exchange proposes to amend Section V of its Pricing Schedule, which sets forth the fees it charges to Customers and Non-Customers for routing orders away from the Exchange. Presently, Section V pays a credit (equal to a Fixed Fee plus $0.05 per contract)[7] to a member organization that qualifies for a Tier 2, 3, 4 or 5 rebate in the Customer Rebate Program in Section B of the Pricing Schedule and that routes away more than 5,000 Customer contracts per day in a given month. The Exchange proposes to decrease the amount of the per contract portion of the credit from $0.05 to $0.01 per contract. The Exchange proposes to decrease the amount of this credit because it no longer wishes to provide substantial subsidies to member organizations that route Customer orders away from the Exchange.

Permit Fees

Finally, the Exchange proposes to amend Section VI of the Pricing Schedule, which sets forth the Exchange's membership fees. Specifically, the Exchange proposes to increase its monthly Permit Fees for Floor Brokers, Floor Specialists and Market Makers. The Exchange presently charges Floor Brokers a monthly Permit Fee of $3,000 and it now proposes to increase that fee to $4,000 per month. The Exchange presently charges Floor Specialists and Market Makers a monthly Permit Fee of $4,500 and it now proposes to increase that Fee to $6,000 per month. The Exchange proposes to increase

[7] If the away market transaction fee is $0.00 or the away market pays a rebate, then the Exchange provides the member organization with a credit equal to the applicable Fixed Fee only.

the amounts of these Permit Fees to recoup its financial investment in building a new Trading Floor for the Exchange as well as the costs associated with developing and deploying new and more advanced technologies for use on the new Trading Floor by Floor Brokers, Floor Specialists, and Market Makers.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The 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."[10]

Likewise, in NetCoalition v. Securities and Exchange Commission[11] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based

8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(4) and (5).

10 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

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

approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[12] 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."[13]

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'…."[14] 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.

Simple Order Rebate for Adding Liquidity in SPY

The Exchange believes that its proposal is reasonable to decrease the amounts of its mid-tier rebates to Market Makers and Specialists that add liquidity in SPY because the Exchange seeks to provide a greater incentive to Market Makers and Specialists to increase their ADVs of contracts in SPY so as to qualify for the top rebate tier, which will be new Tier 6. The Exchange believes that this proposal is an equitable allocation and is not unfairly discriminatory because the same decrease in rebates will apply to all

12 See NetCoalition, at 534 - 535.

13 Id. at 537.

14 Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

similarly situated Market Makers and Specialists. Further, Market Makers and Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[15] 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.

Customer Complex Order Surcharge

The Exchange believes that its proposal is reasonable to impose a $0.05 per contract surcharge on Customers that execute Complex Orders against Market Maker or Specialist Quotes that rest on the Simple Order Book. Specifically, the Exchange believes that it is reasonable for it to impose this surcharge as a means to reduce the Exchange's costs associated with these transactions because each such transaction costs the Exchange between $0.15 and $0.35 per contract in rebates to Market Makers and Specialists. Moreover, it is reasonable to impose this surcharge on Customers because Customers benefit the most from being able to achieve immediate executions of their Complex Orders in the relevant scenario. The Exchange believes that the surcharge is

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

minimal and will not be substantial enough to eliminate or even significantly diminish the benefits to Customers of being able to achieve immediate executions in this manner. Finally, the Exchange notes that all other account categories – Professionals, Firms, Broker-Dealers, Specialists, and Market Makers – pay higher fees (between $0.43 and $0.50 per contract) for removing liquidity from the Complex Order Book than Customers would pay under the proposal when they execute their Complex Orders against Simple Orders of Market Makers and Specialists that are resting on the Simple Order Book.

