

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 40

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

File No. * SR 2022 - * 14

Amendment No. (req. for Amendments *)

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"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <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)		
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Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

Amend Options 7, Section 4 of the Pricing Schedule

Contact Information

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

First Name * Last Name *

Title *

E-mail *

Telephone * Fax

Signature


Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq PHLX LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date (Title *)

By

(Name *)

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



DN:
email=john.zecca@nasdaq.com
Date: 2022.03.22 15:29:12
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Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-Phlx-2022-14 19b-4.doc

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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SR-Phlx-2022-14 Exhibit 1.doc

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 Advanced 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 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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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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

Exhibit Sent As Paper Document

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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SR-Phlx-2022-14 Exhibit 5.doc

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 amend Phlx’s Pricing Schedule at Options 7, Section 4, “Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY).”

Additionally, the Exchange proposes to make a technical amendment and add descriptions of three additional terms within Options 7, Section 1, General Provisions.

The Exchange originally filed SR-Phlx-2022-08 on March 1, 2022. On March 10, 2022, the Exchange withdrew SR-Phlx-2022-08 and submitted SR-Phlx-2022-12. On March 22, 2022, the Exchange withdrew SR-Phlx-2022-12 and submitted this filing.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). 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:

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

Phlx proposes to amend its Pricing Schedule within Options 7, Section 4, "Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY)." Specifically, Phlx proposes to decrease the Professional³ Floor⁴ Options Transaction Charges⁵ in multiply-listed Penny

³ The term "Professional" applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Phlx's Pricing Schedule at Options 7, Section 1(c).

⁴ The term "floor transaction" is a transaction that is effected in open outcry on the Exchange's Trading Floor. See Phlx's Pricing Schedule at Options 7, Section 1(c).

⁵ Floor transaction fees apply to any "as of" or "reversal" adjustments for manually processed trades originally submitted electronically or through FBMS. See Phlx's Pricing Schedule at Options 7, Section 4, footnote 8.

The Floor Based Management System or "FBMS" is an order management system and the gateway for the electronic execution of equity, equity index and U.S. dollar-settled foreign currency option orders represented by Floor Brokers on the Exchange's Options Floor. Floor Brokers contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker to FBMS, which creates an electronic audit trail. The execution of orders to Phlx's electronic trading system also occurs via FBMS. The FBMS application is available on hand-held tablets and stationary desktops.

and non-Penny Symbols to compete with BOX Exchange LLC (“BOX”).⁶ Additionally, the Exchange proposes amendments to Options 7, Section 1, General Provisions. Each change is described below.

Options 7, Section 4

Today, the Exchange assesses Options Transaction Charges in Multiply Listed options, including options overlying equities, ETFs, ETNs and indexes and excluding options in SPY. The Exchange currently assesses the following Floor Options Transaction Charges in multiply-listed Penny and non-Penny Symbols: \$0.25 per contract for a Professional, \$0.35 per contract for a Floor Lead Market Maker⁷ and Floor Market Maker,⁸ and \$0.25 per contract for a Broker-Dealer⁹ and Firm.¹⁰ Customers¹¹ are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols.

⁶ BOX currently assesses a Professional manual fee of \$0.10 per contract.

⁷ The term “Floor Lead Market Maker” is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange’s trading floor. See Options 8, Section 2(a)(3).

⁸ A Floor Market Maker is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. See Options 8, Section 2(a)(4).

The term “Streaming Quote Trader” or “SQT” is defined in Options 1, Section 1(b)(54) as a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. See Phlx’s Pricing Schedule at Options 7, Section 1(c). The term “Remote Streaming Quote Trader” or “RSQT” is defined in Options 1, Section 1(b)(49) as a Market Maker 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 Options 2, Section 1(a). See Phlx’s Pricing Schedule at Options 7, Section 1(c).

The Exchange proposes to decrease the Floor Options Transaction Charges for Professionals in multiply-listed Penny and non-Penny Symbols from \$0.25 to \$0.05 per contract. The Exchange believes the decreased Options Transaction Charges will attract a greater amount of Professional orders to Phlx's Trading Floor.

Options 7, Section 1

The Exchange proposes to make a technical amendment within Options 7, Section 1, General Provisions. The Exchange proposes to remove the words "on and" from description of "Market Maker" within Options 7, Section 1(c). Those words are not necessary. The amended description of Market Maker would state, "The term 'Market Maker' is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers."

