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

File No. * SR 2023 - * 06

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 02/22/2023


(Title *)

By John Zecca

EVP and Chief Counsel

(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.



Date: 2023.02.22
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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 EFFS website.

Form 19b-4 Information *

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SR-Phlx-2023-06 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-2023-06 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-2023-06 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).”³

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

³ On February 10, 2023, the Exchange withdrew SR-Phlx-2023-03 and replaced it with SR-Phlx-2023-05. On February 22, 2023, SR-Phlx-2023-05 was withdrawn and replaced with the instant filing.

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).” Specifically, Phlx proposes to: (1) to remove its current Qualified Contingent Cross (“QCC”) Rebate Schedule and propose a new QCC Rebate and QCC Growth Tier Rebate; (2) amend the Monthly Firm Fee Cap; and (3) propose a new Floor Transaction (Open Outcry) Floor Broker Incentive Program. Each change is described below.

QCC Rebates

Today, the Exchange assesses a \$.20 per contract QCC Transaction Fee for a Lead Market Maker,⁴ Market Maker,⁵ Firm⁶ and Broker-Dealer.⁷ Customers⁸ and

⁴ 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).

⁵ 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).

Professionals⁹ are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to electronic QCC Orders¹⁰ and Floor QCC Orders.¹¹ Rebates are paid on all qualifying executed electronic QCC Orders and Floor QCC Orders based on the below QCC Rebate Schedule:¹²

QCC Rebate Schedule

Tier	Threshold	Rebate per Contract
Tier 1	0 to 999,999 contracts in a month	\$0.09
Tier 2	1,000,000 contracts or more in a month	\$0.20

The Exchange does not pay a QCC Rebate where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional; or (iv) a

⁶ 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).

⁷ 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).

⁸ The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (“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).

⁹ 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).

¹⁰ Electronic QCC Orders are described in Options 3, Section 12.

¹¹ Floor QCC Orders are described in Options 8, Section 30(e).

¹² Volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short stock interest or reversal or conversion strategy executions, is aggregated in determining the applicable volume tier.

dividend, merger, short stock interest or reversal or conversion strategy execution (as defined in Options 7, Section 4).

The Exchange proposes to remove the existing QCC Rebate Schedule and replace those rebates with new QCC Rebates in new Section A as well as a QCC Growth Tier Rebate in new Section B. The Exchange proposes to insert a new title “QCC Transaction Fee” before the paragraph which describes QCC fees.

The Exchange proposes to add a new title “A. QCC Rebate” to describe its proposed QCC Rebates. The Exchange proposes to pay a QCC Rebate of \$0.12 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. The Exchange proposes to increase this rebate to \$0.17 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month. The Exchange also proposes to pay a new QCC Rebate of \$0.14 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. The Exchange proposes to increase this rebate to \$0.19 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month.

As is the case today, the two new proposed QCC rebates would be paid on all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and

Floor QCC Orders, as defined in Options 8, Section 30(e), except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; and (iii) Professional-to-Professional. Today, the Exchange excludes dividend, merger, short stock interest or reversal or conversion strategy executions, as defined in Options 7, Section 4, as qualifying transactions. At this time, the Exchange proposes to exclude all strategy executions within Options 7, Section 4, (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions) as qualifying transactions.

Further, as is the case today, volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short stock interest or reversal or conversion strategy executions, is aggregated in determining the applicable volume tier. With this proposed change, the Exchange would aggregate the applicable member or member organization qualifying QCC contract volume in a given month which includes volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions, as is the case today, and would exclude all strategy executions within Options 7, Section 4, (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions) as qualifying transactions.

The Exchange notes that Customers and Professionals are not assessed a QCC Transaction Fee while all other market participants pay a QCC Transaction Fee of \$0.20 per contract. The Exchange proposes to pay greater rebates where the two contra-parties to a QCC Order are not Customers and Professionals as greater QCC transaction fees are

being assessed to Lead Market Maker, Market Maker, Broker-Dealer or Firm orders.

These QCC Rebates are intended to encourage Phlx members and member organizations to transact a greater number of QCC Orders on Phlx.

Additionally, the Exchange proposes to establish a new QCC Growth Tier Rebate and title that new section as “B. QCC Growth Tier Rebate”. This QCC Growth Tier Rebate is intended to encourage Phlx members and member organizations to transact a greater number of QCC Orders on Phlx. In order to qualify for the QCC Growth Tier Rebate, a member’s or member organization’s total floor transaction,¹³ and electronic QCC Orders and Floor QCC Orders volume (“QCC transaction volume”) must exceed 12,500,000 contracts in a given month. In addition to the aforementioned criteria, the member’s or member organization’s respective Phlx House Account¹⁴ must execute QCC transaction volume of 250,000 or more contracts in excess of the member’s or member organization’s QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 250,000 or more contracts in a given month.

¹³ The term “floor transaction” is a transaction that is effected in open outcry on the Exchange’s trading floor. See Phlx Options 7, Section 1(c). Of note, the term “floor transaction” is more broadly defined than the term “Open Outcry Floor Transaction” which is discussed herein and is a subset of the term “floor transaction”.

¹⁴ Each Phlx member or member organization is required to establish one Phlx House Account with the Exchange’s Membership Department. Only one Phlx House Account is required to transact business on Phlx. The Exchange assesses a \$50.00 a month account fee for this account as provided for within Options 7, Section 8A. A Phlx member or member organization has the option of acquiring multiple Phlx House Accounts depending on a member’s or member organization’s business model and how they elect to organize their business.

The Exchange also proposes to offer an alternative qualification to achieve the QCC Growth Tier Rebate. A member's or member organization's Open Outcry Floor Transaction volume in a given month must exceed 500,000 contracts. In addition to the aforementioned criteria, a member's or member organization's respective Phlx House Account must execute QCC transaction volume of 2,500,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 2,500,000 or more contracts in a given month.

As proposed for the QCC Growth Tier Rebate, the term "Open Outcry Floor Transaction" includes all transactions executed in open outcry on Phlx's trading floor except: (1) dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions as defined in this Options 7, Section 4; (2) Cabinet Transactions as defined in Options 8, Section 33; and (3) Customer-to-Customer transactions.

The Exchange proposes to pay the QCC Growth Tier Rebates per Phlx House Account. The Exchange will pay a \$0.20 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. Further, the Exchange will pay a \$0.26 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. Finally, members and member organizations will be entitled to one QCC Rebate in

a given month, either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both.

The Exchange believes that the proposed QCC Rebates in proposed Section A and the proposed QCC Growth Tier Rebate in Section B will encourage market participants to send QCC orders to Phlx for execution in an effort to earn higher QCC Rebates.

The Exchange proposes to add a new title before the Monthly Market Maker Cap rule text which states, “Monthly Market Maker Cap”.

Monthly Firm Fee Cap

The Exchange proposes to add a new title prior to the paragraph which describes Phlx’s Monthly Firm Fee Cap which states, “Monthly Firm Fee Cap and Facilitation”.

Today, Firms are subject to a maximum fee of \$150,000 (“Monthly Firm Fee Cap”). Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month do not exceed the Monthly Firm Fee Cap per member or member organization provided such members or member organizations are trading in their own proprietary account. Today, the Monthly Firm Fee Cap and all dividend, merger, and short stock interest strategy executions; transactions in broad-based index options symbols listed within Options 7, Section 5.A are excluded from the Monthly Firm Fee Cap. Today, reversal and conversion, jelly roll and box spread strategy executions and QCC Transaction Fees are included in the Monthly Firm Fee Cap.¹⁵

¹⁵ Members and member organizations must notify the Exchange in writing of all accounts in which the member or member organization 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.

