

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 * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input 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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

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

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

Proposal to amend the Exchange Pricing Schedule to exclude A.M. and P.M. settled options on broad based indexes with nonstandard expiration dates from its pricing for Strategy Caps and for FLEX transactions.

Contact Information

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

First Name * Brett Last Name * Kitt
 Title * Senior Associate General Counsel
 E-mail * Brett.Kitt@nasdaq.com
 Telephone * (301) 978-8132 Fax

Signature

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

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

(Title *)
 Executive Vice President and General Counsel

Date 01/26/2018
 By Edward S. Knight
 (Name *)

edward.knight@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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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 proposes to amend the Exchange’s Pricing Schedule to exclude A.M. and P.M.-settled options on broad-based indexes with nonstandard expiration dates from its pricing for Strategy Caps and for FLEX transactions.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2018.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1 and a copy of the applicable portion of the Pricing Schedule is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on September 19, 2017. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

a. Purpose

The Exchange lists A.M and P.M.-settled options on the Nasdaq 100[®] Index with nonstandard expiration dates under the symbols “NDX” and “NDXP,”³ respectively. NDX and NDXP are proprietary products that are or soon will be traded exclusively on the Exchange and its affiliates.⁴ The pricing schemes applicable to these products reflects their proprietary and exclusive nature.⁵ That is, transactions in NDX and NDXP are exempt from many of the fee caps, fee waivers, and prices that otherwise apply to other options transactions. For example, transactions in options overlying NDX and NDXP are excluded from the “Monthly Market Maker Cap” and the “Monthly Firm Fee Cap.” Furthermore, for members executing facilitation orders, NDX and NDXP options transactions are excluded from waivers of the Firm Floor Options Transaction and the Broker-Dealer Floor Options Transaction charges.

³ The Exchange lists NDXP on a pilot basis. See Securities and Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (SR-Phlx-2017-79).

⁴ NDX is listed on Phlx, Nasdaq ISE, and Nasdaq GEMX. Several NDX options are listed on Cboe, but once they expire later this year, NDX will be entirely exclusive to the Nasdaq, Inc. Exchanges. NDXP presently is listed only on Phlx, but other Nasdaq-owned self-regulatory organizations intend to list it at a later date.

⁵ See Securities and Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (SR-Phlx-2017-79).

Presently, however, one category of fee cap remains applicable to transactions in NDX and NDXP. Pursuant to Section II of the Pricing Schedule, transactions in NDX and NDXP are subject to so-called “Strategy Caps.” Strategy Caps limit the fees that otherwise apply to certain categories of options participants when they engage in Floor options transactions while employing strategies set forth in the Pricing Schedule, namely dividend, merger, short stock interest, reversal and conversion, jelly roll, or box spread strategies.

Additionally, pursuant to Section IV.B. of the Pricing Schedule, special pricing applies to transactions by Customers and Non-Customers in NDX and NDXP FLEX options.⁶ Customers presently pay no fees for such transactions, while Non-Customers pay \$0.25 per contract. Moreover, the Monthly Firm Fee Cap, Monthly Market Maker Cap, Strategy Caps and the Options Surcharge described in Section II of the Pricing Schedule apply to FLEX Transaction Fees for NDX and NDXP.

The Exchange proposes to amend these two provisions of the Pricing Schedule. First, the Exchange proposes to amend Section II to exempt transactions in NDX and NDXP from Strategy Caps. Second, the Exchange proposes to apply Section II pricing to transactions in NDX and NDXP FLEX options. Accordingly, electronic and floor options transaction charges for FLEX options overlying NDX and NDXP will be \$0.75 per contract for all Non-Customers. No transaction charge will apply to Customers for NDX or NDXP FLEX options. A \$0.25 per contract surcharge will be assessed to Non-Customers in NDX and NDXP FLEX options.

⁶ The characteristics of a FLEX option are discussed in Rule 1079.