The Exchange believes that the proposal is an equitable allocation and is not unfairly discriminatory because the Exchange will uniformly apply the fee to all similarly situated Customers. Moreover, Customers may avoid this new surcharge by executing their Complex Orders in the Exchange's Complex Order Book or by sending them to other trading venues where the transaction costs to them will be less expensive. Even with this surcharge, Customers are assessed the least amount per contract for executions in SPY. As noted herein, Customers are not assessed fees for adding and removing liquidity for SPY Complex Orders. The Exchange believes that assessing Customers lower fees 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.

Routing Credit

The Exchange believes that its proposal is reasonable to reduce the amount of the credit it presently provides to certain member organizations that route away more than 5,000 Customer orders per day in a given month. Although the Exchange wishes to continue providing incentives to member organizations to utilize its routing service, it seeks to reduce the incentive for member organizations to route orders to away markets. Despite the reduction, the Exchange believes the credit remains competitive.

The Exchange believes that the proposal is an equitable allocation and is not unfairly discriminatory because the same reduced credit will uniformly be assessed on all member organizations when routing orders. Permit Fees

Finally, the Exchange believes that its proposal is reasonable to increase its monthly Permit Fees for Floor Brokers and Floor Specialists and Market Makers. The Exchange has made substantial investments in building a new state-of-the-art Trading Floor for the Exchange as well as developing and deploying new and more advanced technologies for use on the new Trading Floor to the benefit of Floor Brokers, Floor Specialists, and Market Makers. The increased Permit Fees are a reasonable way for the Exchange to recoup some of these investments. Moreover, it is reasonable for the Exchange to recoup these investments from those members and member organizations that utilize the new Trading Floor and associated technologies.

The Exchange believes that the proposal is an equitable allocation and is not unfairly discriminatory because the same reduced credit will uniformly apply uniformly to all situated Floor Brokers, Specialists, and Market Makers that utilize the Trading Floor. Likewise, the Exchange does not believe that its proposal to increase Permit Fees will unduly burden competition because Floor Brokers, Market Makers, and Specialists may choose to utilize the Exchange's electronic environment or become members of other exchanges' trading floors if they conclude that the Exchange's Permit Fees are prohibitively expensive.

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 this instance, the proposed changes to the charges assessed and the credits and rebates available do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. 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 in SPY

The Exchange's proposal to decrease the amounts of its mid-tier rebates to Market Makers and Specialists that add liquidity in SPY does not impose an undue burden on competition because Market Makers and Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[16] 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.

Customer Complex Order Surcharge

The Exchange's proposal to impose a $0.05 per contract surcharge on Customers that execute Complex Orders against Market Maker or Specialist Quotes that rest on the Simple Order Book does not impose an undue burden on competition because Customers may avoid this new surcharge by executing their Complex Orders in the Exchange's Complex Order Book or by sending them to other trading venues where the transaction

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

costs to them will be less expensive. Even with this surcharge, Customers are assessed the least amount per contract for executions in SPY. As noted herein, Customers are not assessed fees for adding and removing liquidity for SPY Complex Orders. The Exchange believes that assessing Customers lower fees 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.

Routing Credit

The Exchange's proposal to reduce the amount of the credit it presently provides to certain member organizations that route away more than 5,000 Customer orders per day in a given month does not impose an undue burden on competition because the reduced credit will uniformly be assessed on all member organizations when routing orders.

Permit Fees

The Exchange's proposal to increase its monthly Permit Fees for Floor Brokers and Floor Specialists and Market Makers does not impose an undue burden on competition because the permit fees will be uniformly assessed to all Floor Brokers, Specialists, and Market Makers that utilize the Trading Floor. Likewise, the Exchange does not believe that its proposal to increase Permit Fees will unduly burden competition because Floor Brokers, Market Makers, and Specialists may choose to utilize the

Exchange's electronic environment or become members of other exchanges' trading floors if they conclude that the Exchange's Permit Fees are prohibitively expensive.

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,[17] 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.