At this time, the Exchange proposes two changes to the Monthly Firm Fee Cap. First, the Exchange proposes to increase the Monthly Firm Fee Cap from \$150,000 to \$200,000. Second, instead of not assessing Firms any fee once the Monthly Firm Fee Cap is exceeded, the Exchange proposes to instead assess a nominal transaction fee of \$0.02 per capped contract once a Firm exceeds the Monthly Firm Fee Cap unless no fee¹⁶ is charged or the fee is waived.¹⁷ The Exchange proposes to amend the text within Options 7, Section 4 to state,

Firms are subject to a \$200,000 “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 that exceed the Monthly Firm Fee Cap per member or member organization, when such members or member organizations are trading in their own proprietary account, will be subject to a reduced transaction fee of \$0.02 per capped contract unless there is no fee or the fee is waived.

While the Exchange would be increasing the cap as well as fees for Firms with this proposal, the Exchange believes that the Monthly Firm Fee Cap still serves to lower fees for Firms that transact certain qualifying volume on Phlx, thus enabling these Firms the ability to lower costs.

¹⁶ Today, Firms pay an electronic Options Transaction Charge of \$0.48 per contract in Penny Symbols for simple orders and \$0.40 per contract in Penny Symbols for complex orders. Also, Firms pay a Floor Options Transaction Charge of \$0.25 per contract in Penny Symbols. Today, Firms pay an electronic Options Transaction Charge of \$0.75 per contract in Non-Penny Symbols and a Floor Options Transactions Charge of \$0.25 per contract in Non-Penny Symbols. See Options 7, Section 4.

¹⁷ Today, the Firm Floor Options Transaction Charges is waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. See Options 7, Section 4.

Additionally, the Exchange proposes to amend the types of strategy executions that will be included in the Monthly Firm Fee Cap. Today, dividend, merger, and short stock interest strategies are excluded from the Monthly Firm Fee Cap and reversal and conversion, jelly roll and box spread strategy executions are included in the Monthly Firm Fee Cap. At this time, the Exchange proposes to exclude all strategy executions from the Monthly Firm Fee Cap (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions).

Floor Transaction (Open Outcry) Floor Broker Incentive Program

The Exchange proposes to create a new incentive program for Floor Brokers¹⁸ that is designed to attract order flow to Phlx's trading floor for execution in open outcry. The Exchange proposes to pay Floor Broker certain rebates for transaction they execute on Phlx's trading floor in open outcry. The Exchange proposes to title this new section, "Floor Transaction (Open Outcry) Floor Broker Incentive Program".

The following floor transactions would not be subject to the rebates offered within the Floor Transaction (Open Outcry) Floor Broker Incentive Program: (1) Floor QCC Orders, as defined in Options 8, Section 30(e)¹⁹; (2) dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions as defined in this Options 7, Section 4; (3) Firm Floor Options Transactions Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are

¹⁸ 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. See Phlx Options 7, Section 1(c).

¹⁹ Today, Floor QCC Orders are not transacted in open outcry. The Exchange proposes to include Floor QCC Orders in the list of exclusions to remind members and member organizations that Floor QCC Orders will not be paid the Floor Transaction (Open Outcry) Floor Broker Incentive Program rebate.

trading in their own proprietary account (including Cabinet Options Transaction Charges); and (4) Customer-to-Customer transactions.

The Exchange would pay Floor Transaction (Open Outcry) Floor Broker Incentive Program rebates on qualifying volume at each threshold level per the below schedule.

Qualifying Contracts	Per Contract Rebate
0 -5,000,000	\$0.03
5,000,001-10,000,000	\$0.06
Greater than 10,000,000	\$0.09

By way of example, a Floor Broker that executes floor transactions in a given month totaling 10,500,000 contracts will be paid \$0.03 for the first 5,000,000 floor transaction contracts (\$150,000), \$0.06 for the next 5,000,000 floor transaction contracts (\$300,000), and \$0.09 for the final 500,000 floor transaction contracts (\$45,000) for a total rebate of \$495,000 for that month. Further, as an additional clarifying example, if a Floor Broker executes a floor transaction in the amount of 1,000,000 contracts, represents both sides of the floor transaction, and executes the floor transaction as a crossing transaction pursuant to Options 8, Section 30(a) for 700,000 of the 1,000,000 contracts, then trades the remaining 300,000 contracts with the trading crowd, the Floor Transaction (Open Outcry) Floor Broker Incentive Program rebate for this transaction will be paid on the qualifying floor transaction volume of 1,000,000 contracts.

Finally, the Exchange proposes to cap rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program at \$1,000,000 per member or member organization in a given month.

The Exchange believes that the Floor Transaction (Open Outcry) Floor Broker Incentive Program will attract greater order flow to Phlx's trading floor.

Technical Amendments

The Exchange proposes to add a title before the rule text related to strategies which states, “Floor Originated Strategy Executions”. The Exchange believes the proposed new titles throughout Options 7, Section 4 will assist market participants in locating certain pricing within this rule. The Exchange also proposes to adjust rule text within Options 7, Section 4 in the Strategies pricing to make clear that all dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions, as defined in this Options 7, Section 4, will be excluded from the Monthly Firm Fee Cap as proposed herein.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²¹ 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

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4) and (5).

broader forms that are most important to investors and listed companies.”²²

Likewise, in NetCoalition v. Securities and Exchange Commission²³ (“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.²⁴ 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.”²⁵

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’ . . .”²⁶ 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.

²² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²³ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²⁴ See NetCoalition, at 534 - 535.

²⁵ Id. at 537.

²⁶ 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)).

QCC Rebates*Section A QCC Rebates*

The Exchange's proposal to remove the existing QCC Rebate Schedule and replace those rebates with new rebates as well as a QCC Growth Tier Rebate is reasonable because the Exchange proposes to offer its members and member organizations additional qualifications to obtain potentially greater QCC Rebates. The Exchange believes the opportunity to earn larger rebates will incentivize members and member organizations to execute a larger amount of floor transactions, QCC transaction volume, and Open Outcry Floor Transaction volume on Phlx's trading floor. The Exchange's proposal to remove the existing QCC Rebate Schedule and replace those rebates with new rebates as well as a QCC Growth Tier Rebate is equitable and not unfairly discriminatory because all members and member organizations may execute QCC trades, electronically or on the Exchange's trading floor.

