

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 25

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

File No. * SR 2022 - * 29

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"/>
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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)

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 Phlx Options 7, Section 4

Contact Information

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

First Name * Angela Last Name * Dunn

Title * Principal Associate General Counsel

E-mail * angela.dunn@nasdaq.com

Telephone * (215) 496-5692 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 06/30/2022


(Title *)

By John Zecca

EVP and Chief Legal Officer

(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: 2022.06.30 10:47:32
-04'00'

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 EFFS website.

Form 19b-4 Information *

Add Remove View

SR-Phlx-2022-29 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 *

Add Remove View

SR-Phlx-2022-29 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

Add Remove View

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

Add Remove View

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

Add Remove View

SR-Phlx-2022-29 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

Add Remove View

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

1. Text of the Proposed Rule Change

(a) Nasdaq Phlx LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend 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 and broad-based index options symbols listed within Options 7, Section 5.A).

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on July 1, 2022.

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.

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

Angela Saccomandi Dunn
Principal Associate General Counsel

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 at Options 7, Section 4, Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A). Specifically, Phlx proposes to remove the rule text within note 1 of Options 7, Section 4 which provides a discount.

Today, Phlx assesses the following electronic Penny Symbol Options Transaction Charges: \$0.00 per contract to Customer;³ \$0.48 per contract⁴ to Professionals;⁵ \$0.22 per contract to Lead Market Makers⁶ and Maker Makers;⁷ \$0.48 per contract⁸ for Broker-

³ 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 Options 7, Section 1(c).

⁴ Electronic Complex Orders will be assessed \$0.40 per contract. See note 2 within Options 7, Section 4 of the Pricing Schedule.

⁵ 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 Options 7, Section 1(c).

⁶ The term "Lead Market Maker" applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options

Dealers;⁹ and \$0.48 per contract¹⁰ for Firms.¹¹ Today, Phlx assesses the following electronic non-Penny Symbol Options Transaction Charges: \$0.00 per contract to Customer; \$0.75 per contract¹² to Professionals; \$0.25 per contract¹³ to Lead Market

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- 7, Section 1(c). 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 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. See Options 7, Section 1(c). 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. See Options 8, Section 2(a)(4).
- ⁸ Electronic Complex Orders will be assessed \$0.40 per contract. See note 2 within Options 7, Section 4 of the Pricing Schedule.
- 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 Options 7, Section 1(c).
- ¹⁰ Electronic Complex Orders will be assessed \$0.40 per contract. See note 2 within Options 7, Section 4 of the Pricing Schedule.
- ¹¹ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. See Options 7, Section 1(c).
- ¹² 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. See note 3 within Options 7, Section 4 of the Pricing Schedule.
- ¹³ 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. See note 4 within Options 7, Section 4 of the Pricing Schedule.

Makers and Maker Makers; \$0.75 per contract¹⁴ for Broker-Dealers; and \$0.75 per contract¹⁵ for Firms.

Today, Phlx assesses an electronic Firm Penny and non-Penny Options Transactions Charges of \$0.45 per contract for simple orders in symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF. Phlx proposes to remove the \$0.45 per contract Options Transaction Charge for simple orders applicable to AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF and reserve note 1 of Options 7, Section 4 of the Pricing Schedule. The Exchange notes that the symbols listed within note 1 of Options 7, Section 4 of the Pricing Schedule are all Penny Symbols and would, therefore, with this proposal be assessed an Options Transaction Charge of \$0.48 per contract for simple orders in symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷

¹⁴ 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. See note 3 within Options 7, Section 4 of the Pricing Schedule.

¹⁵ 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. See note 3 within Options 7, Section 4 of the Pricing Schedule.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

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.”¹⁸

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁹ (“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.²⁰ 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.”²¹

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

¹⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²⁰ See NetCoalition, at 534 - 535.

²¹ Id. at 537.

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’”²² 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 believes that it is reasonable to eliminate the electronic Firm Penny and non-Penny Options Transactions Charges of \$0.45 per contract for simple orders in symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF. By eliminating note 1 within Options 7, Section 4 of the Pricing Schedule, the Exchange would assess a Firm Options Transaction Charge of \$0.48 per contract in simple orders for all Penny Symbols, which includes symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF. Since the aforementioned symbols are all Penny Symbols, eliminating note 1 within Options 7, Section 4 would not cause any Firm to be assessed the electronic non-Penny Options Transaction Charge of \$0.75 per contract for simple orders in symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF. While the Exchange is removing this discount for these symbols, the Exchange believes that its Options Transaction Charges remain competitive.