The Exchange proposes to add three additional descriptions to Options 7, Section 1(c). Specifically, the Exchange proposes to define the terms "Floor Broker," "Floor Lead Market Maker," and "Floor Market Maker." These terms are currently defined within Options 8, Section 2(a)(2)-(4). The Exchange proposes to add these terms to

⁹ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Phlx's Pricing Schedule at Options 7, Section 1(c).

¹⁰ The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC. See Phlx's Pricing Schedule at Options 7, Section 1(c).

¹¹ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(b)(45)). See Phlx's Pricing Schedule at Options 7, Section 1(c).

Options 7, Section 1(c) for greater transparency when referencing the Pricing Schedule.

- The Exchange proposes to define a “Floor Broker” to mean an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders.
- The Exchange proposes to define a “Floor Lead Market Maker” to mean a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange’s Trading Floor.
- The Exchange propose to define a “Floor Market Maker” to mean a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry.

The Exchange believes that these amendments to Options 7, Section 1 will bring greater clarity to the Pricing Schedule.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹³ 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

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁴

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁵ (“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.¹⁶ 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.”¹⁷

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’ . . .”¹⁸ Although the court

¹⁴ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁵ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁶ See NetCoalition, at 534 - 535.

¹⁷ Id. at 537.

¹⁸ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

Options 7, Section 4

The Exchange's proposal to decrease the Floor Options Transaction Charges for Professionals in multiply-listed Penny and non-Penny Symbols from \$0.25 to \$0.05 per contract is reasonable because the decreased fee should attract a greater amount of Professional orders to Phlx's Trading Floor. Today, BOX Exchange LLC ("BOX") assesses a Professional Customer Fee of \$0.10 per contract in Penny and Non-Penny Symbols for manual transactions.¹⁹ By decreasing its Professional Floor Options Transaction Charge, the Exchange believes it will be able to compete more effectively with BOX for options order flow because of the lower Professional fee.

The Exchange's proposal to decrease the current Floor Options Transaction Charges for Professionals in multiply-listed Penny and non-Penny Symbols from \$0.25 to \$0.05 per contract is equitable and not unfairly discriminatory. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols because Customer order flow is unique. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Floor Lead Marker Makers and Floor 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

¹⁹ In addition to the Professional fee of \$0.10 per contract, BOX assesses the following Penny and Non-Penny Interval Classes manual transactions fees: \$0.25 per contract to Broker Dealers and \$0.35 per contract to Market Makers. BOX does not assess Public Customers or Broker Dealers facilitating a Public Customer a Penny and Non-Penny Interval Classes manual transactions fee. See BOX's Fee Schedule at Section II.

believes that lowering the Professional Floor Options Transaction Charges is similarly beneficial as the lower fees may cause market participants to select Phlx's Trading Floor as a venue to send Professional order flow, which benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all market participants.

Today, Floor Lead Market Makers and Floor Market Makers are assessed the highest Penny and non-Penny Options Transaction Charges. Customers are not assessed a Penny or non-Penny Options Transaction Charge. Today, Professionals, Broker-Dealers and Firms pay a Floor Options Transaction Charge of \$0.25 per contract. With this proposal, Professionals would continue to be assessed a lower Options Transaction Charges in multiply-listed Penny and non-Penny Symbols as compared to Floor Lead Market Makers and Floor Market Makers. Floor Lead Market Makers and Floor Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a Floor Broker to represent their trading interest on the Trading Floor as compared to a Floor Lead Market Maker or Floor Market Maker that could directly transact such orders on the Trading Floor. Further, the Exchange believes that in order to attract orders from a Professionals, Broker-Dealers or a Firm, via a Floor Broker, the rates must be competitive with rates at other trading floors. With respect to Firms, the Exchange notes that Firms are subject to a Monthly Firm Fee Cap of \$75,000. Firm Floor Option Transaction Charges along with Qualified Contingent Cross Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary

account.²⁰ Finally, with respect to Broker-Dealers, today the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 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.²¹ The Exchange notes that both Firms and Broker-Dealers have the ability to reduce their Options Transaction Charges as compared to Professionals.

The Exchange believes it is equitable and not unfairly discriminatory to assess a Professional Floor Options Transaction Charge that is less favorable than Customers but

²⁰ See Options 7, Section 4, which states, “Firms are subject to a maximum fee of \$75,000 (‘Monthly Firm Fee Cap’). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Firm Fee Cap. NDX, NDXP, and XND Options Transactions will be excluded from the Monthly Firm Fee Cap. Reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) will be included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap. Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap.”

