

Required fields are shown with yellow backgrounds and asterisks.

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) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

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

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

Description

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

Proposal to amend Section B of the Exchange Pricing Schedule to create a new Category D and make other amendments to this section; and amend Section II of the Exchange Pricing Schedule to assess a surcharge related to Complex Orders.

Contact Information

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

First Name * Last Name *
Title *
E-mail *
Telephone * Fax

Signature

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

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

(Title *)

Date
By
(Name *)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) NASDAQ PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to: (i) amend Section B of the Exchange’s Pricing Schedule to create a new Category D and make other amendments to this section; and (ii) amend Section II of the Exchange’s Pricing Schedule entitled “Multiply Listed Options Fees,”³ to assess a surcharge related to Complex Orders.⁴

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 August 15,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ These fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

⁴ A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). See Rule 1098.

2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

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 Pricing Schedule: (i) at Section B to create an additional incentive to encourage market participants to send Customer Complex Order flow to Phlx; and (ii) at Section II to adopt certain surcharges for electronically-delivered Complex Orders so that the Exchange may pay increased Customer Rebates. Each of the proposed amendments is discussed in greater detail below.

Customer Rebate Program

The Exchange proposes to amend Section B, entitled "Customer Rebate Program," to amend Category C and add a new Category D to continue existing incentives to direct Customer Complex Order flow to the Exchange and create additional incentives. Currently, the Exchange has a Customer Rebate Program consisting of the following five tiers that pay Customer rebates on three Categories, A,⁵ B⁶ and C,⁷ of transactions:

⁵ The Category A Rebate is paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols.

⁶ The Category B Rebate is paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member

Customer Rebate Tiers	Percentage Thresholds of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (Monthly)	Category	Category	Category
		A	B	C
Tier 1	0.00% - 0.60%	\$0.00	\$0.00	\$0.00
Tier 2	Above 0.60% - 1.10%	\$0.10	\$0.10	\$0.17
Tier 3	Above 1.10% - 1.60%	\$0.15	\$0.12	\$0.17
Tier 4	Above 1.60% - 2.50%	\$0.20	\$0.16	\$0.22
Tier 5	Above 2.50%	\$0.21	\$0.17	\$0.22

A Phlx member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options that it transacts monthly on Phlx.

The Exchange calculates Customer⁸ volume in Multiply Listed Options by totaling

organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order are paid a rebate of \$0.14 per contract. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order for Simple PIXL Orders.

⁷ The Category C Rebate is paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order are not paid a rebate under any circumstances. The Category C Rebate is not paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order leg for Complex PIXL Orders.

⁸ 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

electronically-delivered and executed volume, excluding volume associated with electronic Qualified Contingent Cross (“QCC”) Orders, as defined in Exchange Rule 1080(o).⁹

The Exchange proposes to amend Category C by decreasing the Tier 2 rebate from \$0.17 to \$0.16 per contract and increasing the Tier 3 rebate from \$0.17 to \$0.18 per contract. The Category C rebates will continue to be paid on electronically-delivered Customer Complex Orders in Penny Pilot Options, but will no longer be paid on Non-Penny Pilot Options in Section II symbols, which are proposed to be subject to the proposed Category D rebate. For Category C, rebates will continue to be paid on Customer PIXL¹⁰ Complex Orders in Section II symbols that execute against non-Initiating Order interest.¹¹ Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will continue to not be paid a Category C rebate under any circumstances. The Category C rebate will continue to not be paid when an

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

⁹ In calculating electronically-delivered and executed Customer volume in Multiply Listed Options, the numerator of the equation includes all electronically-delivered and executed Customer volume in Multiply Listed Options. The denominator of that equation includes national customer volume in multiply-listed equity and ETF options volume, excluding SPY. See Section B of the Pricing Schedule.

¹⁰ PIXLSM is the Exchange’s price improvement mechanism known as Price Improvement XL or PIXL. See Rule 1080(n).

¹¹ With respect to PIXL functionality, a Phlx member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (“PIXL Order”) against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (“Initiating Order”) provided it submits the PIXL order for electronic execution into the PIXL Auction (“Auction”) pursuant to Rule 1080. Non-Initiating Order interest could be a PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction.

electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. The Exchange proposes to no longer cap rebates on Customer PIXL Orders at 4,000 contracts per order leg for Complex PIXL Orders, but will continue to cap them for Simple PIXL Orders are noted in Category B.

The Exchange will create a new Category D rebate which will pay: no rebate for Tier 1; a \$0.21 per contract rebate for Tier 2; a \$0.22 rebate for Tier 3; a \$0.26 rebate for Tier 4; and a \$0.27 rebate for Tier 5. These rebates are per contract. The Category D Rebates will be paid to members executing electronically-delivered Customer Complex Orders in Non-Penny Pilot Options in Section II symbols. Rebates will be paid on Customer PIXL Complex Orders that execute against non-Initiating Order interest. A Customer Complex PIXL Order that executes against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category D Rebate will not be paid when an electronically-delivered Customer Complex Order, including a Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order.

The Exchange proposes to adopt a new Category D rebate which will be paid to members executing electronically-delivered Customer Complex Orders in Non-Penny Pilot Options in Section II symbols. Rebates will be paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category D Rebate will not be paid when an electronically-delivered Customer Complex Order, including a Customer Complex PIXL

Order, executes against another electronically-delivered Customer Complex Order. The Exchange will pay no Tier 1 Category D rebate. The Exchange will pay a \$0.21 per contract Tier 2 Category D rebate. The Exchange will pay a \$0.22 per contract Tier 3 Category D rebate. The Exchange will pay a \$0.26 per contract Tier 4 Category D rebate. The Exchange will pay a \$0.27 per contract Tier 5 Category D rebate. Today, rebates are not paid on NDX and MNX contracts in any Category, however NDX and MNX contracts count toward the volume requirements to qualify for a Customer Rebate Tier. This will be continue to be the case.

Today, the Exchange pays a \$0.02 per contract Category A and B rebate and a \$0.03 per contract Category C rebate in addition to the applicable Tier 2 and 3 rebate, provided the Specialist,¹² Market Maker¹³ or Appointed MM¹⁴ has reached the Monthly

¹² The term “Specialist” shall apply to 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 501(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.