The Exchange believes that it is equitable and not unfairly discriminatory to eliminate the electronic Firm Penny and non-Penny Options Transactions Charges of \$0.45 per contract for simple orders in symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF and, instead, assess these symbols an electronic Firm

²² 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)).

Options Transaction Charge of \$0.48 per contract for simple orders similar to other Penny Symbols. Customers would continue to pay no electronic Penny Symbol Options Transaction Charge. Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Lead Market Makers and Market Makers would continue to pay a \$0.22 per contract electronic Penny Symbol Options Transaction Charge, which is lower than the \$0.48 per contract electronic Penny Symbol Options Transaction Charge paid by Professionals, Broker-Dealers and Firms. Lead Market Makers and Market Makers add value through continuous quoting and are subject to additional requirements and obligations unlike other market participants.²³ Incentivizing Lead Market Makers Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. The Exchange believes that it is equitable and not unfairly discriminatory to assess AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF an electronic Firm Penny Options Transactions Charge of \$0.48 per contract in simple orders similar to all other Penny Symbols. With this proposal, the electronic Firm, Professional and Broker-Dealer Options Transaction Charge for simple orders would be the same for all Penny Symbols.

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

²³ See Phlx Options 2, Section 5.

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. 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.

Intra-market Competition

The proposed amendment does not impose an undue burden on intra-market competition. The Exchange believes that eliminating the electronic Firm Penny and non-Penny Options Transactions Charges of \$0.45 per contract for simple orders in symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF and, instead, assessing these symbols an electronic Firm Options Transaction Charge of \$0.48 per contract for simple orders, similar to other Penny Symbols, does not create an undue burden on competition. Customers would continue to pay no electronic Penny Symbol Options Transaction Charge. Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in

the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Lead Market Makers and Market Makers would continue to pay a \$0.22 per contract electronic Penny Symbol Options Transaction Charge, which is lower than the \$0.48 per contract electronic Penny Symbol Options Transaction Charge paid by Professionals, Broker-Dealers and Firms. Lead Market Makers and Market Makers add value through continuous quoting and are subject to additional requirements and obligations unlike other market participants.²⁴ Incentivizing Lead Market Makers Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Assessing AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF an electronic Firm Penny Options Transactions Charge of \$0.48 per contract in simple orders, similar to all other Penny Symbols, does not impose an undue burden on competition. With this proposal, the electronic Firm, Professional and Broker-Dealer Options Transaction Charge for simple orders would be the same for all Penny Symbols.

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.

²⁴ See Phlx Options 2, Section 5.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁵ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2022-29)

June __, 2022

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

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 June 30, 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 and broad-based index options symbols listed within Options 7, Section 5.A).

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on July 1, 2022.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

Phlx proposes to amend its 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 and broad-based index options symbols listed within Options 7, Section 5.A). Specifically, Phlx proposes to remove the rule text within note 1 of Options 7, Section 4 which provides a discount.

Today, Phlx assesses the following electronic Penny Symbol Options Transaction Charges: \$0.00 per contract to Customer;³ \$0.48 per contract⁴ to Professionals;⁵ \$0.22

³ 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 Options 7, Section 1(c).

⁴ Electronic Complex Orders will be assessed \$0.40 per contract. See note 2 within Options 7, Section 4 of the Pricing Schedule.

⁵ 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 Options 7, Section 1(c).

per contract to Lead Market Makers⁶ and Maker Makers;⁷ \$0.48 per contract⁸ for Broker-Dealers;⁹ and \$0.48 per contract¹⁰ for Firms.¹¹ Today, Phlx assesses the following electronic non-Penny Symbol Options Transaction Charges: \$0.00 per contract to Customer; \$0.75 per contract¹² to Professionals; \$0.25 per contract¹³ to Lead Market

⁶ The term “Lead Market Maker” applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 7, Section 1(c). 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 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. See Options 7, Section 1(c). 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. See Options 8, Section 2(a)(4).

⁸ Electronic Complex Orders will be assessed \$0.40 per contract. See note 2 within Options 7, Section 4 of the Pricing Schedule.

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 Options 7, Section 1(c).

¹⁰ Electronic Complex Orders will be assessed \$0.40 per contract. See note 2 within Options 7, Section 4 of the Pricing Schedule.

¹¹ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. See Options 7, Section 1(c).

¹² 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. See note 3 within Options 7, Section 4 of the Pricing Schedule.

Makers and Maker Makers; \$0.75 per contract¹⁴ for Broker-Dealers; and \$0.75 per contract¹⁵ for Firms.