Today, the Exchange pays a \$0.09 QCC rebate for executing up to 999,999 QCC contracts in a month and a \$0.20 per contract QCC Rebate for executing 1,000,000 or more QCC contracts in a month. With the two new proposed QCC Rebates within Section A the Exchange offers to pay a QCC Rebate of \$0.12 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. This proposed QCC Rebate is greater than the lowest tier QCC Rebate offered today (\$0.09 (old) vs. \$0.12 (new)). Additionally, the Exchange proposes to pay an increased QCC Rebate of \$0.17 per contract in the event that a member or member

organization executes greater than 1,000,000 qualifying QCC contracts in a given month which is less than the current QCC rebate for 1,000,000 or more contracts today (\$0.20 (old) vs. \$0.17 (new)). Additionally, depending on the contra-parties to the QCC Order, the Exchange would pay a \$0.14 per contract QCC Rebate on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. This rebate is also greater than the lowest tier QCC Rebate offered today (\$0.09 (old) vs. \$0.14 (new)). Additionally, the Exchange proposes to pay an increased QCC Rebate of \$0.19 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month which is less than the current QCC rebate for 1,000,000 or more contracts today (\$0.20 (old) vs. \$0.19 (new)). The Exchange believes that while some QCC Rebates are higher and some QCC Rebates are lower, the range of QCC Rebates offered by Phlx remains competitive and the Exchange believes these QCC Rebates will continue to attract QCC Orders to Phlx. The Exchange believes its proposal to offer these two new QCC Rebates is equitable and not unfairly discriminatory because any market participant may qualify for a QCC Rebate provided they qualified for the QCC Rebate. Further, the Exchange's proposal which pays greater rebates where the two contra-parties to a QCC Order are not Customers and Professionals is equitable and not unfairly discriminatory because, today, the Exchange assesses greater fees to Lead Market Maker, Market Maker, Broker-Dealer and Firms for QCC Orders. Customers and

Professionals are not assessed a QCC Transaction Fee, while all other market participants pay a QCC Transaction Fee of \$0.20 per contract.

The Exchange's proposal to amend the QCC Rebate qualifications such that all strategy executions (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread) will be excluded and, as proposed, will aggregate the applicable member or member organization qualifying QCC contract volume in a given month, excluding all strategy executions, is reasonable. Today, the Exchange offers strategy caps²⁷ for these strategy executions and, therefore, members and member organizations have the ability to pay no fees on strategy executions once the cap is met. The Exchange's proposal to amend the QCC Rebate qualification such that all strategy executions (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread) will be excluded and, as proposed, will aggregate the applicable member or member organization qualifying QCC contract volume in a given month, excluding all strategy executions is equitable and not unfairly discriminatory because the Exchange would uniformly apply the QCC Rebate qualifications as well as calculate the QCC Rebates.

Section B QCC Growth Tier Rebate

The Exchange's proposal to establish a new QCC Growth Tier Rebate is reasonable because this rebate should provide additional incentives for members and member organizations to engage in substantial amounts of trading activity which would

²⁷ Today, the Exchange offers certain strategy caps for dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions. To qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange's trading floor or as a Floor Qualified Contingent Cross Order. See Options 7, Section 4.

serve to bring additional open outcry liquidity to the trading floor and additional QCC Order Flow to Phlx. This incentive may also encourage members and member organizations to commence sending such order flow to Phlx for the opportunity to earn this rebate. Additionally, the Exchange's proposal to establish a new QCC Growth Tier Rebate is equitable and not unfairly discriminatory because any member or member organization may qualify for this rebate.

The Exchange's proposal offers member and member organizations two paths to qualify for a QCC Growth Tier Rebate. In the first instance, a member's or member organization's total floor transaction, and electronic QCC Orders and Floor QCC Orders volume ("QCC transaction volume") must exceed 12,500,000 contracts in a given month and the member's or member organization's respective Phlx House Account must execute QCC transaction volume of 250,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 250,000 or more contracts in a given month. In the second instance, a member's or member organization's Open Outcry Floor Transaction volume in a given month must exceed 500,000 contracts and a member's or member organization's respective Phlx House Account must execute QCC transaction volume of 2,500,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 2,500,000 or more contracts in a given month. The Exchange believes that these qualifications are

reasonable because they offer members and member organizations optional qualifications to achieve a QCC Growth Tier Rebate. Additionally, the Exchange believes that these qualifications are equitable and not unfairly discriminatory as all members and member organizations may qualify for the QCC Growth Tier Rebate.²⁸ All members and member organizations may enter order flow to obtain a QCC Growth Tier Rebate.

The Exchange's exclusion of strategy executions, cabinet transactions and Customer-to-Customer transactions is reasonable. Cabinet transactions and Customer-to-Customer transactions are excluded today from QCC Rebates. This proposal would exclude all strategy executions, which is a change from the current QCC Rebate exclusions which only excludes dividend, merger, short stock interest, and reversal or conversion strategies. Today, the Exchange offers strategy caps²⁹ for these types of open outcry transactions and, therefore, members and member organizations have the ability to pay no fees on strategy executions once the cap is met. The Exchange's exclusion of strategy executions, cabinet transactions and Customer-to-Customer transactions are equitable and not unfairly discriminatory as the qualifications for the QCC Growth Tier Rebate will be uniformly applied.

²⁸ The Exchange notes that while all Phlx member organizations may transact an options business electronically or on the Exchange's trading floor, each member located on Phlx's trading floor must have an individual permit. Alternatively, Phlx members or member organizations may transact business on the trading floor through a Floor Broker.

²⁹ Today, the Exchange offers certain strategy caps for dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions. To qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange's trading floor or as a Floor Qualified Contingent Cross Order. See Options 7, Section 4.

The Exchange's proposal to utilize January 2023 as a baseline to add 250,000 or more contracts for the QCC Growth Tier Rebate and permit members or member organizations with no QCC transaction volume in January 2023, to add 250,000 or more contracts in a given month is reasonable as it will create an incentive for members and member organizations to bring liquidity to Phlx's trading floor relative to a benchmark. The Exchange believes that if the proposed incentive is effective, then any ensuing increase in trading activity on the Exchange will improve the quality of the market overall, to the benefit of all market participants. Further, it is reasonable to consider any new liquidity volume for members or member organizations who have no volume for the month of January 2023 for those members or member organizations to qualify to receive the proposed QCC Growth Tier Rebate because this program is designed to attract additional liquidity from new members and member organizations. To the extent this proposal attracts new members and member organization volume to the Exchange, all market participants should benefit through more trading opportunities. The Exchange's proposal to utilize January 2023 as a baseline to add 250,000 or more contracts for the QCC Growth Tier Rebate and permit members or member organizations with no QCC transaction volume in January 2023, to add 250,000 or more contracts in a given month is equitable and not unfairly discriminatory for the reasons which follow. The Exchange's proposal is designed to increase participation in Phlx's trading floor and reward those members and member organizations for the unique role they play in ensuring a robust market. As discussed above, the proposal is designed to encourage members and member organizations to substantially execute additional volume on the trading floor. To the extent the Exchange succeeds in increasing the levels of liquidity and activity on the

Exchange, the Exchange will experience improvements in market quality, which stands to benefit all floor members. The Exchange believes that it is equitable and not unfairly discriminatory to consider any new volume for members and member organizations with no such volume for the month of January 2023 for those members and member organizations to qualify to receive the proposed QCC Growth Tier Rebate because the program is designed to attract additional liquidity from new members and member organizations to the Exchange. In turn, this additional liquidity should benefit all market participants through increased liquidity and order interaction.

The Exchange's proposal to pay the QCC Growth Tier Rebates per Phlx House Account is reasonable, equitable and not unfairly discriminatory. Today, each Phlx member or member organization is required to establish one Phlx House Account with the Exchange's Membership Department. Only one Phlx House Account is required to transact business on Phlx.³⁰ A Phlx member or member organization has the option of acquiring multiple Phlx House Accounts depending on a member's or member organization's business model and how they elect to organize their business.

The Exchange's proposal to pay a \$0.20 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side and a \$0.26 per contract QCC Growth Tier Rebate on a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side is reasonable because these rebates are both higher than the rebates offered today for QCC Rebates.

³⁰ The Exchange assesses a \$50.00 a month account fee for this account as provided for within Options 7, Section 8A.