¹³ The term “Market Maker” describes fees and rebates applicable to Registered Options Traders (“ROT”), Streaming Quote Traders (“SQTs”), Remote Streaming Quote Traders (“RSQTs”). An ROT is defined in Exchange Rule 1014(b) is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes SQTs and RSQTs as well as on and off-floor ROTs. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or “RSQTO,” which may also be referred to as a Remote Market Making Organization (“RMO”), is a member organization in good standing that satisfies the RSQTO readiness

Market Maker Cap¹⁵ as defined in Section II, to: (1) a Specialist or Market Maker who is not under Common Ownership¹⁶ or is not a party of an Affiliated Entity; or (2) an OFP member or member organization affiliate under Common Ownership; or (3) an Appointed OFP¹⁷ of an Affiliated Entity. The Exchange proposes to pay an additional \$0.03 rebate in addition to the applicable Tier 2 and 3 Category D rebates, provided the Specialist, Market Maker or Appointed MM has reached the Monthly Market Maker Cap as defined in Section II, to: (1) a Specialist or Market Maker who is not under Common Ownership or is not a party of an Affiliated Entity; or (2) an OFP member or member organization affiliate under Common Ownership; or (3) an Appointed OFP of an Affiliated Entity.

requirements in Rule 507(a). RSQTs may also be referred to as Remote Market Markers (“RMMs”).

- ¹⁴ An Appointed MM is a Phlx Market Maker or Specialist who has been appointed by an Order Flow Provider (“OFP”) for purposes of qualifying as an Affiliated Entity. An OFP is a member or member organization that submits orders, as agent or principal, to the Exchange.
- ¹⁵ Specialists and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II) are excluded from the Monthly Market Maker Cap.
- ¹⁶ The term “Common Ownership” shall mean members or member organizations under 75% common ownership or control.
- ¹⁷ An Appointed OFP is an Order Flow Provider who has been appointed by a Phlx Market Maker or Specialist for purposes of qualifying as an Affiliated Entity.

Today, the Exchange pays a \$0.05 per contract Category C rebate in addition to the applicable Tier 2 and 3 rebates to members or member organizations or member or member organization affiliated under Common Ownership provided the member or member organization qualified for a Tier 1 or 2 MARS Payments in Section IV, Part E. The Exchange is proposing to expand this additional rebate to apply the \$0.05 per contract rebate to Category D and also expand the applicable Tiers from 2 and 3 to Tiers 2, 3, 4 or 5 rebate tiers for both Category C and D rebates. Finally the Exchange is expanding the MARS qualification from Tiers 1 and 2 to any MARS Payments¹⁸ for both Category C and D rebates. The new rule text would provide, “The Exchange will pay a \$0.05 per contract Category C and Category D rebate in addition to the applicable Tier 2, 3, 4 and 5 rebates to members or member organizations or member or member organization affiliated under Common Ownership provided the member or member organization qualified for any MARS Payments in Section IV, Part E.”

The Exchange believes that the proposed amendments will attract a greater amount of Customer Complex Order liquidity to Phlx. Customer liquidity benefits all market participants by providing more order flow to the marketplace and more trading opportunities.

Multiply Listed Options

The Exchange proposes to adopt certain surcharges for electronically-delivered Complex Orders in order that it may pay increased Customer Rebates. Customer liquidity benefits all market participants by providing more liquidity with which market

¹⁸ Today, Phlx members that have System Eligibility, as described in Section IV, Part E, and have executed the requisite number of Eligible Contracts, as described in Section IV, Part E, in a month will be paid per contract rebates based on a 4 tier structure which pays a certain MARS Payment based on Average Daily Volume.

participants may interact on Phlx. The Customer Rebates provide an additional incentive to encourage market participants to send Customer Complex Order flow to Phlx.

The Exchange proposes to amend Section II to assess a surcharge of \$0.03 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Penny Pilot Options, excluding SPY. The Exchange proposes to assess a surcharge of \$0.10 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options, excluding NDX and MNX.

The Exchange notes that an 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.

The Exchange is amending the rule text to make clear that surcharges are not subject to the Monthly Market Maker Cap. Today, the Exchange assesses surcharges for BKX, NDX and MNX. Those charges are not included in the calculation of the Monthly Market Maker Cap. The proposed surcharges will not be included in the Monthly Market Maker Cap.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,²⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4), (5).

other persons using its facilities, 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.”²¹

Likewise, in NetCoalition v. Securities and Exchange Commission²² (“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.²³ 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.”²⁴

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

²¹ Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7-10-04) (“Regulation NMS Adopting Release”).

²² NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²³ See id. at 534-535.

²⁴ See id. at 537.

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’”²⁵ 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.

Customer Rebates

The Exchange’s proposal to amend Section B, entitled “Customer Rebate Program,” to amend Category C and add a new Category D is reasonable because today the Exchange pays a Customer Complex Order rebate on both Penny and Non-Penny Pilot Options. The Exchange will continue to pay rebates for both Penny and Non-Penny Pilot Options, but will amend the rebates paid for Non-Penny Pilot Options as proposed for Category D. The Exchange notes that today it assesses different fees for Penny and Non-Penny Pilot Options.²⁶

The Exchange’s proposal to amend Section B, entitled “Customer Rebate Program,” to amend Category C and add a new Category D is equitable and not unfairly discriminatory because the Exchange will uniformly pay Customer rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

With respect to the Tier 2 Category C rebate, which is decreased from \$0.17 to \$0.16 per contract, and the Tier 3 Category C rebate, which is increased from \$0.17 to

²⁵ See *id.* at 539 (quoting Securities Exchange Act Commission at Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782-74783 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁶ See Section II of the Pricing Schedule.

\$0.18 per contract, the Exchange believes that these proposed changes are reasonable because the Exchange currently pays the same \$0.17 per contract rebate for these two tiers. The Exchange desires to pay a lower rebate for Tier 2, which requires National Customer Volume²⁷ of above 0.60% - 1.10%, and a higher rebate for Tier 3, which requires National Customer Volume of above 1.10% - 1.60%, because of the difference in the volume requirements. The Exchange believes that it is reasonable to pay a higher rebate for the Tier 3 Category C rebate because of the higher volume requirement.