Today, Phlx assesses an electronic Firm Penny and non-Penny Options Transactions Charges of \$0.45 per contract for simple orders in symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF. Phlx proposes to remove the \$0.45 per contract Options Transaction Charge for simple orders applicable to AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF and reserve note 1 of Options 7, Section 4 of the Pricing Schedule. The Exchange notes that the symbols listed within note 1 of Options 7, Section 4 of the Pricing Schedule are all Penny Symbols and would, therefore, with this proposal be assessed an Options Transaction Charge of \$0.48 per contract for simple orders in symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF.

¹³ 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. See note 4 within Options 7, Section 4 of the Pricing Schedule.

¹⁴ 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. See note 3 within Options 7, Section 4 of the Pricing Schedule.

¹⁵ 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. See note 3 within Options 7, Section 4 of the Pricing Schedule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ 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.”¹⁸

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁹ (“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.²⁰ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

¹⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²⁰ See NetCoalition, at 534 - 535.

play a role in determining the market data . . . to be made available to investors and at what cost.”²¹

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’”²² 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 believes that it is reasonable to eliminate the electronic Firm Penny and non-Penny Options Transactions Charges of \$0.45 per contract for simple orders in symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF. By eliminating note 1 within Options 7, Section 4 of the Pricing Schedule, the Exchange would assess a Firm Options Transaction Charge of \$0.48 per contract in simple orders for all Penny Symbols, which includes symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF. Since the aforementioned symbols are all Penny Symbols, eliminating note 1 within Options 7, Section 4 would not cause any Firm to be assessed the electronic non-Penny Options Transaction Charge of \$0.75 per contract for simple orders in symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and

²¹ Id. at 537.

²² 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)).

XLF. While the Exchange is removing this discount for these symbols, the Exchange believes that its Options Transaction Charges remain competitive.

The Exchange believes that it is equitable and not unfairly discriminatory to eliminate the electronic Firm Penny and non-Penny Options Transactions Charges of \$0.45 per contract for simple orders in symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF and, instead, assess these symbols an electronic Firm Options Transaction Charge of \$0.48 per contract for simple orders similar to other Penny Symbols. Customers would continue to pay no electronic Penny Symbol Options Transaction Charge. Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Lead Market Makers and Market Makers would continue to pay a \$0.22 per contract electronic Penny Symbol Options Transaction Charge, which is lower than the \$0.48 per contract electronic Penny Symbol Options Transaction Charge paid by Professionals, Broker-Dealers and Firms. Lead Market Makers and Market Makers add value through continuous quoting and are subject to additional requirements and obligations unlike other market participants.²³ Incentivizing Lead Market Makers Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. The Exchange believes that it is equitable and not unfairly discriminatory to assess AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF an electronic Firm Penny Options Transactions Charge of \$0.48 per contract in

²³ See Phlx Options 2, Section 5.

simple orders similar to all other Penny Symbols. With this proposal, the electronic Firm, Professional and Broker-Dealer Options Transaction Charge for simple orders would be the same for all Penny Symbols.

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. 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.

Intra-market Competition

The proposed amendment does not impose an undue burden on intra-market competition. The Exchange believes that eliminating the electronic Firm Penny and non-Penny Options Transactions Charges of \$0.45 per contract for simple orders in symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF and,

instead, assessing these symbols an electronic Firm Options Transaction Charge of \$0.48 per contract for simple orders, similar to other Penny Symbols, does not create an undue burden on competition. Customers would continue to pay no electronic Penny Symbol Options Transaction Charge. Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Lead Market Makers and Market Makers would continue to pay a \$0.22 per contract electronic Penny Symbol Options Transaction Charge, which is lower than the \$0.48 per contract electronic Penny Symbol Options Transaction Charge paid by Professionals, Broker-Dealers and Firms. Lead Market Makers and Market Makers add value through continuous quoting and are subject to additional requirements and obligations unlike other market participants.²⁴ Incentivizing Lead Market Makers Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Assessing AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF an electronic Firm Penny Options Transactions Charge of \$0.48 per contract in simple orders, similar to all other Penny Symbols, does not impose an undue burden on competition. With this proposal, the electronic Firm, Professional and Broker-Dealer Options Transaction Charge for simple orders would be the same for all Penny Symbols.

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.

²⁴ See Phlx Options 2, Section 5.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁵

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2022-29 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.

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2022-29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2022-29 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

J. Matthew DeLesDernier
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq PHLX LLC Rules

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Options Rules

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Options 7 Pricing Schedule

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Section 4. Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A)

	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	\$0.05 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	\$0.00	\$0.75 ³	\$0.05 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
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- 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.]Reserved

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