The purpose of these two amendments to the Pricing Schedule is to further refine the pricing of transactions in NDX and NDXP to reflect the exclusive and proprietary nature of these products.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁹

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁰ (“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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

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

¹⁰ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

Congress mandated a cost-based approach.¹¹ 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.”¹²

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’ . . .”¹³ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange’s proposal to exclude NDX and NDXP options transactions from the Strategy Caps in Section II of the Pricing Schedule is reasonable because these caps apply to Multiply-Listed Options and NDX and NDXP are not Multiply-Listed Options. As noted above, NDX and NDXP are listed exclusively on the Exchange. The Exchange does not believe that such caps are necessary to incentivize member organizations to execute strategies on the Floor involving products like NDX or NDXP that are exclusive to it. The Exchange’s proposal to exclude NDX and NDXP options transactions from

¹¹ See NetCoalition, at 534 - 535.

¹² Id. at 537.

¹³ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

Strategy Caps is also equitable and not unfairly discriminatory because the Exchange will apply this cap exclusion in a uniform manner.

The Exchange's proposal to exclude NDX and NDXP FLEX options from Section IV.B. – FLEX Transaction Fees pricing and instead apply to such transactions Section II pricing is reasonable because the Exchange believes that FLEX option pricing will continue to be competitive despite the exclusion of NDX and NDXP. The Exchange's proposal is equitable and not unfairly discriminatory because the Exchange will uniformly exclude NDX and NDXP FLEX options from FLEX option pricing. Moreover, the Exchange will apply to participants in NDX and NDXP FLEX options the same Section II transaction charges it applies to participants in other types of NDX and NDXP options transactions.

The Exchange notes that the proposed transaction charges for NDX and NDXP FLEX options are reasonable, equitable and not unfairly discriminatory as NDX and NDXP are exclusively listed products. The Exchange seeks to recoup its operational costs¹⁴ for listing proprietary products. Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.¹⁵ Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact NDX or NDXP or separately execute options

¹⁴ By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a Multiply Listed Option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

¹⁵ See pricing for RUT on CBOE's Fees Schedule.

overlying PowerShares QQQ Trust (“QQQ”).¹⁶ Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100[®] Index.¹⁷ When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

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. The Exchange notes that with its products, market participants are offered an opportunity to either transact NDX or NDXP or separately execute options overlying PowerShares QQQ Trust (“QQQ”). Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100 Index.¹⁸

The Exchange’s proposal to exclude NDX and NDXP from the Strategies Caps does not impose an undue burden on competition because no market participant would be eligible to count NDX or NDXP toward the Strategies Caps.

¹⁶ QQQ is an exchange-traded fund based on the Nasdaq-100 Index[®].

¹⁷ QQQ options overlies the same Index as NDX and NDXP, namely the Nasdaq 100[®] Index. This relationship between QQQ options and NDX and NDXP options is similar to the relationship between RUT, the iShares Russell 2000 Index, and IWM which is the ETF on RUT.

¹⁸ See note 17 above.

The Exchange's proposal to exclude NDX and NDXP from FLEX Option pricing in Section IV.B. and instead apply Section II pricing to such transactions does not impose an undue burden on competition because the proposal would apply to participants in FLEX NDX and NDXP options transactions the same transactions fees that it assess for other types of NDX and NDXP options transactions.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁹ 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.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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

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

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2018-13)

January __, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule to Exclude NDX and NDXP Options from the Strategy Caps and from Special Pricing for FLEX Transactions

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 January 26, 2018, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange's Pricing Schedule to exclude A.M. and P.M.-settled options on broad-based indexes with nonstandard expiration dates from its pricing for Strategy Caps and for FLEX transactions.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2018.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange lists A.M and P.M.-settled options on the Nasdaq 100[®] Index with nonstandard expiration dates under the symbols "NDX" and "NDXP,"³ respectively. NDX and NDXP are proprietary products that are or soon will be traded exclusively on the Exchange and its affiliates.⁴ The pricing schemes applicable to these products reflects their proprietary and exclusive nature.⁵ That is, transactions in NDX and NDXP are

³ The Exchange lists NDXP on a pilot basis. See Securities and Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (SR-Phlx-2017-79).