²¹ See Options 7, Section 4, which states, “...In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Options 8, Section 30 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. NDX, NDXP, and XND Options Transactions will be excluded from each of the waivers set forth in the above paragraph.”

more favorable than Firms, and Broker-Dealers and continue to assess a lower fee as compared to Floor Lead Market Makers, Floor Market Makers. Professionals have access to more information than Customers and therefore are being assessed a less favorable Options Transaction Charge²² as compared to Customers. While Professionals may have the same technological and informational advantages as Broker-Dealers trading for their own account,²³ the Exchange believes that lowering the current Professional Floor Options Transaction Charges to range between that of a Customer and other non-Customer participants (Floor Lead Market Makers, Floor Market Makers, Firms, and Broker-Dealers) is equitable and not unfairly discriminatory because the potential increased volume would create better trading opportunities that benefit all market participants.²⁴ Specifically, greater volume and liquidity from increased order flow could create more trading opportunities and tighter spreads. Finally, assessing lower fees for

²² Customers are not assessed Options Transaction Charges for multiply-listed options in Penny and non-Penny Symbols.

²³ A Professional by definition enters 390 orders per day on average over a calendar month which the Exchange believes exceeds the number of retail Customer orders in a single day.

²⁴ The Exchange notes that BOX assesses the same fees for Professionals and Broker-Dealers for non-auction transactions within Section I, A of BOX's Fee Schedule, PIP and COPIP transactions within Section I, B of BOX's Fee Schedule, Facilitation and Solicitation transactions within Section I, C of BOX's Fee Schedule, and Complex Orders within Section III, A of BOX's Fee Schedule. See BOX's Fee Schedule. BOX has stated in prior rule changes that , "Professional Customers, while Public Customers by virtue of not being Broker Dealers, generally engage in trading activity more similar to Broker Dealer proprietary trading accounts (submitting more than 390 standard orders per day on average)." See Securities Exchange Act Release No. 73547 (November 6, 2014), 79 FR 67520 at 67523 (November 13, 2014) (SR-BOX-2014-25) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility). Notwithstanding this justification, BOX assesses lower Professional manual transactions as compared to Broker-Dealers and Market Makers.

Professional Customers compared to Floor Lead Market Makers, Floor Market Makers, Firms, and Broker-Dealers is not novel as BOX currently assesses lower fees for Professional Customers as compared to Broker Dealers and Market Makers.²⁵ Additionally, with respect to Qualified Contingent Cross Fees, Phlx currently assesses Customers and Professional no fee, while a Lead Market Maker, Market Maker, Firm and Broker- Dealer are assessed \$0.20 per contract.²⁶

Options 7, Section 1

The Exchange's proposal to amend the description of "Market Maker" within Options 7, Section 1(c) is consistent with the Act. The proposed non-substantive amendment removes unnecessary words.

The Exchange's proposal to define the terms "Floor Broker," "Floor Lead Market Maker," and "Floor Market Maker" within Options 7, Section 1(c) is consistent with the Act. The addition of these terms, which are currently defined within Options 8, Section 2(a)(2)-(4), will bring greater transparency to the Pricing Schedule.

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.

²⁵ BOX assess a Professional a manual fee of \$0.10 per contract in Penny and Non-Penny Interval Classes, while assessing \$0.25 per contract to Broker Dealers and \$0.35 per contract to Market Makers for manual transactions in Penny and Non-Penny Interval Classes. See BOX's Fee Schedule at Section II.

²⁶ See Options 7, Section 4 which states, "QCC Transaction Fees for a Lead Market Maker, Market Maker, Firm and Broker- Dealer are \$0.20 per contract. Customers and Professionals are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e)."

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. 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 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.

Moreover, the proposal is designed to encourage market participants to execute a greater amount of Professional orders on Phlx's Trading Floor. To the extent that the proposed change attracts additional Professional orders to Phlx's Trading Floor, this increased order flow would continue to make the Exchange a more competitive venue for order execution.

Intra-market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

The Exchange's proposal to decrease the Floor Options Transaction Charges for Professionals in multiply-listed Penny and non-Penny Symbols from \$0.25 to \$0.05 per

contract does not create an undue burden on competition. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols because Customer order flow is unique. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Floor Lead Market Makers and Floor 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 believes that lowering the Professional Floor Options Transaction Charges is similarly beneficial as the lower fees may cause market participants to select Phlx's Trading Floor as a venue to send Professional order flow, which benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all market participants.