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[17] 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-Phlx-2017-108)

December __, 2017

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4 thereunder,[2] notice is hereby given that on December 21, 2017, 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 in the following respects: (i) modify the Simple Order rebate applicable to Specialists[3] and Market Makers[4] for adding liquidity in SPY;[5] (ii) establish a new $0.05 per contract

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

2 17 CFR 240.19b-4.

3 The term "Specialist" applies to transactions for the account of a Specialist (as defined in Exchange Rule 1020(a)). A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

4 The term "ROT, SQT and RSQT" applies to transactions for the accounts of Registered Option Traders ("ROTs"), Streaming Quote Traders ("SQTs"), and Remote Streaming Quote Traders ("RSQTs"). For purposes of the Pricing Schedule, the term "Market Maker" will be utilized to describe fees and rebates

surcharge for Customers[6] whose SPY Complex Orders execute against simple Market Maker or Specialist orders resting on the Simple Order Book; (iii) reduce the per contract credit that certain member organizations are entitled to receive when routing away more than 5,000 Customer contracts per day in a given month; and (iv) increase permit fees for Floor Brokers and Floor Specialists and Market Makers.

The text of the proposed rule change is available on the Exchange's Website at http://nasdaqphlx.cchwallstreet.com/, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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applicable to ROTs, SQTs and RSQTs. RSQTs may also be referred to as Remote Market Markers ("RMMs").

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

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 in the following respects: (i) modify the Simple Order rebate applicable to Specialists and Market Makers for adding liquidity in SPY; (ii) establish a new $0.05 per contract surcharge for Customers whose SPY Complex Orders execute against simple Market Maker or Specialist orders resting on the Simple Order Book; (iii) reduce the per contract credit that certain member organizations are entitled to receive when routing away more than 5,000 Customer contracts per day in a given month; and (iv) increase permit fees for Floor Brokers and Floor Specialists and Market Makers.

Simple Order Rebate for Adding Liquidity in SPY

The Exchange first proposes to amend Section I.A. of the Exchange's Pricing Schedule, which sets forth a schedule of rebates and fees for adding and removing liquidity in SPY with respect to Simple Orders. Presently, the Pricing Schedule provides that Customers and Specialists are entitled to a rebate to the extent that they add a requisite amount of electronically executed Simple Order contracts per day in a given month in SPY. The existing rebate varies on a five tier basis, which each tier corresponding to a range of average daily volumes ("ADV") of Simple Order contracts in SPY added per month. The Exchange now proposes to add a sixth tier to this Pricing Schedule. Specifically, it proposes to amend Tier 4 by adjusting the applicable ADV range from 20,000 to 49,999 to 20,000 to 34,999 contracts per day in SPY in a month and by decreasing the applicable per contract rebate from $0.31 to $0.27 per contract. The Exchange also proposes to establish a new Tier 5, which will provide for a $0.30 per contract rebate that Customers and Specialists will receive for adding an ADV of between 35,000 and 49,999 contracts per day in SPY in a month. Finally, the Exchange proposes to rename the existing Tier 5 as Tier 6. The rebate applicable to the new Tier 6 will remain $0.35 per contract for an ADV of greater than 49,999 contracts per day in SPY in a month.

The Exchange proposes the foregoing amendments, which will reduce the rebate amount from that which applies to existing Tier 4 to that which will apply to new Tiers 4 and 5, so as to provide a greater incentive to Specialists and Market Makers to seek to qualify for the top tier of rebates (new Tier 6). The Exchange also proposes to split the existing Tier 4 into two tiers to provide for a more graduated transition among tiers in the Pricing Schedule.

Customer Complex Order Surcharge

Second, the Exchange proposes to amend Section I.B of the Pricing Schedule, which sets forth a schedule of rebates and fees for adding and removing liquidity in SPY with respect to Complex Orders. Presently, the Pricing Schedule charges Customers no fees for adding or removing Complex Orders in SPY even as it charges fees to other categories of member organizations for doing the same, including Market Makers and Specialists.