Today, the QCC Rebate for Tier 1 is \$0.09 per contract and the QCC Rebate for Tier 2 is \$0.20 per contract. Further, the Exchange's proposal to pay greater rebates where both sides are not a Customer or a Professional is reasonable because, today, Customers and Professionals are not assessed a QCC Transaction Fee. Lead Market Makers, Market Makers, Broker-Dealers, and Firms pay a QCC Transaction Fee of \$0.20 per contract. The Exchange's proposal to pay a \$0.20 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side and a \$0.26 per contract QCC Growth Tier Rebate on a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side is equitable and not unfairly discriminatory because the Exchange will uniformly apply the qualifications and to pay the QCC Growth Tier Rebate.

The Exchange's proposal to pay members and member organizations the greater of the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both QCC Rebates, is reasonable, equitable and not unfairly discriminatory because each of the Exchange's QCC rebates remain competitive with today's QCC Rebate and the Exchange would uniformly only pay the greater of the two QCC Rebates.

Monthly Firm Fee Cap

The Exchange's proposal to amend the Monthly Firm Fee Cap from \$150,000 to \$200,000 and assess a nominal fee of \$0.02 per capped contract once a Firm exceeds the Monthly Firm Fee Cap, instead of not assessing Firms any fee once the Monthly Firm

Fee Cap is exceeded is reasonable. While the Exchange would be increasing the cap as well as fees for Firms with this proposal, the Exchange believes that the Monthly Firm Fee Cap still serves to lower fees for Firms that transact certain qualifying volume on Phlx, thus enabling these firms the ability to lower costs. The Exchange believes that the Monthly Firm Fee Cap would continue to incentivize Firms to direct order flow to the Exchange to achieve the benefits of reducing their fees. The Exchange's proposal to not assess the \$0.02 per contract transaction fee if no fee³¹ is charged or the fee is waived³² is reasonable because the Exchange wants to ensure that members and member organizations get the most favorable incentive that they qualify for under its Pricing Schedule. The Exchange's proposal to amend the Monthly Firm Fee Cap from \$150,000 to \$200,000 and assess a nominal fee of \$0.02 per capped contract once a Firm exceeds the Monthly Firm Fee Cap, instead of not assessing Firms any fee once the Monthly Firm Fee Cap is exceeded is equitable and not unfairly discriminatory as other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or

³¹ Today, Firms pay an electronic Options Transaction Charge of \$0.48 per contract in Penny Symbols for simple orders and \$0.40 per contract in Penny Symbols for complex orders. Also, Firms pay a Floor Options Transaction Charge of \$0.25 per contract in Penny Symbols. Today, Firms pay an electronic Options Transaction Charge of \$0.75 per contract in Non-Penny Symbols and a Floor Options Transactions Charge of \$0.25 per contract in Non-Penny Symbols. See Options 7, Section 4.

³² Today, the Firm Floor Options Transaction Charges is waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. See Options 7, Section 4.

non-Penny Symbols.³³ Customer liquidity benefits all market participants by providing more trading opportunities. 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. Today, Lead Market Makers and Market Makers are subject to a Monthly Market Maker Cap.³⁴ 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

³³ See Options 7, Section 4.

³⁴ See Options 7, Section 4. Lead Market Makers and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) is excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows: \$0.05 per contract Fee for Adding Liquidity in Penny Symbols; \$0.18 per contract Fee for Removing Liquidity in Penny Symbols; \$0.18 per contract in Non-Penny Symbols; and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (“COLA”). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

10,000 contracts per day in a given month.³⁵ Finally, today, Professional Floor Options Transaction Charges are less favorable than Customers but more favorable than Firms.³⁶ Additionally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because members and member organizations that are JBOs³⁷ could be subject to the Monthly Firm Fee Cap,³⁸ as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not members or member organizations to seek to become members or member organizations to further reduce their transaction fees. Finally, other market participants may interact with the order flow submitted by Firms to Phlx to reach the cap. The Exchange's proposal to not assess the \$0.02 per contract transaction fee if no fee is charged or the fee is waived is equitable and not unfairly discriminatory as the Exchange would uniformly not assess the transaction fee in this case.

The Exchange's proposal to amend the types of strategy executions that will be included in the Monthly Firm Fee Cap to exclude all strategy executions from the

³⁵ See Options 7, Section 4.

³⁶ See Options 7, Section 4.

³⁷ The term "Joint Back Office" or "JBO" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO is priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Options 6D, Section 1. See Options 7, Section 1(c).

³⁸ Firms are subject to a Monthly Firm Fee Cap. See Options 7, Section 4.

Monthly Firm Fee Cap is reasonable because the Exchange offers strategy caps³⁹ for these types of open outcry transactions and, therefore, members and member organizations have the ability to pay no fees on strategy executions once the cap is met. The Exchange's proposal to amend the types of strategy executions that will be included in the Monthly Firm Fee Cap to exclude all strategy executions from the Monthly Firm Fee Cap is equitable and not unfairly discriminatory because the Exchange would uniformly calculate qualifying transactions to arrive at the Monthly Firm Fee Cap.

Floor Transaction (Open Outcry) Floor Broker Incentive Program

The Exchange's proposal to create a new incentive program for Floor Brokers that is designed to attract order flow to Phlx's trading floor for execution in open outcry is reasonable, equitable and not unfairly discriminatory because the Exchange's program seeks to attract greater order flow to the Exchange's trading floor. The Exchange notes that other Phlx floor members may interact with orders exposed in open outcry on the Exchange's trading floor. Other floor members⁴⁰ may interact with the order flow that Floor Brokers attract to Phlx's trading floor.

The Exchange's proposal to exclude Floor QCC Orders, dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions as defined in this Options 7, Section 4; Firm Floor Options Transaction Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such

³⁹ Today, the Exchange offers certain strategy caps for dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions. To qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange's trading floor or as a Floor Qualified Contingent Cross Order. See Options 7, Section 4.

⁴⁰ Floor members include all members who have acquired a permit to trade on Phlx's trading floor.

members are trading in their own proprietary account (including Cabinet Options Transaction Charges); and Customer-to-Customer transactions from the Floor Transaction (Open Outcry) Floor Broker Incentive Program is reasonable. Within this proposal, the Exchange offers to pay significant QCC Rebates for Floor QCC Orders. As noted herein, with respect to strategy transactions, the Exchange offers strategy caps⁴¹ for these types of open outcry transactions and, therefore, members and member organizations have the ability to pay no fees on strategy executions once the cap is met. The Exchange is excluding Firm Floor Options Transaction Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges) because, today, Firm Floor Options Transaction Charges are waived pursuant to Options 7, Section 4. Finally, the Exchange is excluding Customer-to-Customer transaction as Customers are not subject to Options Transaction Charges within Options 7, Section 4. The Exchange's proposal to exclude Floor QCC Orders, dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions as defined in this Options 7, Section 4; Firm Floor Options Transaction Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges); and Customer-to-Customer transactions from the Floor Transaction (Open Outcry) Floor Broker Incentive Program is equitable and not unfairly discriminatory

⁴¹ Today, the Exchange offers certain strategy caps for dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions. To qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange's trading floor or as a Floor Qualified Contingent Cross Order. See Options 7, Section 4.

because the Exchange would uniformly apply the qualification criteria to calculate rebates.