Today, Floor Lead Market Makers and Floor Market Makers are assessed the highest Penny and non-Penny Options Transaction Charges. Customers are not assessed a Penny or non-Penny Options Transaction Charge. Today, Professionals, Broker-Dealers and Firms pay a Floor Options Transaction Charge of \$0.25 per contract. With this proposal, Professionals would continue to be assessed a lower Options Transaction Charges in multiply-listed Penny and non-Penny Symbols as compared to Floor Lead Market Makers and Floor Market Makers. Floor Lead Market Makers and Floor Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a Floor Broker to represent their trading interest on the Trading Floor as compared to a Floor Lead Market Maker or Floor Market Maker that could directly

transact such orders on the Trading Floor. Further, the Exchange believes that in order to attract orders from a Professionals, Broker-Dealers or a Firm, via a Floor Broker, the rates must be competitive with rates at other trading floors. With respect to Firms, the Exchange notes that Firms are subject to a Monthly Firm Fee Cap of \$75,000. Firm Floor Option Transaction Charges along with Qualified Contingent Cross Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account.²⁷ Finally, with respect to Broker-Dealers, today the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 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.²⁸ The Exchange notes that both Firms and Broker-Dealers have the ability to reduce their Options Transaction Charges as compared to Professionals.

Assessing a Professional Floor Options Transaction Charge that is less favorable than Customers but more favorable than Firms, and Broker-Dealers and continuing to assess a lower fee as compared to Floor Lead Market Makers, Floor Market Makers does not impose an undue burden on competition. Professionals have access to more information than Customers and therefore are being assessed a less favorable Options

²⁷ See note 20 above.

²⁸ See note 21 above.

Transaction Charge²⁹ as compared to Customers. While Professionals may have the similar technological and informational advantages as Broker-Dealers trading for their own account,³⁰ the Exchange believes that lowering the current Professional Floor Options Transaction Charges to range between that of a Customer and other non-Customer participants (Floor Lead Market Makers, Floor Market Makers, Firms, and Broker-Dealers) does not impose an undue burden on competition because the potential increased volume would create better trading opportunities that benefit all market participants.³¹ Specifically, greater volume and liquidity from increased order flow could create more trading opportunities and tighter spreads. Finally, assessing lower fees for Professional Customers compared to Floor Lead Market Makers, Floor Market Makers, Firms, and Broker-Dealers is not novel as BOX currently assesses lower fees for Professional Customers as compared to Broker Dealers and Market Makers.³² Additionally, with respect to Qualified Contingent Cross Fees, Phlx currently assesses Customers and Professional no fee, while a Lead Market Maker, Market Maker, Firm and Broker- Dealer are assessed \$0.20 per contract.³³

Options 7, Section 1

The Exchange's proposal to amend the description of "Market Maker" within Options 7, Section 1 does not impose an undue burden on competition. The proposed

²⁹ See note 22 above.

³⁰ See note 23 above.

³¹ See note 24 above.

³² See note 25 above.

³³ See note 26 above.

non-substantive amendment removes unnecessary words.

The Exchange's proposal to define the terms "Floor Broker," "Floor Lead Market Maker," and "Floor Market Maker" within Options 7, Section 1(c) does not impose an undue burden on competition. The addition of these terms, which are currently defined within Options 8, Section 2(a)(2)-(4), will bring greater transparency to the Pricing Schedule.

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,³⁴ 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.

³⁴ 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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2022-14)

March __, 2022

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Section 4 of the Pricing Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on March 22, 2022, 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 Phlx’s Pricing Schedule at Options 7, Section 4, “Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY).”

Additionally, the Exchange proposes to make a technical amendment and add descriptions of three additional terms within Options 7, Section 1, General Provisions.

The Exchange originally filed SR-Phlx-2022-08 on March 1, 2022. On March 10, 2022, the Exchange withdrew SR-Phlx-2022-08 and submitted SR-Phlx-2022-12. On March 22, 2022, the Exchange withdrew SR-Phlx-2022-12 and submitted this filing.

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 <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, 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

Phlx proposes to amend its Pricing Schedule within Options 7, Section 4, "Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY)." Specifically, Phlx proposes to decrease the Professional³ Floor⁴ Options Transaction Charges⁵ in multiply-listed Penny

³ The term "Professional" applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Phlx's Pricing Schedule at Options 7, Section 1(c).

⁴ The term "floor transaction" is a transaction that is effected in open outcry on the Exchange's Trading Floor. See Phlx's Pricing Schedule at Options 7, Section 1(c).