With respect to the Tier 2 Category C rebate, which is decreased from \$0.17 to \$0.16 per contract, and the Tier 3 Category C rebate, which is increased from \$0.17 to \$0.18 per contract, the Exchange believes that these proposed changes are equitable and not unfairly discriminatory because the Exchange will uniformly pay Customer rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

With respect to the proposed rebates for Category D, the Exchange believes that it is reasonable to pay no rebate for Tier 1, which has a National Customer Volume requirement between 0.00% - 0.60%, because no other Category pays a rebate for this level of volume. The Exchange believes that it is reasonable to pay the proposed Tier 2 through 5 rebates,²⁸ progressively higher rebates which are commensurate with the increased National Customer Volume requirement for each Tier.

²⁷ The National Customer Volume would be in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options, on a monthly basis.

²⁸ Category D pays: a \$0.21 rebate for Tier 2 (National Customer Volume above 0.60% - 1.10%); a \$0.22 rebate for Tier 3 (National Customer Volume above 1.10% - 1.60%); a \$0.26 rebate for Tier 4 (National Customer Volume above 1.60% - 2.50%); and a \$0.27 rebate for Tier 5 (National Customer Volume above 2.50%).

With respect to the proposed rebates for Category D, the Exchange believes the proposed rebates are equitable and not unfairly discriminatory because the Exchange will uniformly pay Customer rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

The Exchange's proposal to no longer cap rebates on Customer PIXL Orders at 4,000 contracts per order leg for Complex PIXL Orders is reasonable because the Exchange will potentially attract a greater amount of Customer liquidity to the Exchange without a cap. 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.

The Exchange's proposal to no longer cap rebates on Customer PIXL Orders at 4,000 contracts per order leg for Complex PIXL Orders is equitable and not unfairly discriminatory because the Exchange will uniformly not cap Category C rebates for any market participant.

The Exchange's proposal to structure the Category D rebate similar to the Category C rebate is reasonable because today, electronically-delivered Customer Complex Orders in Non-Penny Pilot Options in Section II symbols, will be subject to the same terms. Rebates will continue to be paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will continue to not

be paid a rebate under any circumstances. The Category D Rebate will continue to not be paid when an electronically-delivered Customer Complex Order, including a Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. Also, the Exchange is proposing to remove the 4,000 contracts per order cap, as noted above, for the Category C rebates and the cap will not be applicable for the Category D rebates.

The Exchange's proposal to structure the Category D rebate similar to the Category C rebate is equitable and not unfairly discriminatory because the Exchange will uniformly apply the Category D rebates to all market participants.

The Exchange's proposal to pay a \$0.03 per contract Category D rebate, in addition to the applicable Tier 2 and 3 rebates, provided the Specialist, Market Maker or Appointed MM has reached the Monthly Market Maker Cap as defined in Section II, to: (1) a Specialist or Market Maker who is not under Common Ownership or is not a party of an Affiliated Entity; or (2) an OFP member or member organization affiliate under Common Ownership; or (3) an Appointed OFP of an Affiliated Entity is reasonable. Today, market participants sending electronically-delivered Customer Complex Orders in Non-Penny Pilot Options in Section II symbols are paid the \$0.03 per contract rebate in addition to the Tier 2 and 3 rebate in Category C, provided the requirements are met. The Exchange believes it is reasonable to continue to pay this additional rebate provide the requirements are met.

The Exchange's proposal to pay a \$0.03 per contract Category D rebate, in addition to the applicable Tier 2 and 3 rebates, provided the Specialist, Market Maker or Appointed MM has reached the Monthly Market Maker Cap as defined in Section II, to:

(1) a Specialist or Market Maker who is not under Common Ownership or is not a party of an Affiliated Entity; or (2) an OFP member or member organization affiliate under Common Ownership; or (3) an Appointed OFP of an Affiliated Entity is equitable and not unreasonably discriminatory. The Exchange will uniformly pay the additional \$0.03 rebate in addition to the Tier 2 and 3 Category D rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

The Exchange's proposal to amend the manner in which the Exchange pays the \$0.05 per contract rebate on electronically-delivered Customer Complex Orders in Non-Penny Pilot Options is reasonable. Today, electronically-delivered Customer Complex Orders in Non-Penny Pilot Options are paid a \$0.05 per contract rebate in addition to the applicable Tier 2 and 3 rebates to members or member organizations or member or member organization affiliated under Common Ownership, provided the member or member organization qualified for a Tier 1 or 2 MARS Payment in Section IV, Part E. The Exchange proposes, with respect to both Category C and D, to expand the applicable tiers from only Tiers 2 and 3 to Tiers 2, 3, 4 or 5. This is reasonable because it will allow additional market participants to take advantage of the additional rebate, provided the requirements are met. Also, the Exchange's proposal to expand the MARS qualification from Tiers 1 and 2 to any MARS Payments²⁹ is reasonable because it will allow additional market participants to take advantage of the additional rebate.

The Exchange's proposal to amend the manner in which the Exchange pays the \$0.05 per contract rebate on electronically-delivered Customer Complex Orders in Non-

²⁹ Today, Phlx members that have System Eligibility, as described in Section IV, Part E, and have executed the requisite number of Eligible Contracts, as described in Section IV, Part E, in a month will be paid per contract rebates based on a 4 tier structure which pays a certain MARS Payment based on Average Daily Volume.

Penny Pilot Options is equitable and not unreasonably discriminatory because the Exchange will uniformly pay the additional \$0.05 rebate to the applicable expanded rebate tiers and MARS tiers provided the market participant qualifies. Any market participant may qualify for a Customer Rebate.

Multiply Listed Options

The Exchange's proposal to adopt a surcharge of \$0.03 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Penny Pilot Options, excluding SPY and a surcharge of \$0.10 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options, excluding NDX and MNX is reasonable. The Exchange is adopting these surcharges, which will be applied on transactions that remove liquidity from the Complex Order Book, in order to help offset the increased rebates which are proposed to be given to Complex Orders in Section B. The Exchange believes that it is reasonable to only assess this surcharge to those orders which remove liquidity from the market because the Exchange wants to continue to encourage market participation and price improvement for those participants that seek to add liquidity on Phlx. The Exchange believes that not assessing the surcharge on PIXL and SPY orders is reasonable. PIXL has its own pricing,³⁰ and the Exchange wants to continue to encourage price improvement within PIXL. SPY has its own rebate program separate and apart from Section B.³¹ Limiting the surcharges to electronically-delivered transactions is reasonable because the Section B rebates apply only to

³⁰ See Section IV, Part A of the Pricing Schedule.