The Exchange's proposal to pay Floor Brokers rebates on qualifying open outcry volume at each of three threshold levels, with rebates ranging from \$0.03 to \$0.09 per contract, is reasonable because the Exchange believes that these rebates will serve to incentivize Floor Brokers to execute a greater number of orders in the Exchange's trading crowd. The Exchange's proposal to pay Floor Brokers rebates on qualifying open outcry volume at each of three threshold levels, with rebates ranging from \$0.03 to \$0.09 per contract, is equitable and not unfairly discriminatory as the Exchange would uniformly calculate all qualifying volume and uniformly pay rebates associated with the Floor Transaction (Open Outcry) Floor Broker Incentive Program.

The Exchange's proposal to cap rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program at \$1,000,000 per member or member organization in a given month is reasonable. The Exchange's program will pay Floor Brokers up to \$1,000,000 in rebates a month to incentivize them to bring additional order flow to the Exchange's trading crowd. The Exchange believes that the incentive, despite the cap, will attract order flow to Phlx. All other floor members may interact with that order flow. The Exchange's proposal to cap rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program at \$1,000,000 per member or member organization in a given month is equitable and not unfairly discriminatory as all Floor Brokers would be subject to the same cap.

Technical Amendments

The Exchange's proposal to add certain titles within Options 7, Section 4 is reasonable, equitable and not unfairly discriminatory as the titles will assist market participants in locating certain pricing within Phlx's Options 7, Section 4 rule. The addition of these titles are non-substantive amendments.

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.

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 amendments do not impose an undue burden on intra-market

competition. In terms of intra-market competition, the Exchange does not believe that its proposals will place any category of market participant at a competitive disadvantage. The Exchange believes that the proposed QCC Rebate and QCC Rebate Growth Tier Rebates will encourage market participants to send a greater amount of electronic QCC orders and Floor QCC Orders to Phlx for execution in order to obtain greater rebates and lower their costs. Further, the proposed QCC Growth Tier Rebate should incentivize a greater amount of floor transactions on Phlx, thereby allowing Phlx to compete more effectively with other options floor models. The proposed Floor Broker Incentive Program should encourage Floor Brokers to send additional order flow to Phlx to obtain rebates and lower their costs. Any market participant may send an order to a Phlx Floor Broker for execution on Phlx's trading floor. The Exchange believes that the additional liquidity will enhance the quality of the Exchange's market and increase certain trading opportunities on the Exchange's trading floor for floor members.

QCC Rebates

Section A QCC Rebates

The Exchange's proposal to remove the existing QCC Rebate Schedule and replace those rebates with new rebates as well as a QCC Growth Tier Rebate does not impose an undue burden on competition because all members and member organizations may execute QCC rebates, electronically or on the Exchange's trading floor. The Exchange believes its proposal to offer these two new QCC Rebates does not impose an undue burden on competition because any market participant may qualify for a QCC Rebate provided they qualified for the QCC Rebate. Further, the Exchange's proposal which pays greater rebates where the two contra-parties to a QCC Order are not

Customers and Professionals does not impose an undue burden on competition because, today, the Exchange assesses greater fees to Lead Market Maker, Market Maker, Broker-Dealer and Firms for QCC Orders. Customers and Professionals are not assessed a QCC Transaction Fee, while all other market participants pay a QCC Transaction Fee of \$0.20 per contract. The Exchange's proposal to amend the QCC Rebate qualification such that all strategy executions (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread) will be excluded and, as proposed, will aggregate the applicable member or member organization qualifying QCC contract volume in a given month, excluding all strategy executions does not impose an undue burden on competition because the Exchange would uniformly apply the QCC Rebate qualifications as well as calculate the QCC Rebates.

Section B QCC Growth Tier Rebate

The Exchange's proposal to establish a new QCC Growth Tier Rebate does not impose an undue burden on competition, rather is it pro-competitive in that would serve to increase liquidity on Phlx, thus rendering Phlx a more attractive and vibrant venue to market participants. The QCC Growth Tier Rebate qualifications do not impose an undue burden on competition because all members and member organizations may qualify for the QCC Growth Tier Rebate.⁴² All members and member organizations may enter order flow to obtain a QCC Growth Tier Rebate. The Exchange's exclusion of strategy executions, cabinet transactions and Customer-to-Customer transactions does not

⁴² The Exchange notes that while all Phlx member organizations may transact an options business electronically or on the Exchange's trading floor, each member located on Phlx's trading floor must have an individual permit. Alternatively, Phlx members or member organizations may transact business on the trading floor through a Floor Broker.

impose an undue burden on competition as the qualifications for the QCC Growth Tier Rebate will be uniformly applied. The Exchange's proposal to utilize January 2023 as a baseline to add 250,000 or more contracts for the QCC Growth Tier Rebate and permit members or member organizations with no QCC transaction volume in January 2023, to add 250,000 or more contracts in a given month does not impose an undue burden on competition because the proposal is designed to increase participation in Phlx's trading floor and reward those members and member organizations for the unique role they play in ensuring a robust market. Further, the proposal is designed to encourage members and member organizations to substantially add liquidity to the trading floor. To the extent the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, the Exchange will experience improvements in market quality, which stands to benefit all floor members. The proposal considers any new volume for members and member organizations with no such volume for the month of January 2023 for those members and member organizations to qualify to receive the proposed QCC Growth Tier Rebate. This does not impose an undue burden on competition because the program is designed to attract additional liquidity from new members and member organizations to the Exchange. In turn, this additional liquidity should benefit all market participants through increased liquidity and order interaction. The Exchange's proposal to pay the QCC Growth Tier Rebates per Phlx House Account does not impose an undue burden on competition. Today, each Phlx member or member organization is required to establish one Phlx House Account with the Exchange's Membership Department. Only one Phlx House Account is required to transact business on Phlx.⁴³ A Phlx member or member

⁴³ The Exchange assesses a \$50.00 a month account fee for this account as provided

organization has the option of acquiring multiple Phlx House Accounts depending on a member's or member organization's business model and how they elect to organize their business. The Exchange's proposal to pay a \$0.20 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side and a \$0.26 per contract QCC Growth Tier Rebate on a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side does not impose an undue burden on competition because the Exchange will uniformly apply the qualifications and to pay the QCC Growth Tier Rebate. The Exchange's proposal to pay members and member organizations the greater of the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both QCC Rebates, does not impose an undue burden on competition because each of the Exchange's QCC rebates remain competitive with today's QCC Rebate and the Exchange would uniformly only pay the greater of the two QCC Rebates.

Monthly Firm Fee Cap

The Exchange's proposal to amend the Monthly Firm Fee Cap from \$150,000 to \$200,000 and assess a nominal fee of \$0.02 per capped contract once a Firm exceeds the Monthly Firm Fee Cap, instead of not assessing Firms any fee once the Monthly Firm Fee Cap is exceeded does not impose an undue burden on competition as other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or

for within Options 7, Section 8A.

non-Penny Symbols.⁴⁴ Customer liquidity benefits all market participants by providing more trading opportunities. 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. Today, Lead Market Makers and Market Makers are subject to a Monthly Market Maker Cap.⁴⁵ 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

⁴⁴ See Options 7, Section 4.