Customers submit Complex Orders to the Exchange because often, Customers are able to execute such Complex Orders immediately by executing the individual components thereof through interactions with Market Maker and Specialist quotes that rest on the Exchange's Simple Order Book. These Customers benefit from not having to wait for counterparties that are willing to execute against their Complex Orders in the Complex Order Book.

Going forward, the Exchange proposes to impose a $0.05 per contract surcharge on Customers that execute Complex Orders against Market Maker or Specialist quotes resting on the Simple Order Book. The Exchange proposes this surcharge to reduce the costs to it of such transactions. Not only does the Exchange receive no fees from Customers for engaging in these transactions, but the Exchange also pays rebates to the Market Makers and Specialists whose quotes execute against the Customers' Complex Orders. Pursuant to Section I.A. of the Exchange's Pricing Schedule, these rebates range from $0.15 to $0.35 per contact.

Routing Credit

Third, the Exchange proposes to amend Section V of its Pricing Schedule, which sets forth the fees it charges to Customers and Non-Customers for routing orders away from the Exchange. Presently, Section V pays a credit (equal to a Fixed Fee plus $0.05 per contract)[7] to a member organization that qualifies for a Tier 2, 3, 4 or 5 rebate in the Customer Rebate Program in Section B of the Pricing Schedule and that routes away more than 5,000 Customer contracts per day in a given month. The Exchange proposes to decrease the amount of the per contract portion of the credit from $0.05 to $0.01 per contract. The Exchange proposes to decrease the amount of this credit because it no longer wishes to provide substantial subsidies to member organizations that route Customer orders away from the Exchange.

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7 If the away market transaction fee is $0.00 or the away market pays a rebate, then the Exchange provides the member organization with a credit equal to the applicable Fixed Fee only.

Permit Fees

Finally, the Exchange proposes to amend Section VI of the Pricing Schedule, which sets forth the Exchange's membership fees. Specifically, the Exchange proposes to increase its monthly Permit Fees for Floor Brokers, Floor Specialists and Market Makers. The Exchange presently charges Floor Brokers a monthly Permit Fee of $3,000 and it now proposes to increase that fee to $4,000 per month. The Exchange presently charges Floor Specialists and Market Makers a monthly Permit Fee of $4,500 and it now proposes to increase that Fee to $6,000 per month. The Exchange proposes to increase the amounts of these Permit Fees to recoup its financial investment in building a new Trading Floor for the Exchange as well as the costs associated with developing and deploying new and more advanced technologies for use on the new Trading Floor by Floor Brokers, Floor Specialists, and Market Makers.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The 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

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8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(4) and (5).

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."[10]

Likewise, in NetCoalition v. Securities and Exchange Commission[11] ("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.[12] 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."[13]

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'…."[14] Although the court

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10 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

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

12 See NetCoalition, at 534 - 535.

13 Id. at 537.

14 Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

Simple Order Rebate for Adding Liquidity in SPY

The Exchange believes that its proposal is reasonable to decrease the amounts of its mid-tier rebates to Market Makers and Specialists that add liquidity in SPY because the Exchange seeks to provide a greater incentive to Market Makers and Specialists to increase their ADVs of contracts in SPY so as to qualify for the top rebate tier, which will be new Tier 6. The Exchange believes that this proposal is an equitable allocation and is not unfairly discriminatory because the same decrease in rebates will apply to all similarly situated Market Makers and Specialists. Further, Market Makers and Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[15] 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.