³¹ See Section I of the Pricing Schedule.

electronically-delivered Customer orders. Further, limiting the surcharge to orders entered electronically is equitable and not unfairly discriminatory because the Exchange has expended considerable resources to develop its electronic trading platforms and seeks to recoup the costs of such expenditures. Finally, excluding NDX and MNX is reasonable because these symbols are currently subject to a surcharge.³²

The Exchange's proposal to adopt a surcharge of \$0.03 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Penny Pilot Options, excluding SPY and a surcharge of \$0.10 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options, excluding NDX and MNX is equitable and not unfairly discriminatory. The surcharges will be applied uniformly to all market participants.

The Exchange's proposal to amend the rule text to make clear that surcharges are not subject to the Monthly Market Maker Cap is reasonable because today, the Exchange does not count surcharges for BKX, NDX and MNX toward the Monthly Market Maker Cap, only Options Transaction Charges.

The Exchange's proposal to amend the rule text to make clear that surcharges are not subject to the Monthly Market Maker Cap is equitable and not unfairly discriminatory because all Specialists and Market Makers will be uniformly applied the cap. Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.³³ They have obligations to make

³² See Section II of the Pricing Schedule.

³³ See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

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. For these reasons, the Exchange believes that it is equitable and not unfairly discriminatory for Specialists and Market Makers to cap fees.

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 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.

Customer Rebates

The Exchange's proposal to amend Section B, entitled "Customer Rebate Program," to amend Category C and add a new Category D does not impose an undue burden on intra-market competition because the Exchange will uniformly pay Customer rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

With respect to the Tier 2 Category C rebate, which is decreased from \$0.17 to \$0.16 per contract, and the Tier 3 Category C rebate, which is increased from \$0.17 to \$0.18 per contract, the Exchange believes that these proposed changes do not impose an undue burden on intra-market competition because the Exchange will uniformly pay Customer rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

With respect to the proposed rebates for Category D, the Exchange believes the proposed rebates do not impose an undue burden on intra-market competition because the Exchange will uniformly pay Customer rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

The Exchange's proposal to no longer cap rebates on Customer PIXL Orders at 4,000 contracts per order leg for Complex PIXL Orders does not impose an undue burden

on intra-market competition because the Exchange will uniformly not cap Category C rebates for any market participant.

The Exchange proposal's to structure the Category D rebate similar to the Category C rebate does not impose an undue burden on intra-market competition because the Exchange will uniformly apply the Category D rebates to all market participants.

The Exchange's proposal to pay a \$0.03 per contract Category D rebate addition to the applicable Tier 2 and 3 rebate, provided the Specialist, Market Maker or Appointed MM has reached the Monthly Market Maker Cap as defined in Section II, to: (1) a Specialist or Market Maker who is not under Common Ownership or is not a party of an Affiliated Entity; or (2) an OFP member or member organization affiliate under Common Ownership; or (3) an Appointed OFP of an Affiliated Entity does not impose an undue burden on intra-market competition. The Exchange will uniformly pay the additional \$0.03 rebate in addition to the Tier 2 and 3 Category D rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

The Exchange's proposal to amend the manner in which the Exchange pays the \$0.05 per contract rebate on electronically-delivered Customer Complex Orders in Non-Penny Pilot Options does not impose an undue burden on intra-market competition because the Exchange will uniformly pay the additional \$0.05 rebate to the applicable expanded rebate and MARS tiers, provided the market participant qualifies. Any market participant may qualify for a Customer Rebate.

Multiply Listed Options

The Exchange's proposal to adopt a surcharge of \$0.03 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Penny Pilot Options, excluding SPY and a surcharge of \$0.10 per

contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options, excluding NDX and MNX does not impose on intra-market competition because the surcharges will be applied uniformly to all market participants.

The Exchange's proposal to amend the rule text to make clear that surcharges are not subject to the Monthly Market Maker Cap does not impose on intra-market competition because the all Specialists and Market Makers will be uniformly applied the cap. Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.³⁴ 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. For these reasons, the Exchange believes that it is equitable and not unfairly discriminatory for Specialists and Market Makers to cap fees.

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.

³⁴ See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,³⁵ The Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed 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.

³⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2017-29)

April __, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Customer Rebates and Pricing for Multiply Listed Options

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 3, 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: (i) amend Section B of the Exchange’s Pricing Schedule to create a new Category D and make other amendments to this section; and (ii) amend Section II of the Exchange’s Pricing Schedule entitled “Multiply Listed Options Fees,”³ to assess a surcharge related to Complex Orders.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ These fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

⁴ A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order

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.

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 Pricing Schedule: (i) at Section B to create an additional incentive to encourage market participants to send Customer Complex Order flow to Phlx; and (ii) at Section II to adopt certain surcharges for electronically-delivered Complex Orders so that the Exchange may pay increased Customer Rebates. Each of the proposed amendments is discussed in greater detail below.

Customer Rebate Program

The Exchange proposes to amend Section B, entitled "Customer Rebate Program," to amend Category C and add a new Category D to continue existing incentives to direct Customer Complex Order flow to the Exchange and create additional

to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). See Rule 1098.

incentives. Currently, the Exchange has a Customer Rebate Program consisting of the following five tiers that pay Customer rebates on three Categories, A,⁵ B⁶ and C,⁷ of transactions:

Customer Rebate Tiers	Percentage Thresholds of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (Monthly)	Category	Category	Category
		A	B	C
Tier 1	0.00% - 0.60%	\$0.00	\$0.00	\$0.00
Tier 2	Above 0.60% - 1.10%	\$0.10	\$0.10	\$0.17
Tier 3	Above 1.10% - 1.60%	\$0.15	\$0.12	\$0.17
Tier 4	Above 1.60% - 2.50%	\$0.20	\$0.16	\$0.22

⁵ The Category A Rebate is paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols.

⁶ The Category B Rebate is paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order are paid a rebate of \$0.14 per contract. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order for Simple PIXL Orders.

⁷ The Category C Rebate is paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order are not paid a rebate under any circumstances. The Category C Rebate is not paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order leg for Complex PIXL Orders.