⁴⁵ See Options 7, Section 4. Lead Market Makers and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) is excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows: \$0.05 per contract Fee for Adding Liquidity in Penny Symbols; \$0.18 per contract Fee for Removing Liquidity in Penny Symbols; \$0.18 per contract in Non-Penny Symbols; and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (“COLA”). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

10,000 contracts per day in a given month.⁴⁶ Finally, today, Professional Floor Options Transaction Charges are less favorable than Customers but more favorable than Firms.⁴⁷ Additionally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because members and member organizations that are JBOs⁴⁸ could be subject to the Firm Related Equity Option Cap, as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not members or member organizations to seek to become members or member organizations to further reduce their transaction fees. Finally, other market participants may interact with the order flow submitted by Firms to Phlx to reach the cap. The Exchange's proposal to not assess the \$0.02 per contract transaction fee if no fee is charged or the fee is waived does not impose an undue burden on competition as the Exchange would uniformly not assess the transaction fee in this case.

Floor Transaction (Open Outcry) Floor Broker Incentive Program

The Exchange's proposal to create a new incentive program for Floor Brokers that is designed to attract order flow to Phlx's trading floor for execution in open outcry does not impose an undue burden on competition because the Exchange's program seeks to attract greater order flow to the Exchange. Other floor members may interact with the

⁴⁶ See Options 7, Section 4.

⁴⁷ See Options 7, Section 4.

⁴⁸ The term "Joint Back Office" or "JBO" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO is priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Options 6D, Section 1. See Options 7, Section 1(c).

order flow that Floor Brokers attract to Phlx's trading floor. The Exchange's proposal to exclude Floor QCC Orders, dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions as defined in this Options 7, Section 4; Firm Floor Options Transaction Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges); and Customer-to-Customer transactions from the Floor Transaction (Open Outcry) Floor Broker Incentive Program does not impose an undue burden on competition because the Exchange would uniformly apply the qualification criteria to calculate rebates. The Exchange's proposal to pay Floor Brokers rebates on qualifying open outcry volume at each of three threshold levels, with rebates ranging from \$0.03 to \$0.09 per contract, does not impose an undue burden on competition as the Exchange would uniformly calculate all qualifying volume and uniformly pay rebates associated with the Floor Transaction (Open Outcry) Floor Broker Incentive Program. The Exchange's proposal to cap rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program at \$1,000,000 per member or member organization in a given month does not impose an undue burden on competition as all Floor Brokers would be subject to the same cap.

Technical Amendments

The Exchange's proposal to add certain titles within Options 7, Section 4 does not impose an undue burden on competition as the titles will assist market participants in locating certain pricing within Phlx's Options 7, Section 4 rule. The addition of these titles are non-substantive amendments.

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,⁴⁹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed 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.

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

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

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Applicable portion of the Exchange's Pricing Schedule.

⁴⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2023-06)

February __, 2023

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 February 22, 2023, 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).”³

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.

³ On February 10, 2023, the Exchange withdrew SR-Phlx-2023-03 and replaced it with SR-Phlx-2023-05. On February 22, 2023, SR-Phlx-2023-05 was withdrawn and replaced with the instant filing.

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).” Specifically, Phlx proposes to: (1) to remove its current Qualified Contingent Cross (“QCC”) Rebate Schedule and propose a new QCC Rebate and QCC Growth Tier Rebate; (2) amend the Monthly Firm Fee Cap; and (3) propose a new Floor Transaction (Open Outcry) Floor Broker Incentive Program. Each change is described below.

QCC Rebates

Today, the Exchange assesses a \$.20 per contract QCC Transaction Fee for a Lead Market Maker,⁴ Market Maker,⁵ Firm⁶ and Broker-Dealer.⁷ Customers⁸ and

⁴ 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

Professionals⁹ are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to electronic QCC Orders¹⁰ and Floor QCC Orders.¹¹ Rebates are paid on all qualifying executed electronic QCC Orders and Floor QCC Orders based on the below QCC Rebate Schedule:¹²

-
- 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).
- ⁵ 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).
- ⁶ 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).
- ⁷ 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).
- ⁸ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("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).
- ⁹ 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).
- ¹⁰ Electronic QCC Orders are described in Options 3, Section 12.
- ¹¹ Floor QCC Orders are described in Options 8, Section 30(e).
- ¹² Volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short

QCC Rebate Schedule

Tier	Threshold	Rebate per Contract
Tier 1	0 to 999,999 contracts in a month	\$0.09
Tier 2	1,000,000 contracts or more in a month	\$0.20

The Exchange does not pay a QCC Rebate where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional; or (iv) a dividend, merger, short stock interest or reversal or conversion strategy execution (as defined in Options 7, Section 4).

The Exchange proposes to remove the existing QCC Rebate Schedule and replace those rebates with new QCC Rebates in new Section A as well as a QCC Growth Tier Rebate in new Section B. The Exchange proposes to insert a new title “QCC Transaction Fee” before the paragraph which describes QCC fees.

The Exchange proposes to add a new title “A. QCC Rebate” to describe its proposed QCC Rebates. The Exchange proposes to pay a QCC Rebate of \$0.12 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. The Exchange proposes to increase this rebate to \$0.17 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month. The Exchange also proposes to pay a new QCC Rebate of \$0.14 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-

stock interest or reversal or conversion strategy executions, is aggregated in determining the applicable volume tier.

Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. The Exchange proposes to increase this rebate to \$0.19 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month.

As is the case today, the two new proposed QCC rebates would be paid on all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; and (iii) Professional-to-Professional. Today, the Exchange excludes dividend, merger, short stock interest or reversal or conversion strategy executions, as defined in Options 7, Section 4, as qualifying transactions. At this time, the Exchange proposes to exclude all strategy executions within Options 7, Section 4, (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions) as qualifying transactions.

Further, as is the case today, volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short stock interest or reversal or conversion strategy executions, is aggregated in determining the applicable volume tier. With this proposed change, the Exchange would aggregate the applicable member or member organization qualifying QCC contract volume in a given month which includes volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions, as is the case today, and would exclude all strategy executions within Options 7, Section 4, (dividend, merger,

short stock interest, reversal and conversion, jelly roll, and box spread strategy executions) as qualifying transactions.

The Exchange notes that Customers and Professionals are not assessed a QCC Transaction Fee while all other market participants pay a QCC Transaction Fee of \$0.20 per contract. The Exchange proposes to pay greater rebates where the two contra-parties to a QCC Order are not Customers and Professionals as greater QCC transaction fees are being assessed to Lead Market Maker, Market Maker, Broker-Dealer or Firm orders. These QCC Rebates are intended to encourage Phlx members and member organizations to transact a greater number of QCC Orders on Phlx.

Additionally, the Exchange proposes to establish a new QCC Growth Tier Rebate and title that new section as “B. QCC Growth Tier Rebate”. This QCC Growth Tier Rebate is intended to encourage Phlx members and member organizations to transact a greater number of QCC Orders on Phlx. In order to qualify for the QCC Growth Tier Rebate, a member’s or member organization’s total floor transaction,¹³ and electronic QCC Orders and Floor QCC Orders volume (“QCC transaction volume”) must exceed 12,500,000 contracts in a given month. In addition to the aforementioned criteria, the member’s or member organization’s respective Phlx House Account¹⁴ must execute QCC

¹³ The term “floor transaction” is a transaction that is effected in open outcry on the Exchange’s trading floor. See Phlx Options 7, Section 1(c). Of note, the term “floor transaction” is more broadly defined than the term “Open Outcry Floor Transaction” which is discussed herein and is a subset of the term “floor transaction”.

¹⁴ Each Phlx member or member organization is required to establish one Phlx House Account with the Exchange’s Membership Department. Only one Phlx House Account is required to transact business on Phlx. The Exchange assesses a \$50.00 a month account fee for this account as provided for within Options 7, Section 8A. A Phlx member or member organization has the option of acquiring

transaction volume of 250,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 250,000 or more contracts in a given month.