⁵ Floor transaction fees apply to any "as of" or "reversal" adjustments for manually processed trades originally submitted electronically or through FBMS. See Phlx's Pricing Schedule at Options 7, Section 4, footnote 8.

and non-Penny Symbols. Additionally, the Exchange proposes amendments to Options 7, Section 1, General Provisions. Each change is described below.

Options 7, Section 4

Today, the Exchange assesses Options Transaction Charges in Multiply Listed options, including options overlying equities, ETFs, ETNs and indexes and excluding options in SPY. The Exchange currently assesses the following Floor Options Transaction Charges in multiply-listed Penny and non-Penny Symbols: \$0.25 per contract for a Professional, \$0.35 per contract for a Floor Lead Market Maker⁶ and Floor Market Maker,⁷ and \$0.25 per contract for a Broker-Dealer⁸ and Firm.⁹ Customers¹⁰ are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols.

The Floor Based Management System or “FBMS” is an order management system and the gateway for the electronic execution of equity, equity index and U.S. dollar-settled foreign currency option orders represented by Floor Brokers on the Exchange’s Options Floor. Floor Brokers contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker to FBMS, which creates an electronic audit trail. The execution of orders to Phlx’s electronic trading system also occurs via FBMS. The FBMS application is available on hand-held tablets and stationary desktops.

⁶ The term “Floor Lead Market Maker” is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange’s trading floor. See Options 8, Section 2(a)(3).

⁷ A Floor Market Maker is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. See Options 8, Section 2(a)(4).

The term “Streaming Quote Trader” or “SQT” is defined in Options 1, Section 1(b)(54) as a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. See Phlx’s Pricing Schedule at Options 7, Section 1(c). The term “Remote Streaming Quote Trader” or “RSQT” is defined in Options 1, Section 1(b)(49) as a Market Maker 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

The Exchange proposes to decrease the Floor Options Transaction Charges for Professionals in multiply-listed Penny and non-Penny Symbols from \$0.25 to \$0.05 per contract. The Exchange believes the decreased Options Transaction Charges will attract a greater amount of Professional orders to Phlx's Trading Floor.

Options 7, Section 1

The Exchange proposes to make a technical amendment within Options 7, Section 1, General Provisions. The Exchange proposes to remove the words "on and" from description of "Market Maker" within Options 7, Section 1(c). Those words are not necessary. The amended description of Market Maker would state, "The term 'Market Maker' is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers."

The Exchange proposes to add three additional descriptions to Options 7, Section

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 Options 2, Section 1(a). See Phlx's Pricing Schedule at Options 7, Section 1(c).

⁸ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Phlx's Pricing Schedule at Options 7, Section 1(c).

⁹ The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC. See Phlx's Pricing Schedule at Options 7, Section 1(c).

¹⁰ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(b)(45)). See Phlx's Pricing Schedule at Options 7, Section 1(c).

1(c). Specifically, the Exchange proposes to define the terms “Floor Broker,” “Floor Lead Market Maker,” and “Floor Market Maker.” These terms are currently defined within Options 8, Section 2(a)(2)-(4). The Exchange proposes to add these terms to Options 7, Section 1(c) for greater transparency when referencing the Pricing Schedule.

- The Exchange proposes to define a “Floor Broker” to mean an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders.
- The Exchange proposes to define a “Floor Lead Market Maker” to mean a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange’s Trading Floor.
- The Exchange propose to define a “Floor Market Maker” to mean a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry.

The Exchange believes that these amendments to Options 7, Section 1 will bring greater clarity to the Pricing Schedule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² 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.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

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.”¹³

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁴ (“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.¹⁵ 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.”¹⁶

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

¹³ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁴ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁵ See NetCoalition, at 534 - 535.

¹⁶ Id. at 537.

otherwise, in the execution of order flow from broker dealers'"¹⁷ 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.

Options 7, Section 4

The Exchange's proposal to decrease the Floor Options Transaction Charges for Professionals in multiply-listed Penny and non-Penny Symbols from \$0.25 to \$0.05 per contract is reasonable because the decreased fee should attract a greater amount of Professional orders to Phlx's Trading Floor. Today, BOX Exchange LLC ("BOX") assesses a Professional Customer Fee of \$0.10 per contract in Penny and Non-Penny Symbols for manual transactions.¹⁸ By decreasing its Professional Floor Options Transaction Charge, the Exchange believes it will be able to compete more effectively with BOX for options order flow because of the lower Professional fee.