Tier 5	Above 2.50%	\$0.21	\$0.17	\$0.22
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A Phlx member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options that it transacts monthly on Phlx. The Exchange calculates Customer⁸ volume in Multiply Listed Options by totaling electronically-delivered and executed volume, excluding volume associated with electronic Qualified Contingent Cross (“QCC”) Orders, as defined in Exchange Rule 1080(o).⁹

The Exchange proposes to amend Category C by decreasing the Tier 2 rebate from \$0.17 to \$0.16 per contract and increasing the Tier 3 rebate from \$0.17 to \$0.18 per contract. The Category C rebates will continue to be paid on electronically-delivered Customer Complex Orders in Penny Pilot Options, but will no longer be paid on Non-Penny Pilot Options in Section II symbols, which are proposed to be subject to the proposed Category D rebate. For Category C, rebates will continue to be paid on Customer PIXL¹⁰ Complex Orders in Section II symbols that execute against non-

⁸ The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation which is not for the account of a broker or dealer or for the account of a “Professional” (as that term is defined in Rule 1000(b)(14)).

⁹ In calculating electronically-delivered and executed Customer volume in Multiply Listed Options, the numerator of the equation includes all electronically-delivered and executed Customer volume in Multiply Listed Options. The denominator of that equation includes national customer volume in multiply-listed equity and ETF options volume, excluding SPY. See Section B of the Pricing Schedule.

¹⁰ PIXLSM is the Exchange’s price improvement mechanism known as Price Improvement XL or PIXL. See Rule 1080(n).

Initiating Order interest.¹¹ Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will continue to not be paid a Category C rebate under any circumstances. The Category C rebate will continue to not be paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. The Exchange proposes to no longer cap rebates on Customer PIXL Orders at 4,000 contracts per order leg for Complex PIXL Orders, but will continue to cap them for Simple PIXL Orders are noted in Category B.

The Exchange will create a new Category D rebate which will pay: no rebate for Tier 1; a \$0.21 per contract rebate for Tier 2; a \$0.22 rebate for Tier 3; a \$0.26 rebate for Tier 4; and a \$0.27 rebate for Tier 5. These rebates are per contract. The Category D Rebates will be paid to members executing electronically-delivered Customer Complex Orders in Non-Penny Pilot Options in Section II symbols. Rebates will be paid on Customer PIXL Complex Orders that execute against non-Initiating Order interest. A Customer Complex PIXL Order that executes against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category D Rebate will not be paid when an electronically-delivered Customer Complex Order, including a Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order.

¹¹ With respect to PIXL functionality, a Phlx member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (“PIXL Order”) against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (“Initiating Order”) provided it submits the PIXL order for electronic execution into the PIXL Auction (“Auction”) pursuant to Rule 1080. Non-Initiating Order interest could be a PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction.

The Exchange proposes to adopt a new Category D rebate which will be paid to members executing electronically-delivered Customer Complex Orders in Non-Penny Pilot Options in Section II symbols. Rebates will be paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category D Rebate will not be paid when an electronically-delivered Customer Complex Order, including a Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. The Exchange will pay no Tier 1 Category D rebate. The Exchange will pay a \$0.21 per contract Tier 2 Category D rebate. The Exchange will pay a \$0.22 per contract Tier 3 Category D rebate. The Exchange will pay a \$0.26 per contract Tier 4 Category D rebate. The Exchange will pay a \$0.27 per contract Tier 5 Category D rebate. Today, rebates are not paid on NDX and MNX contracts in any Category, however NDX and MNX contracts count toward the volume requirements to qualify for a Customer Rebate Tier. This will be continue to be the case.

Today, the Exchange pays a \$0.02 per contract Category A and B rebate and a \$0.03 per contract Category C rebate in addition to the applicable Tier 2 and 3 rebate, provided the Specialist,¹² Market Maker¹³ or Appointed MM¹⁴ has reached the Monthly

¹² The term “Specialist” shall apply to 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 501(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.

¹³ The term “Market Maker” describes fees and rebates applicable to Registered Options Traders (“ROT”), Streaming Quote Traders (“SQTs”), Remote Streaming Quote Traders (“RSQTs”). An ROT is defined in Exchange Rule

Market Maker Cap¹⁵ as defined in Section II, to: (1) a Specialist or Market Maker who is not under Common Ownership¹⁶ or is not a party of an Affiliated Entity; or (2) an OFP member or member organization affiliate under Common Ownership; or (3) an Appointed OFP¹⁷ of an Affiliated Entity. The Exchange proposes to pay an additional

1014(b) is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes SQTs and RSQTs as well as on and off-floor ROTS. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or “RSQTO,” which may also be referred to as a Remote Market Making Organization (“RMO”), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a). RSQTs may also be referred to as Remote Market Markers (“RMMs”).

¹⁴ An Appointed MM is a Phlx Market Maker or Specialist who has been appointed by an Order Flow Provider (“OFP”) for purposes of qualifying as an Affiliated Entity. An OFP is a member or member organization that submits orders, as agent or principal, to the Exchange.

¹⁵ Specialists and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II) are excluded from the Monthly Market Maker Cap.

¹⁶ The term “Common Ownership” shall mean members or member organizations under 75% common ownership or control.

¹⁷ An Appointed OFP is an Order Flow Provider who has been appointed by a Phlx Market Maker or Specialist for purposes of qualifying as an Affiliated Entity.

\$0.03 rebate in addition to the applicable Tier 2 and 3 Category D rebates, provided the Specialist, Market Maker or Appointed MM has reached the Monthly Market Maker Cap as defined in Section II, to: (1) a Specialist or Market Maker who is not under Common Ownership or is not a party of an Affiliated Entity; or (2) an OFP member or member organization affiliate under Common Ownership; or (3) an Appointed OFP of an Affiliated Entity.

Today, the Exchange pays a \$0.05 per contract Category C rebate in addition to the applicable Tier 2 and 3 rebates to members or member organizations or member or member organization affiliated under Common Ownership provided the member or member organization qualified for a Tier 1 or 2 MARS Payments in Section IV, Part E. The Exchange is proposing to expand this additional rebate to apply the \$0.05 per contract rebate to Category D and also expand the applicable Tiers from 2 and 3 to Tiers 2, 3, 4 or 5 rebate tiers for both Category C and D rebates. Finally the Exchange is expanding the MARS qualification from Tiers 1 and 2 to any MARS Payments¹⁸ for both Category C and D rebates. The new rule text would provide, “The Exchange will pay a \$0.05 per contract Category C and Category D rebate in addition to the applicable Tier 2, 3, 4 and 5 rebates to members or member organizations or member or member organization affiliated under Common Ownership provided the member or member organization qualified for any MARS Payments in Section IV, Part E.”