The Exchange also proposes to offer an alternative qualification to achieve the QCC Growth Tier Rebate. A member's or member organization's Open Outcry Floor Transaction volume in a given month must exceed 500,000 contracts. In addition to the aforementioned criteria, a member's or member organization's respective Phlx House Account must execute QCC transaction volume of 2,500,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 2,500,000 or more contracts in a given month.

As proposed for the QCC Growth Tier Rebate, the term "Open Outcry Floor Transaction" includes all transactions executed in open outcry on Phlx's trading floor except: (1) dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions as defined in this Options 7, Section 4; (2) Cabinet Transactions as defined in Options 8, Section 33; and (3) Customer-to-Customer transactions.

The Exchange proposes to pay the QCC Growth Tier Rebates per Phlx House Account. The Exchange will pay a \$0.20 per contract QCC Growth Tier Rebate on a

multiple Phlx House Accounts depending on a member's or member organization's business model and how they elect to organize their business.

QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. Further, the Exchange will pay a \$0.26 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. Finally, members and member organizations will be entitled to one QCC Rebate in a given month, either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both.

The Exchange believes that the proposed QCC Rebates in proposed Section A and the proposed QCC Growth Tier Rebate in Section B will encourage market participants to send QCC orders to Phlx for execution in an effort to earn higher QCC Rebates.

The Exchange proposes to add a new title before the Monthly Market Maker Cap rule text which states, “Monthly Market Maker Cap”.

Monthly Firm Fee Cap

The Exchange proposes to add a new title prior to the paragraph which describes Phlx’s Monthly Firm Fee Cap which states, “Monthly Firm Fee Cap and Facilitation”.

Today, Firms are subject to a maximum fee of \$150,000 (“Monthly Firm Fee Cap”). Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month do not exceed the Monthly Firm Fee Cap per member or member organization provided such members or member organizations are trading in their own proprietary account. Today, the Monthly Firm Fee Cap and all dividend, merger, and short stock interest strategy executions; transactions in broad-based index options symbols listed within Options 7, Section 5.A are excluded from the Monthly

Firm Fee Cap. Today, reversal and conversion, jelly roll and box spread strategy executions and QCC Transaction Fees are included in the Monthly Firm Fee Cap.¹⁵

At this time, the Exchange proposes two changes to the Monthly Firm Fee Cap. First, the Exchange proposes to increase the Monthly Firm Fee Cap from \$150,000 to \$200,000. Second, instead of not assessing Firms any fee once the Monthly Firm Fee Cap is exceeded, the Exchange proposes to instead assess a nominal transaction fee of \$0.02 per capped contract once a Firm exceeds the Monthly Firm Fee Cap unless no fee¹⁶ is charged or the fee is waived.¹⁷ The Exchange proposes to amend the text within Options 7, Section 4 to state,

Firms are subject to a \$200,000 “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 that exceed the Monthly Firm Fee Cap per member or member organization, when such members or member organizations are trading in their own proprietary

¹⁵ Members and member organizations must notify the Exchange in writing of all accounts in which the member or member organization 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.

¹⁶ Today, Firms pay an electronic Options Transaction Charge of \$0.48 per contract in Penny Symbols for simple orders and \$0.40 per contract in Penny Symbols for complex orders. Also, Firms pay a Floor Options Transaction Charge of \$0.25 per contract in Penny Symbols. Today, Firms pay an electronic Options Transaction Charge of \$0.75 per contract in Non-Penny Symbols and a Floor Options Transactions Charge of \$0.25 per contract in Non-Penny Symbols. See Options 7, Section 4.

¹⁷ Today, the Firm Floor Options Transaction Charges is waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. See Options 7, Section 4.

account, will be subject to a reduced transaction fee of \$0.02 per capped contract unless there is no fee or the fee is waived.

While the Exchange would be increasing the cap as well as fees for Firms with this proposal, the Exchange believes that the Monthly Firm Fee Cap still serves to lower fees for Firms that transact certain qualifying volume on Phlx, thus enabling these Firms the ability to lower costs.

Additionally, the Exchange proposes to amend the types of strategy executions that will be included in the Monthly Firm Fee Cap. Today, dividend, merger, and short stock interest strategies are excluded from the Monthly Firm Fee Cap and reversal and conversion, jelly roll and box spread strategy executions are included in the Monthly Firm Fee Cap. At this time, the Exchange proposes to exclude all strategy executions from the Monthly Firm Fee Cap (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions).

Floor Transaction (Open Outcry) Floor Broker Incentive Program

The Exchange proposes to create a new incentive program for Floor Brokers¹⁸ that is designed to attract order flow to Phlx's trading floor for execution in open outcry. The Exchange proposes to pay Floor Broker certain rebates for transaction they execute on Phlx's trading floor in open outcry. The Exchange proposes to title this new section, "Floor Transaction (Open Outcry) Floor Broker Incentive Program".

The following floor transactions would not be subject to the rebates offered within the Floor Transaction (Open Outcry) Floor Broker Incentive Program: (1) Floor QCC

¹⁸ 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. See Phlx Options 7, Section 1(c).

Orders, as defined in Options 8, Section 30(e)¹⁹; (2) dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions as defined in this Options 7, Section 4; (3) Firm Floor Options Transactions Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges); and (4) Customer-to-Customer transactions.

The Exchange would pay Floor Transaction (Open Outcry) Floor Broker Incentive Program rebates on qualifying volume at each threshold level per the below schedule.

Qualifying Contracts	Per Contract Rebate
0 -5,000,000	\$0.03
5,000,001-10,000,000	\$0.06
Greater than 10,000,000	\$0.09

By way of example, a Floor Broker that executes floor transactions in a given month totaling 10,500,000 contracts will be paid \$0.03 for the first 5,000,000 floor transaction contracts (\$150,000), \$0.06 for the next 5,000,000 floor transaction contracts (\$300,000), and \$0.09 for the final 500,000 floor transaction contracts (\$45,000) for a total rebate of \$495,000 for that month. Further, as an additional clarifying example, if a Floor Broker executes a floor transaction in the amount of 1,000,000 contracts, represents both sides of the floor transaction, and executes the floor transaction as a crossing transaction pursuant to Options 8, Section 30(a) for 700,000 of the 1,000,000 contracts, then trades the remaining 300,000 contracts with the trading crowd, the Floor Transaction

¹⁹ Today, Floor QCC Orders are not transacted in open outcry. The Exchange proposes to include Floor QCC Orders in the list of exclusions to remind members and member organizations that Floor QCC Orders will not be paid the Floor Transaction (Open Outcry) Floor Broker Incentive Program rebate.

(Open Outcry) Floor Broker Incentive Program rebate for this transaction will be paid on the qualifying floor transaction volume of 1,000,000 contracts.

Finally, the Exchange proposes to cap rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program at \$1,000,000 per member or member organization in a given month.

The Exchange believes that the Floor Transaction (Open Outcry) Floor Broker Incentive Program will attract greater order flow to Phlx's trading floor.

Technical Amendments

The Exchange proposes to add a title before the rule text related to strategies which states, "Floor Originated Strategy Executions". The Exchange believes the proposed new titles throughout Options 7, Section 4 will assist market participants in locating certain pricing within this rule. The Exchange also proposes to adjust rule text within Options 7, Section 4 in the Strategies pricing to make clear that all dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions, as defined in this Options 7, Section 4, will be excluded from the Monthly Firm Fee Cap as proposed herein.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4) and (5).