The Exchange's proposal to decrease the current Floor Options Transaction Charges for Professionals in multiply-listed Penny and non-Penny Symbols from \$0.25 to \$0.05 per contract is equitable and not unfairly discriminatory. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols because Customer order flow is unique. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Floor Lead Marker

¹⁷ 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)).

¹⁸ In addition to the Professional fee of \$0.10 per contract, BOX assesses the following Penny and Non-Penny Interval Classes manual transactions fees: \$0.25 per contract to Broker Dealers and \$0.35 per contract to Market Makers. BOX does not assess Public Customers or Broker Dealers facilitating a Public Customer a Penny and Non-Penny Interval Classes manual transactions fee. See BOX's Fee Schedule at Section II.

Makers and Floor 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 believes that lowering the Professional Floor Options Transaction Charges is similarly beneficial as the lower fees may cause market participants to select Phlx's Trading Floor as a venue to send Professional order flow, which benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all market participants.

Today, Floor Lead Market Makers and Floor Market Makers are assessed the highest Penny and non-Penny Options Transaction Charges. Customers are not assessed a Penny or non-Penny Options Transaction Charge. Today, Professionals, Broker-Dealers and Firms pay a Floor Options Transaction Charge of \$0.25 per contract. With this proposal, Professionals would continue to be assessed a lower Options Transaction Charges in multiply-listed Penny and non-Penny Symbols as compared to Floor Lead Market Makers and Floor Market Makers. Floor Lead Market Makers and Floor Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a Floor Broker to represent their trading interest on the Trading Floor as compared to a Floor Lead Market Maker or Floor Market Maker that could directly transact such orders on the Trading Floor. Further, the Exchange believes that in order to attract orders from a Professionals, Broker-Dealers or a Firm, via a Floor Broker, the rates must be competitive with rates at other trading floors. With respect to Firms, the Exchange notes that Firms are subject to a Monthly Firm Fee Cap of \$75,000. Firm

Floor Option Transaction Charges along with Qualified Contingent Cross Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account.¹⁹ Finally, with respect to Broker-Dealers, today the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 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.²⁰ The

¹⁹ See Options 7, Section 4, which states, “Firms are subject to a maximum fee of \$75,000 (‘Monthly Firm Fee Cap’). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Firm Fee Cap. NDX, NDXP, and XND Options Transactions will be excluded from the Monthly Firm Fee Cap. Reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) will be included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap. Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap.”

²⁰ See Options 7, Section 4, which states, “...In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Options 8, Section 30 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. NDX, NDXP, and XND Options Transactions will be excluded from each of the waivers set forth in the above paragraph.”

Exchange notes that both Firms and Broker-Dealers have the ability to reduce their Options Transaction Charges as compared to Professionals.

The Exchange believes it is equitable and not unfairly discriminatory to assess a Professional Floor Options Transaction Charge that is less favorable than Customers but more favorable than Firms, and Broker-Dealers and continue to assess a lower fee as compared to Floor Lead Market Makers, Floor Market Makers. Professionals have access to more information than Customers and therefore are being assessed a less favorable Options Transaction Charge²¹ as compared to Customers. While Professionals may have the same technological and informational advantages as Broker-Dealers trading for their own account,²² the Exchange believes that lowering the current Professional Floor Options Transaction Charges to range between that of a Customer and other non-Customer participants (Floor Lead Market Makers, Floor Market Makers, Firms, and Broker-Dealers) is equitable and not unfairly discriminatory because the potential increased volume would create better trading opportunities that benefit all market participants.²³ Specifically, greater volume and liquidity from increased order flow could

²¹ Customers are not assessed Options Transaction Charges for multiply-listed options in Penny and non-Penny Symbols.

²² A Professional by definition enters 390 orders per day on average over a calendar month which the Exchange believes exceeds the number of retail Customer orders in a single day.