⁴ NDX is listed on Phlx, Nasdaq ISE, and Nasdaq GEMX. Several NDX options are listed on Cboe, but once they expire later this year, NDX will be entirely exclusive to the Nasdaq, Inc. Exchanges. NDXP presently is listed only on Phlx, but other Nasdaq-owned self-regulatory organizations intend to list it at a later date.

⁵ See Securities and Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (SR-Phlx-2017-79).

exempt from many of the fee caps, fee waivers, and prices that otherwise apply to other options transactions. For example, transactions in options overlying NDX and NDXP are excluded from the “Monthly Market Maker Cap” and the “Monthly Firm Fee Cap.” Furthermore, for members executing facilitation orders, NDX and NDXP options transactions are excluded from waivers of the Firm Floor Options Transaction and the Broker-Dealer Floor Options Transaction charges.

Presently, however, one category of fee cap remains applicable to transactions in NDX and NDXP. Pursuant to Section II of the Pricing Schedule, transactions in NDX and NDXP are subject to so-called “Strategy Caps.” Strategy Caps limit the fees that otherwise apply to certain categories of options participants when they engage in Floor options transactions while employing strategies set forth in the Pricing Schedule, namely dividend, merger, short stock interest, reversal and conversion, jelly roll, or box spread strategies.

Additionally, pursuant to Section IV.B. of the Pricing Schedule, special pricing applies to transactions by Customers and Non-Customers in NDX and NDXP FLEX options.⁶ Customers presently pay no fees for such transactions, while Non-Customers pay \$0.25 per contract. Moreover, the Monthly Firm Fee Cap, Monthly Market Maker Cap, Strategy Caps and the Options Surcharge described in Section II of the Pricing Schedule apply to FLEX Transaction Fees for NDX and NDXP.

The Exchange proposes to amend these two provisions of the Pricing Schedule. First, the Exchange proposes to amend Section II to exempt transactions in NDX and NDXP from Strategy Caps. Second, the Exchange proposes to apply Section II pricing to

⁶ The characteristics of a FLEX option are discussed in Rule 1079.

transactions in NDX and NDXP FLEX options. Accordingly, electronic and floor options transaction charges for FLEX options overlying NDX and NDXP will be \$0.75 per contract for all Non-Customers. No transaction charge will apply to Customers for NDX or NDXP FLEX options. A \$0.25 per contract surcharge will be assessed to Non-Customers in NDX and NDXP FLEX options.

The purpose of these two amendments to the Pricing Schedule is to further refine the pricing of transactions in NDX and NDXP to reflect the exclusive and proprietary nature of these products.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

broader forms that are most important to investors and listed companies.”⁹

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁰ (“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.¹¹ 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.”¹²

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’”¹³ 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.

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

¹⁰ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹¹ See NetCoalition, at 534 - 535.

¹² Id. at 537.

¹³ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

The Exchange's proposal to exclude NDX and NDXP options transactions from the Strategy Caps in Section II of the Pricing Schedule is reasonable because these caps apply to Multiply-Listed Options and NDX and NDXP are not Multiply-Listed Options. As noted above, NDX and NDXP are listed exclusively on the Exchange. The Exchange does not believe that such caps are necessary to incentivize member organizations to execute strategies on the Floor involving products like NDX or NDXP that are exclusive to it. The Exchange's proposal to exclude NDX and NDXP options transactions from Strategy Caps is also equitable and not unfairly discriminatory because the Exchange will apply this cap exclusion in a uniform manner.

The Exchange's proposal to exclude NDX and NDXP FLEX options from Section IV.B. – FLEX Transaction Fees pricing and instead apply to such transactions Section II pricing is reasonable because the Exchange believes that FLEX option pricing will continue to be competitive despite the exclusion of NDX and NDXP. The Exchange's proposal is equitable and not unfairly discriminatory because the Exchange will uniformly exclude NDX and NDXP FLEX options from FLEX option pricing. Moreover, the Exchange will apply to participants in NDX and NDXP FLEX options the same Section II transaction charges it applies to participants in other types of NDX and NDXP options transactions.