The Exchange believes that the proposed amendments will attract a greater amount of Customer Complex Order liquidity to Phlx. Customer liquidity benefits all

¹⁸ Today, Phlx members that have System Eligibility, as described in Section IV, Part E, and have executed the requisite number of Eligible Contracts, as described in Section IV, Part E, in a month will be paid per contract rebates based on a 4 tier structure which pays a certain MARS Payment based on Average Daily Volume.

market participants by providing more order flow to the marketplace and more trading opportunities.

Multiply Listed Options

The Exchange proposes to adopt certain surcharges for electronically-delivered Complex Orders in order that it may pay increased Customer Rebates. Customer liquidity benefits all market participants by providing more liquidity with which market participants may interact on Phlx. The Customer Rebates provide an additional incentive to encourage market participants to send Customer Complex Order flow to Phlx.

The Exchange proposes to amend Section II to assess a surcharge of \$0.03 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Penny Pilot Options, excluding SPY. The Exchange proposes to assess a surcharge of \$0.10 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options, excluding NDX and MNX.

The Exchange notes that an 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.

The Exchange is amending the rule text to make clear that surcharges are not subject to the Monthly Market Maker Cap. Today, the Exchange assesses surcharges for BKK, NDX and MNX. Those charges are not included in the calculation of the Monthly Market Maker Cap. The proposed surcharges will not be included in the Monthly Market Maker Cap.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,²⁰ 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 its facilities, 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.”²¹

Likewise, in NetCoalition v. Securities and Exchange Commission²² (“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.²³ As the court emphasized, the Commission

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4), (5).

²¹ Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7-10-04) (“Regulation NMS Adopting Release”).

²² NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²³ See id. at 534-535.

“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.”²⁴

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’”²⁵ 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.

Customer Rebates

The Exchange’s proposal to amend Section B, entitled “Customer Rebate Program,” to amend Category C and add a new Category D is reasonable because today the Exchange pays a Customer Complex Order rebate on both Penny and Non-Penny Pilot Options. The Exchange will continue to pay rebates for both Penny and Non-Penny Pilot Options, but will amend the rebates paid for Non-Penny Pilot Options as proposed for Category D. The Exchange notes that today it assesses different fees for Penny and Non-Penny Pilot Options.²⁶

²⁴ See id. at 537.

²⁵ See id. at 539 (quoting Securities Exchange Act Commission at Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782-74783 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁶ See Section II of the Pricing Schedule.

The Exchange's proposal to amend Section B, entitled "Customer Rebate Program," to amend Category C and add a new Category D is equitable and not unfairly discriminatory because the Exchange will uniformly pay Customer rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

With respect to the Tier 2 Category C rebate, which is decreased from \$0.17 to \$0.16 per contract, and the Tier 3 Category C rebate, which is increased from \$0.17 to \$0.18 per contract, the Exchange believes that these proposed changes are reasonable because the Exchange currently pays the same \$0.17 per contract rebate for these two tiers. The Exchange desires to pay a lower rebate for Tier 2, which requires National Customer Volume²⁷ of above 0.60% - 1.10%, and a higher rebate for Tier 3, which requires National Customer Volume of above 1.10% - 1.60%, because of the difference in the volume requirements. The Exchange believes that it is reasonable to pay a higher rebate for the Tier 3 Category C rebate because of the higher volume requirement.

With respect to the Tier 2 Category C rebate, which is decreased from \$0.17 to \$0.16 per contract, and the Tier 3 Category C rebate, which is increased from \$0.17 to \$0.18 per contract, the Exchange believes that these proposed changes are equitable and not unfairly discriminatory because the Exchange will uniformly pay Customer rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

With respect to the proposed rebates for Category D, the Exchange believes that it is reasonable to pay no rebate for Tier 1, which has a National Customer Volume

²⁷ The National Customer Volume would be in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options, on a monthly basis.

requirement between 0.00% - 0.60%, because no other Category pays a rebate for this level of volume. The Exchange believes that it is reasonable to pay the proposed Tier 2 through 5 rebates,²⁸ progressively higher rebates which are commensurate with the increased National Customer Volume requirement for each Tier.

With respect to the proposed rebates for Category D, the Exchange believes the proposed rebates are equitable and not unfairly discriminatory because the Exchange will uniformly pay Customer rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

The Exchange's proposal to no longer cap rebates on Customer PIXL Orders at 4,000 contracts per order leg for Complex PIXL Orders is reasonable because the Exchange will potentially attract a greater amount of Customer liquidity to the Exchange without a cap. 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.

The Exchange's proposal to no longer cap rebates on Customer PIXL Orders at 4,000 contracts per order leg for Complex PIXL Orders is equitable and not unfairly

²⁸ Category D pays: a \$0.21 rebate for Tier 2 (National Customer Volume above 0.60% - 1.10%); a \$0.22 rebate for Tier 3 (National Customer Volume above 1.10% - 1.60%); a \$0.26 rebate for Tier 4 (National Customer Volume above 1.60% - 2.50%); and a \$0.27 rebate for Tier 5 (National Customer Volume above 2.50%).

discriminatory because the Exchange will uniformly not cap Category C rebates for any market participant.

The Exchange's proposal to structure the Category D rebate similar to the Category C rebate is reasonable because today, electronically-delivered Customer Complex Orders in Non-Penny Pilot Options in Section II symbols, will be subject to the same terms. Rebates will continue to be paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will continue to not be paid a rebate under any circumstances. The Category D Rebate will continue to not be paid when an electronically-delivered Customer Complex Order, including a Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. Also, the Exchange is proposing to remove the 4,000 contracts per order cap, as noted above, for the Category C rebates and the cap will not be applicable for the Category D rebates.

The Exchange's proposal to structure the Category D rebate similar to the Category C rebate is equitable and not unfairly discriminatory because the Exchange will uniformly apply the Category D rebates to all market participants.

The Exchange's proposal to pay a \$0.03 per contract Category D rebate, in addition to the applicable Tier 2 and 3 rebates, provided the Specialist, Market Maker or Appointed MM has reached the Monthly Market Maker Cap as defined in Section II, to:

- (1) a Specialist or Market Maker who is not under Common Ownership or is not a party of an Affiliated Entity; or
- (2) an OFP member or member organization affiliate under Common Ownership; or
- (3) an Appointed OFP of an Affiliated Entity is reasonable.