²³ The Exchange notes that BOX assesses the same fees for Professionals and Broker-Dealers for non-auction transactions within Section I, A of BOX's Fee Schedule, PIP and COPIP transactions within Section I, B of BOX's Fee Schedule, Facilitation and Solicitation transactions within Section I, C of BOX's Fee Schedule, and Complex Orders within Section III, A of BOX's Fee Schedule. See BOX's Fee Schedule. BOX has stated in prior rule changes that, "Professional Customers, while Public Customers by virtue of not being Broker Dealers, generally engage in trading activity more similar to Broker Dealer proprietary trading accounts (submitting more than 390 standard orders per day

create more trading opportunities and tighter spreads. Finally, assessing lower fees for Professional Customers compared to Floor Lead Market Makers, Floor Market Makers, Firms, and Broker-Dealers is not novel as BOX currently assesses lower fees for Professional Customers as compared to Broker Dealers and Market Makers.²⁴

Additionally, with respect to Qualified Contingent Cross Fees, Phlx currently assesses Customers and Professional no fee, while a Lead Market Maker, Market Maker, Firm and Broker- Dealer are assessed \$0.20 per contract.²⁵

Options 7, Section 1

The Exchange's proposal to amend the description of "Market Maker" within Options 7, Section 1(c) is consistent with the Act. The proposed non-substantive amendment removes unnecessary words.

The Exchange's proposal to define the terms "Floor Broker," "Floor Lead Market Maker," and "Floor Market Maker" within Options 7, Section 1(c) is consistent with the Act. The addition of these terms, which are currently defined within Options 8, Section

on average)." See Securities Exchange Act Release No. 73547 (November 6, 2014), 79 FR 67520 at 67523 (November 13, 2014) (SR-BOX-2014-25) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility).

Notwithstanding this justification, BOX assesses lower Professional manual transactions as compared to Broker-Dealers and Market Makers.

²⁴ BOX assess a Professional a manual fee of \$0.10 per contract in Penny and Non-Penny Interval Classes, while assessing \$0.25 per contract to Broker Dealers and \$0.35 per contract to Market Makers for manual transactions in Penny and Non-Penny Interval Classes. See BOX's Fee Schedule at Section II.

²⁵ See Options 7, Section 4 which states, "QCC Transaction Fees for a Lead Market Maker, Market Maker, Firm and Broker- Dealer are \$0.20 per contract. Customers and Professionals are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e)."

2(a)(2)-(4), will bring greater transparency to the Pricing Schedule.

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.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. 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 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.

Moreover, the proposal is designed to encourage market participants to execute a greater amount of Professional orders on Phlx's Trading Floor. To the extent that the proposed change attracts additional Professional orders to Phlx's Trading Floor, this increased order flow would continue to make the Exchange a more competitive venue for order execution.

Intra-market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

The Exchange's proposal to decrease the Floor Options Transaction Charges for Professionals in multiply-listed Penny and non-Penny Symbols from \$0.25 to \$0.05 per contract does not create an undue burden on competition. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols because Customer order flow is unique. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Floor Lead Market Makers and Floor 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 believes that lowering the Professional Floor Options Transaction Charges is similarly beneficial as the lower fees may cause market participants to select Phlx's Trading Floor as a venue to send Professional order flow, which benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all market participants.

Today, Floor Lead Market Makers and Floor Market Makers are assessed the highest Penny and non-Penny Options Transaction Charges. Customers are not assessed a Penny or non-Penny Options Transaction Charge. Today, Professionals, Broker-Dealers and Firms pay a Floor Options Transaction Charge of \$0.25 per contract. With this proposal, Professionals would continue to be assessed a lower Options Transaction Charges in multiply-listed Penny and non-Penny Symbols as compared to Floor Lead

Market Makers and Floor Market Makers. Floor Lead Market Makers and Floor Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a Floor Broker to represent their trading interest on the Trading Floor as compared to a Floor Lead Market Maker or Floor Market Maker that could directly transact such orders on the Trading Floor. Further, the Exchange believes that in order to attract orders from a Professionals, Broker-Dealers or a Firm, via a Floor Broker, the rates must be competitive with rates at other trading floors. With respect to Firms, the Exchange notes that Firms are subject to a Monthly Firm Fee Cap of \$75,000. Firm Floor Option Transaction Charges along with Qualified Contingent Cross Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account.²⁶ Finally, with respect to Broker-Dealers, today the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 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.²⁷ The Exchange notes that both Firms and Broker-Dealers have the ability to reduce their Options Transaction Charges as compared to Professionals.

²⁶ See note 20 above.

²⁷ See note 21 above.