The Exchange notes that the proposed transaction charges for NDX and NDXP FLEX options are reasonable, equitable and not unfairly discriminatory as NDX and NDXP are exclusively listed products. The Exchange seeks to recoup its operational

costs¹⁴ for listing proprietary products. Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.¹⁵ Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact NDX or NDXP or separately execute options overlying PowerShares QQQ Trust (“QQQ”).¹⁶ Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100[®] Index.¹⁷ When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities

¹⁴ By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a Multiply Listed Option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

¹⁵ See pricing for RUT on CBOE’s Fees Schedule.

¹⁶ QQQ is an exchange-traded fund based on the Nasdaq-100 Index[®].

¹⁷ QQQ options overlies the same Index as NDX and NDXP, namely the Nasdaq 100[®] Index. This relationship between QQQ options and NDX and NDXP options is similar to the relationship between RUT, the iShares Russell 2000 Index, and IWM which is the ETF on RUT.

available at other venues to be more favorable. The Exchange notes that with its products, market participants are offered an opportunity to either transact NDX or NDXP or separately execute options overlying PowerShares QQQ Trust (“QQQ”). Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100 Index.¹⁸

The Exchange’s proposal to exclude NDX and NDXP from the Strategies Caps does not impose an undue burden on competition because no market participant would be eligible to count NDX or NDXP toward the Strategies Caps.

The Exchange’s proposal to exclude NDX and NDXP from FLEX Option pricing in Section IV.B. and instead apply Section II pricing to such transactions does not impose an undue burden on competition because the proposal would apply to participants in FLEX NDX and NDXP options transactions the same transactions fees that it assess for other types of NDX and NDXP options transactions.

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.¹⁹

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

¹⁸ See note 17 above.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2018-13 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2018-13. 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-2018-13 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.²⁰

Eduardo A. Aleman
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

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

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

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

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

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Strategy Caps:

To qualify for a strategy cap, the buy and sell side of a transaction must originate from the Exchange floor.

Floor Options Transactions - Multiply Listed Options	Strategy	Qualification	Cap
Specialist, Market Maker, Professional, Firm and	dividend, merger and short stock interest strategies	executed on the same trading day in the same options class when such members are trading in their own	\$1,500

Broker- Dealer		proprietary accounts.	
Specialist, Market Maker, Professional, Firm and Broker- Dealer	reversal and conversion strategies	executed on the same trading day in the same options class	\$700
Specialist, Market Maker, Professional, Firm and Broker- Dealer	jelly rolls	executed on the same trading day in the same options class	\$700
Specialist, Market Maker, Professional, Firm and Broker- Dealer	box spreads	executed on the same trading day in the same options class	\$700
Per member organization	dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies ("Monthly Strategy Cap")	combined executions in a month when trading in own proprietary accounts	\$65,000

- Reversal and conversion, jelly roll and box spread strategy executions will not be included in the Monthly Strategy Cap for a Firm. Reversal and conversion, jelly roll and box spread strategy executions (as defined in this Section II) are included in the Monthly Firm Fee Cap. 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. NDX and NDXP Options Transactions will be excluded from Strategy Cap pricing.

* * * * *

IV. Other Transaction Fees

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B. FLEX Transaction Fees

- FLEX Multiply Listed Options:

Customer	\$0.00
Non-Customer	\$0.25

- The Monthly Firm Fee Cap, Monthly Market Maker Cap, Strategy Caps and the Options Surcharge in BKX, NDX and NDXP described in Section II will apply to this Section IV, B. No other fees described in Section II will apply to this Section IV.B.
- The FLEX transaction fees for a Firm will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. In addition, FLEX transaction fees for a Broker-Dealer will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.
- FLEX Singly Listed Options: Section III pricing will apply.
- FLEX NDX and NDXP Options: Section II pricing will apply.

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