Today, market participants sending electronically-delivered Customer Complex Orders in Non-Penny Pilot Options in Section II symbols are paid the \$0.03 per contract rebate in addition to the Tier 2 and 3 rebate in Category C, provided the requirements are met. The Exchange believes it is reasonable to continue to pay this additional rebate provide the requirements are met.

The Exchange's proposal to pay a \$0.03 per contract Category D rebate, in addition to the applicable Tier 2 and 3 rebates, provided the Specialist, Market Maker or Appointed MM has reached the Monthly Market Maker Cap as defined in Section II, to: (1) a Specialist or Market Maker who is not under Common Ownership or is not a party of an Affiliated Entity; or (2) an OFP member or member organization affiliate under Common Ownership; or (3) an Appointed OFP of an Affiliated Entity is equitable and not unreasonably discriminatory. The Exchange will uniformly pay the additional \$0.03 rebate in addition to the Tier 2 and 3 Category D rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

The Exchange's proposal to amend the manner in which the Exchange pays the \$0.05 per contract rebate on electronically-delivered Customer Complex Orders in Non-Penny Pilot Options is reasonable. Today, electronically-delivered Customer Complex Orders in Non-Penny Pilot Options are paid a \$0.05 per contract rebate in addition to the applicable Tier 2 and 3 rebates to members or member organizations or member or member organization affiliated under Common Ownership, provided the member or member organization qualified for a Tier 1 or 2 MARS Payment in Section IV, Part E. The Exchange proposes, with respect to both Category C and D, to expand the applicable tiers from only Tiers 2 and 3 to Tiers 2, 3, 4 or 5. This is reasonable because it will allow

additional market participants to take advantage of the additional rebate, provided the requirements are met. Also, the Exchange's proposal to expand the MARS qualification from Tiers 1 and 2 to any MARS Payments²⁹ is reasonable because it will allow additional market participants to take advantage of the additional rebate.

The Exchange's proposal to amend the manner in which the Exchange pays the \$0.05 per contract rebate on electronically-delivered Customer Complex Orders in Non-Penny Pilot Options is equitable and not unreasonably discriminatory because the Exchange will uniformly pay the additional \$0.05 rebate to the applicable expanded rebate tiers and MARS tiers provided the market participant qualifies. Any market participant may qualify for a Customer Rebate.

Multiply Listed Options

The Exchange's proposal to adopt a surcharge of \$0.03 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Penny Pilot Options, excluding SPY and a surcharge of \$0.10 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options, excluding NDX and MNX is reasonable. The Exchange is adopting these surcharges, which will be applied on transactions that remove liquidity from the Complex Order Book, in order to help offset the increased rebates which are proposed to be given to Complex Orders in Section B. The Exchange believes that it is reasonable to only assess this surcharge to those orders which remove liquidity from the market because the Exchange wants to continue

²⁹ Today, Phlx members that have System Eligibility, as described in Section IV, Part E, and have executed the requisite number of Eligible Contracts, as described in Section IV, Part E, in a month will be paid per contract rebates based on a 4 tier structure which pays a certain MARS Payment based on Average Daily Volume.

to encourage market participation and price improvement for those participants that seek to add liquidity on Phlx. The Exchange believes that not assessing the surcharge on PIXL and SPY orders is reasonable. PIXL has its own pricing,³⁰ and the Exchange wants to continue to encourage price improvement within PIXL. SPY has its own rebate program separate and apart from Section B.³¹ Limiting the surcharges to electronically-delivered transactions is reasonable because the Section B rebates apply only to electronically-delivered Customer orders. Further, limiting the surcharge to orders entered electronically is equitable and not unfairly discriminatory because the Exchange has expended considerable resources to develop its electronic trading platforms and seeks to recoup the costs of such expenditures. Finally, excluding NDX and MNX is reasonable because these symbols are currently subject to a surcharge.³²

The Exchange's proposal to adopt a surcharge of \$0.03 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Penny Pilot Options, excluding SPY and a surcharge of \$0.10 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options, excluding NDX and MNX is equitable and not unfairly discriminatory. The surcharges will be applied uniformly to all market participants.

The Exchange's proposal to amend the rule text to make clear that surcharges are not subject to the Monthly Market Maker Cap is reasonable because today, the Exchange

³⁰ See Section IV, Part A of the Pricing Schedule.

³¹ See Section I of the Pricing Schedule.

³² See Section II of the Pricing Schedule.

does not count surcharges for BKX, NDX and MNX toward the Monthly Market Maker Cap, only Options Transaction Charges.

The Exchange's proposal to amend the rule text to make clear that surcharges are not subject to the Monthly Market Maker Cap is equitable and not unfairly discriminatory because all Specialists and Market Makers will be uniformly applied the cap. Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.³³ 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. For these reasons, the Exchange believes that it is equitable and not unfairly discriminatory for Specialists and Market Makers to cap fees.

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

³³ See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

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 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.

Customer Rebates

The Exchange's proposal to amend Section B, entitled "Customer Rebate Program," to amend Category C and add a new Category D does not impose an undue burden on intra-market competition because the Exchange will uniformly pay Customer rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

With respect to the Tier 2 Category C rebate, which is decreased from \$0.17 to \$0.16 per contract, and the Tier 3 Category C rebate, which is increased from \$0.17 to \$0.18 per contract, the Exchange believes that these proposed changes do not impose an undue burden on intra-market competition because the Exchange will uniformly pay

Customer rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

With respect to the proposed rebates for Category D, the Exchange believes the proposed rebates do not impose an undue burden on intra-market competition because the Exchange will uniformly pay Customer rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

The Exchange's proposal to no longer cap rebates on Customer PIXL Orders at 4,000 contracts per order leg for Complex PIXL Orders does not impose an undue burden on intra-market competition because the Exchange will uniformly not cap Category C rebates for any market participant.

The Exchange proposal's to structure the Category D rebate similar to the Category C rebate does not impose an undue burden on intra-market competition because the Exchange will uniformly apply the Category D rebates to all market participants.