Assessing a Professional Floor Options Transaction Charge that is less favorable than Customers but more favorable than Firms, and Broker-Dealers and continuing to assess a lower fee as compared to Floor Lead Market Makers, Floor Market Makers does not impose an undue burden on competition. Professionals have access to more information than Customers and therefore are being assessed a less favorable Options Transaction Charge²⁸ as compared to Customers. While Professionals may have the similar technological and informational advantages as Broker-Dealers trading for their own account,²⁹ the Exchange believes that lowering the current Professional Floor Options Transaction Charges to range between that of a Customer and other non-Customer participants (Floor Lead Market Makers, Floor Market Makers, Firms, and Broker-Dealers) does not impose an undue burden on competition because the potential increased volume would create better trading opportunities that benefit all market participants.³⁰ Specifically, greater volume and liquidity from increased order flow could create more trading opportunities and tighter spreads. Finally, assessing lower fees for Professional Customers compared to Floor Lead Market Makers, Floor Market Makers, Firms, and Broker-Dealers is not novel as BOX currently assesses lower fees for Professional Customers as compared to Broker Dealers and Market Makers.³¹

Additionally, with respect to Qualified Contingent Cross Fees, Phlx currently assesses

²⁸ See note 22 above.

²⁹ See note 23 above.

³⁰ See note 24 above.

³¹ See note 25 above.

Customers and Professional no fee, while a Lead Market Maker, Market Maker, Firm and Broker- Dealer are assessed \$0.20 per contract.³²

Options 7, Section 1

The Exchange's proposal to amend the description of "Market Maker" within Options 7, Section 1 does not impose an undue burden on competition. The proposed non-substantive amendment removes unnecessary words.

The Exchange's proposal to define the terms "Floor Broker," "Floor Lead Market Maker," and "Floor Market Maker" within Options 7, Section 1(c) does not impose an undue burden on competition. The addition of these terms, which are currently defined within Options 8, Section 2(a)(2)-(4), will bring greater transparency to the Pricing Schedule.

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.³³

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

³² See note 26 above.

³³ 15 U.S.C. 78s(b)(3)(A)(ii).

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2022-14 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-2022-14. 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-2022-14 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.³⁴

J. Matthew DeLesDernier
Assistant Secretary

³⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq PHLX LLC Rules

* * * * *

Options Rules

* * * * *

Options 7 Pricing Schedule

Section 1 General Provisions

* * * * *

(c) For purposes of assessing options fees and paying rebates, the following references should serve as guidance.

* * * * *

The term “**Firm**” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

The term “**Floor Broker**” means an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders.

The term “**Floor Lead Market Maker**” is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange’s Trading Floor.

The term “**Floor Market Maker**” is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry.

The term “**floor transaction**” is a transaction that is effected in open outcry on the Exchange’s Trading Floor

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The term “**Market Maker**” is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as [on and] Floor Market Makers.

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Section 4. Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY)

	Customer Professional			Lead Market Maker and Market Maker		Broker-Dealer		Firm	
	Electronic Floor			Electronic Floor		Electronic Floor		Electronic Floor	
Options Transaction Charge (Penny Symbol)⁶	\$0.00	\$0.48 ²	\$0.[25]05 ⁸	\$0.22	\$0.35 ⁸	\$0.48 ²	\$0.25 ⁸	\$0.48 ^{1, 2}	\$0.25 ⁸
Options Transaction Charge (non-Penny Symbol)⁷, excluding NDX, NDXP, and XND	\$0.00	\$0.75 ³	\$0.[25]05 ⁸	\$0.25 ⁴	\$0.35 ⁸	\$0.75 ³	\$0.25 ⁸	\$0.75 ^{1, 3}	\$0.25 ⁸
Options Surcharge in BKX	N/A	\$0.10	\$0.10 ⁸	\$0.10	\$0.10 ⁸	\$0.10	\$0.10 ⁸	\$0.10	\$0.10 ⁸
Cabinet Options	\$0.00	N/A	\$0.10 ⁸	N/A	\$0.10 ⁸	N/A	\$0.10 ⁸	N/A	\$0.10 ⁸

- These fees are per contract.

¹ Firm electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF will be assessed \$0.45.

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

³ Any 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 Options 7, Section 2 of the Pricing Schedule will be assessed \$0.65 per contract.

⁴ Any 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 Options 7, Section 2 of the Pricing Schedule will be assessed \$0.23 per contract.

⁵ Reserved.

⁶ A \$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 Symbols (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.

⁷ A \$0.12 per contract surcharge will be assessed to Non-Customer electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Symbols (excluding NDX, NDXP, and XND). 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.

⁸ Floor transaction fees will apply to any “as of” or “reversal” adjustments for manually processed trades originally submitted electronically or through FBMS.

- The Cabinet Fees above are not in addition to the Options Transaction Charges.

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