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

Customer Complex Order Surcharge

The Exchange believes that its proposal is reasonable to impose a $0.05 per contract surcharge on Customers that execute Complex Orders against Market Maker or Specialist Quotes that rest on the Simple Order Book. Specifically, the Exchange believes that it is reasonable for it to impose this surcharge as a means to reduce the Exchange's costs associated with these transactions because each such transaction costs the Exchange between $0.15 and $0.35 per contract in rebates to Market Makers and Specialists. Moreover, it is reasonable to impose this surcharge on Customers because Customers benefit the most from being able to achieve immediate executions of their Complex Orders in the relevant scenario. The Exchange believes that the surcharge is minimal and will not be substantial enough to eliminate or even significantly diminish the benefits to Customers of being able to achieve immediate executions in this manner. Finally, the Exchange notes that all other account categories – Professionals, Firms, Broker-Dealers, Specialists, and Market Makers – pay higher fees (between $0.43 and $0.50 per contract) for removing liquidity from the Complex Order Book than Customers would pay under the proposal when they execute their Complex Orders against Simple Orders of Market Makers and Specialists that are resting on the Simple Order Book.

The Exchange believes that the proposal is an equitable allocation and is not unfairly discriminatory because the Exchange will uniformly apply the fee to all similarly situated Customers. Moreover, Customers may avoid this new surcharge by executing their Complex Orders in the Exchange's Complex Order Book or by sending them to other trading venues where the transaction costs to them will be less expensive. Even with this surcharge, Customers are assessed the least amount per contract for executions in SPY. As noted herein, Customers are not assessed fees for adding and removing liquidity for SPY Complex Orders. The Exchange believes that assessing Customers lower fees 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.

Routing Credit

The Exchange believes that its proposal is reasonable to reduce the amount of the credit it presently provides to certain member organizations that route away more than 5,000 Customer orders per day in a given month. Although the Exchange wishes to continue providing incentives to member organizations to utilize its routing service, it seeks to reduce the incentive for member organizations to route orders to away markets. Despite the reduction, the Exchange believes the credit remains competitive.

The Exchange believes that the proposal is an equitable allocation and is not unfairly discriminatory because the same reduced credit will uniformly be assessed on all member organizations when routing orders. Permit Fees

Finally, the Exchange believes that its proposal is reasonable to increase its monthly Permit Fees for Floor Brokers and Floor Specialists and Market Makers. The Exchange has made substantial investments in building a new state-of-the-art Trading Floor for the Exchange as well as developing and deploying new and more advanced technologies for use on the new Trading Floor to the benefit of Floor Brokers, Floor

Specialists, and Market Makers. The increased Permit Fees are a reasonable way for the Exchange to recoup some of these investments. Moreover, it is reasonable for the Exchange to recoup these investments from those members and member organizations that utilize the new Trading Floor and associated technologies.

The Exchange believes that the proposal is an equitable allocation and is not unfairly discriminatory because the same reduced credit will uniformly apply uniformly to all situated Floor Brokers, Specialists, and Market Makers that utilize the Trading Floor. Likewise, the Exchange does not believe that its proposal to increase Permit Fees will unduly burden competition because Floor Brokers, Market Makers, and Specialists may choose to utilize the Exchange's electronic environment or become members of other exchanges' trading floors if they conclude that the Exchange's Permit Fees are prohibitively expensive.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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 this instance, the proposed changes to the charges assessed and the credits and rebates available do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. 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 in SPY

The Exchange's proposal to decrease the amounts of its mid-tier rebates to Market Makers and Specialists that add liquidity in SPY does not impose an undue burden on competition because Market Makers and Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[16] 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

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

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

Customer Complex Order Surcharge

The Exchange's proposal to impose a $0.05 per contract surcharge on Customers that execute Complex Orders against Market Maker or Specialist Quotes that rest on the Simple Order Book does not impose an undue burden on competition because Customers may avoid this new surcharge by executing their Complex Orders in the Exchange's Complex Order Book or by sending them to other trading venues where the transaction costs to them will be less expensive. Even with this surcharge, Customers are assessed the least amount per contract for executions in SPY. As noted herein, Customers are not assessed fees for adding and removing liquidity for SPY Complex Orders. The Exchange believes that assessing Customers lower fees 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.