The Exchange's proposal to pay a \$0.03 per contract Category D rebate addition to the applicable Tier 2 and 3 rebate, provided the Specialist, Market Maker or Appointed MM has reached the Monthly Market Maker Cap as defined in Section II, to: (1) a Specialist or Market Maker who is not under Common Ownership or is not a party of an Affiliated Entity; or (2) an OFP member or member organization affiliate under Common Ownership; or (3) an Appointed OFP of an Affiliated Entity does not impose an undue burden on intra-market competition. The Exchange will uniformly pay the additional \$0.03 rebate in addition to the Tier 2 and 3 Category D rebates to all qualifying market participants. Any market participant may qualify for a Customer Rebate.

The Exchange's proposal to amend the manner in which the Exchange pays the \$0.05 per contract rebate on electronically-delivered Customer Complex Orders in Non-Penny Pilot Options does not impose an undue burden on intra-market competition because the Exchange will uniformly pay the additional \$0.05 rebate to the applicable expanded rebate and MARS tiers, provided the market participant qualifies. Any market participant may qualify for a Customer Rebate.

Multiply Listed Options

The Exchange's proposal to adopt a surcharge of \$0.03 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Penny Pilot Options, excluding SPY and a surcharge of \$0.10 per contract on electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options, excluding NDX and MNX does not impose on intra-market competition because the surcharges will be applied uniformly to all market participants.

The Exchange's proposal to amend the rule text to make clear that surcharges are not subject to the Monthly Market Maker Cap does not impose on intra-market competition because the all Specialists and Market Makers will be uniformly applied the cap. Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.³⁴ 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.

³⁴ See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

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. For these reasons, the Exchange believes that it is equitable and not unfairly discriminatory for Specialists and Market Makers to cap fees.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³⁵

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

³⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-29 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-2017-29. 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-2017-29 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Robert W. Errett
Deputy Secretary

³⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

NASDAQ PHLX Rules

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**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.

* * * * *

B. Customer Rebate Program

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

Customer Rebate Tiers	Percentage Thresholds of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (Monthly)	Category	Category	Category	Category
		A	B	C	<u>D</u>
Tier 1	0.00% - 0.60%	\$0.00	\$0.00	\$0.00	<u>\$0.00</u>
Tier 2	Above 0.60% - 1.10%	\$0.10*	\$0.10*	\$0.1[7]6* [#]	<u>\$0.21*[#]</u>
Tier 3	Above 1.10% - 1.60%	\$0.15	\$0.12*	\$0.1[7]8* [#]	<u>\$0.22*[#]</u>
Tier 4	Above 1.60% - 2.50%	\$0.20	\$0.16	\$0.22 [#]	<u>\$0.26[#]</u>
Tier 5	Above 2.50%	\$0.21	\$0.17	\$0.22 [#]	<u>\$0.27[#]</u>

Category A: Rebate will be paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols.

Category B: Rebate will be paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order will be paid a rebate of \$0.14 per contract. Rebates on Customer PIXL Orders will be capped at 4,000 contracts per order for Simple PIXL Orders.

Category C: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options [and Non-Penny Pilot Options] in Section II symbols. Rebate will be paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category C Rebate will not be paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. [Rebates on Customer PIXL Orders will be capped at 4,000 contracts per order leg for Complex PIXL Orders.]

Category D: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Non-Penny Pilot Options in Section II symbols. Rebate will be paid on Customer PIXL Complex Orders in Section II symbols that execute against non-

Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category D Rebate will not be paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order.

Rebates will not be paid on NDX and MNX contracts in any Category, however NDX and MNX contracts will count toward the volume requirement to qualify for a Customer Rebate Tier.

*The Exchange will pay a \$0.02 per contract Category A and B rebate and a \$0.03 per contract Category C and D rebate in addition to the applicable Tier 2 and 3 rebate, provided the Specialist, Market Maker or Appointed MM has reached the Monthly Market Maker Cap as defined in Section II, to: (1) a Specialist or Market Maker who is not under Common Ownership or is not a party of an Affiliated Entity; or (2) an OFP member or member organization affiliate under Common Ownership; or (3) an Appointed OFP of an Affiliated Entity.

#The Exchange will pay a \$0.05 per contract Category C and D rebate in addition to the applicable Tier 2, 3, 4 and [3]5 rebates to members or member organizations or member or member organization affiliated under Common Ownership provided the member or member organization qualified for [a Tier 1 or 2] any MARS Payments in Section IV, Part E.

* * * * *

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

	Customer Professional	Specialist and Market Maker	Broker-Dealer	Firm					
	Electronic Floor	Electronic Floor	Electronic Floor	Electronic Floor					
Options Transaction Charge (Penny Pilot)⁶	\$0.00	\$0.48 ²	\$0.25	\$0.22	\$0.35	\$0.48 ²	\$0.25	\$0.48 ^{1, 2}	\$0.25
Options Transaction Charge (non-Penny Pilot)⁷, excluding	\$0.00	\$0.75 ³	\$0.25	\$0.25 ⁴	\$0.35	\$0.75 ³	\$0.25	\$0.75 ^{1, 3}	\$0.25

NDX and MNX									
Options Transactions Charge NDX and MNX⁵	\$0.00	\$0.75	\$0.75	\$0.75	\$0.35	\$0.75	\$0.75	\$0.75	\$0.75
Options Surcharge in BKK	N/A	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10
Cabinet Options	\$0.00	N/A	\$0.10	N/A	\$0.10	N/A	\$0.10	N/A	\$0.10

- These fees are per contract.

¹Firm electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF will be assessed \$0.37.

²Electronic Complex Orders will be assessed \$0.40 per contract.

³Any member or member organization under Common Ownership with another member or member organization or an Appointed OFP of an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed \$0.65 per contract.

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

⁵For transactions in NDX and MNX, a surcharge of \$0.25 will be assessed to Non-Customers.

⁶A \$0.03 per contract surcharge will be assessed to electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Penny Pilot Options (excluding SPY). An 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.

⁷A \$0.10 per contract surcharge will be assessed to electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-

Penny Pilot Options (excluding NDX and MNX). An 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.

* * * * *

• Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges; and (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)). The trading activity of separate Specialist and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Section II) will be excluded from the Monthly Market Maker Cap. Specialists or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows:

Fee per contract

\$0.05 per contract Fee for Adding Liquidity in Penny Pilot Options

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

\$0.18 per contract in Non-Penny Pilot Options

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

* * * * *