Routing Credit

The Exchange's proposal to reduce the amount of the credit it presently provides to certain member organizations that route away more than 5,000 Customer orders per day in a given month does not impose an undue burden on competition because the reduced credit will uniformly be assessed on all member organizations when routing orders.

Permit Fees

The Exchange's proposal to increase its monthly Permit Fees for Floor Brokers and Floor Specialists and Market Makers does not impose an undue burden on competition because the permit fees will be uniformly assessed to all Floor Brokers, Specialists, and Market Makers that utilize the Trading Floor. Likewise, the Exchange does not believe that its proposal to increase Permit Fees will unduly burden competition because Floor Brokers, Market Makers, and Specialists may choose to utilize the Exchange's electronic environment or become members of other exchanges' trading floors if they conclude that the Exchange's Permit Fees are prohibitively expensive.

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.[17]

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

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2017-108 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2017-108. 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-2017-108 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.[18]

Eduardo A. Aleman
Assistant Secretary

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[18] 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**NASDAQ PHLX LLC PRICING SCHEDULE**

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

With respect to Section 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 | * | * | $0.00 | $0.00 | $0.00 |
| Fee for Removing Liquidity | $0.45 | $0.48 | $0.48 | $0.48 | $0.48 | $0.48 |

* The Simple Order Rebate for Adding Liquidity will be paid as noted below to Specialists and Market Makers adding the requisite amount of electronically executed Specialist and Market Maker Simple Order contracts per day in a month in SPY:

| **Tiers** | **Average Daily Volume "ADV"** | **Rebate for Adding Liquidity** |
|---|---|---|
| 1 | 1 to 2,499 | $0.15 |
| 2 | 2,500 to 4,999 | $0.18 |
| 3 | 5,000 to 19,999 | $0.21 |
| 4 | 20,000 to [49,999]<u>34,999</u> | $[0.31]<u>0.27</u> |

| | | |
|---|---|---|
| 5 | 35,000 to 49,999 | $0.30 |
| [5]6 | greater than 49,999 | $0.35 |

**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 | $0.43 | $0.43 | $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.

• Customers will be assessed a $0.05 per contract surcharge to the extent that they execute the individual components of their Complex Orders in SPY against Market Maker or Specialist quotes that are resting on the Simple Order Book.

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

No change.

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**V. Routing Fees**

| | |
|---|---|
| **Non-Customer** | • $0.99 per contract to any options exchange. |
| **Customer** | • Routing Fees to NOM: $0.13 per contract fee ("Fixed Fee") in addition to the actual transaction fee assessed.<br><br>• Routing Fees to BX Options: $0.13.<br><br>• Routing Fees to all other options exchanges: $0.23 per contract fee ("Fixed Fee") in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee will be $0.13.<br><br>• A member organization that: (1) qualifies for a Tier 2, 3, 4 or 5 rebate in the Customer Rebate Program in Section B of the Pricing Schedule; and (2) routes away more than 5,000 Customer contracts per day in a given month to an away market is entitled to receive a credit equal to the applicable Fixed Fee plus $[0.05]0.01 per contract, unless the away market transaction fee is $0.00 or the away market pays a rebate, in which case the member organization is entitled to receive a credit equal to the applicable Fixed Fee. Members and member organizations under Common Ownership may aggregate their Customer volume routed away for purposes of calculating discount thresholds and receiving discounted routing fees. |

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**VI. MEMBERSHIP FEES**

**A. Permit and Registration Fees**

Permit Fees for Phlx Members (per month)

Phlx Permit Fees

| | |
|---|---|
| Floor Broker Permit Fee | [$3,000]$4,000 |
| Floor Specialist and Floor | [$4,500]$6,000 |

Market Maker

Permit Fees for all other member and member organizations, including Remote Specialists and Remote Market Makers: $4,000 in a given month, unless the member or member organization or member organizations under Common Ownership, executes at least 100 options in a Phlx house account that is assigned to one of the member organizations in a given month, in which case the Permit Fee will be $2,300 for that month.

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