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.”²²

Likewise, in NetCoalition v. Securities and Exchange Commission²³ (“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.²⁴ 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.”²⁵

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

²² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²³ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²⁴ See NetCoalition, at 534 - 535.

²⁵ Id. at 537.

where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”²⁶ 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.

QCC Rebates

Section A QCC Rebates

The Exchange’s proposal to remove the existing QCC Rebate Schedule and replace those rebates with new rebates as well as a QCC Growth Tier Rebate is reasonable because the Exchange proposes to offer its members and member organizations additional qualifications to obtain potentially greater QCC Rebates. The Exchange believes the opportunity to earn larger rebates will incentivize members and member organizations to execute a larger amount of floor transactions, QCC transaction volume, and Open Outcry Floor Transaction volume on Phlx’s trading floor. The Exchange’s proposal to remove the existing QCC Rebate Schedule and replace those rebates with new rebates as well as a QCC Growth Tier Rebate is equitable and not unfairly discriminatory because all members and member organizations may execute QCC trades, electronically or on the Exchange’s trading floor.

Today, the Exchange pays a \$0.09 QCC rebate for executing up to 999,999 QCC contracts in a month and a \$0.20 per contract QCC Rebate for executing 1,000,000 or more QCC contracts in a month. With the two new proposed QCC Rebates within Section A the Exchange offers to pay a QCC Rebate of \$0.12 per contract on electronic

²⁶ 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)).

QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. This proposed QCC Rebate is greater than the lowest tier QCC Rebate offered today (\$0.09 (old) vs. \$0.12 (new)). Additionally, the Exchange proposes to pay an increased QCC Rebate of \$0.17 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month which is less than the current QCC rebate for 1,000,000 or more contracts today (\$0.20 (old) vs. \$0.17 (new)). Additionally, depending on the contra-parties to the QCC Order, the Exchange would pay a \$0.14 per contract QCC Rebate on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. This rebate is also greater than the lowest tier QCC Rebate offered today (\$0.09 (old) vs. \$0.14 (new)). Additionally, the Exchange proposes to pay an increased QCC Rebate of \$0.19 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month which is less than the current QCC rebate for 1,000,000 or more contracts today (\$0.20 (old) vs. \$0.19 (new)). The Exchange believes that while some QCC Rebates are higher and some QCC Rebates are lower, the range of QCC Rebates offered by Phlx remains competitive and the Exchange believes these QCC Rebates will continue to attract QCC Orders to Phlx. The Exchange believes its proposal to offer these two new QCC Rebates is equitable and not unfairly discriminatory because

any market participant may qualify for a QCC Rebate provided they qualified for the QCC Rebate. Further, the Exchange's proposal which pays greater rebates where the two contra-parties to a QCC Order are not Customers and Professionals is equitable and not unfairly discriminatory because, today, the Exchange assesses greater fees to Lead Market Maker, Market Maker, Broker-Dealer and Firms for QCC Orders. Customers and Professionals are not assessed a QCC Transaction Fee, while all other market participants pay a QCC Transaction Fee of \$0.20 per contract.

The Exchange's proposal to amend the QCC Rebate qualifications such that all strategy executions (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread) will be excluded and, as proposed, will aggregate the applicable member or member organization qualifying QCC contract volume in a given month, excluding all strategy executions, is reasonable. Today, the Exchange offers strategy caps²⁷ for these strategy executions and, therefore, members and member organizations have the ability to pay no fees on strategy executions once the cap is met. The Exchange's proposal to amend the QCC Rebate qualification such that all strategy executions (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread) will be excluded and, as proposed, will aggregate the applicable member or member organization qualifying QCC contract volume in a given month, excluding all strategy executions is equitable and not unfairly discriminatory because the Exchange would uniformly apply the QCC Rebate qualifications as well as calculate the QCC

²⁷ Today, the Exchange offers certain strategy caps for dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions. To qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange's trading floor or as a Floor Qualified Contingent Cross Order. See Options 7, Section 4.

Rebates.

Section B QCC Growth Tier Rebate

The Exchange's proposal to establish a new QCC Growth Tier Rebate is reasonable because this rebate should provide additional incentives for members and member organizations to engage in substantial amounts of trading activity which would serve to bring additional open outcry liquidity to the trading floor and additional QCC Order Flow to Phlx. This incentive may also encourage members and member organizations to commence sending such order flow to Phlx for the opportunity to earn this rebate. Additionally, the Exchange's proposal to establish a new QCC Growth Tier Rebate is equitable and not unfairly discriminatory because any member or member organization may qualify for this rebate.

The Exchange's proposal offers member and member organizations two paths to qualify for a QCC Growth Tier Rebate. In the first instance, a member's or member organization's total floor transaction, and electronic QCC Orders and Floor QCC Orders volume ("QCC transaction volume") must exceed 12,500,000 contracts in a given month and the member's or member organization's respective Phlx House Account must execute QCC transaction volume of 250,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 250,000 or more contracts in a given month. In the second instance, a member's or member organization's Open Outcry Floor Transaction volume in a given month must exceed 500,000 contracts and a member's or member organization's respective Phlx House Account must execute

QCC transaction volume of 2,500,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 2,500,000 or more contracts in a given month. The Exchange believes that these qualifications are reasonable because they offer members and member organizations optional qualifications to achieve a QCC Growth Tier Rebate. Additionally, the Exchange believes that these qualifications are equitable and not unfairly discriminatory as all members and member organizations may qualify for the QCC Growth Tier Rebate.²⁸ All members and member organizations may enter order flow to obtain a QCC Growth Tier Rebate.

The Exchange's exclusion of strategy executions, cabinet transactions and Customer-to-Customer transactions is reasonable. Cabinet transactions and Customer-to-Customer transactions are excluded today from QCC Rebates. This proposal would exclude all strategy executions, which is a change from the current QCC Rebate exclusions which only excludes dividend, merger, short stock interest, and reversal or conversion strategies. Today, the Exchange offers strategy caps²⁹ for these types of open outcry transactions and, therefore, members and member organizations have the ability to

²⁸ The Exchange notes that while all Phlx member organizations may transact an options business electronically or on the Exchange's trading floor, each member located on Phlx's trading floor must have an individual permit. Alternatively, Phlx members or member organizations may transact business on the trading floor through a Floor Broker.

²⁹ Today, the Exchange offers certain strategy caps for dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions. To qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange's trading floor or as a Floor Qualified Contingent Cross Order. See Options 7, Section 4.

pay no fees on strategy executions once the cap is met. The Exchange's exclusion of strategy executions, cabinet transactions and Customer-to-Customer transactions are equitable and not unfairly discriminatory as the qualifications for the QCC Growth Tier Rebate will be uniformly applied.

The Exchange's proposal to utilize January 2023 as a baseline to add 250,000 or more contracts for the QCC Growth Tier Rebate and permit members or member organizations with no QCC transaction volume in January 2023, to add 250,000 or more contracts in a given month is reasonable as it will create an incentive for members and member organizations to bring liquidity to Phlx's trading floor relative to a benchmark. The Exchange believes that if the proposed incentive is effective, then any ensuing increase in trading activity on the Exchange will improve the quality of the market overall, to the benefit of all market participants. Further, it is reasonable to consider any new liquidity volume for members or member organizations who have no volume for the month of January 2023 for those members or member organizations to qualify to receive the proposed QCC Growth Tier Rebate because this program is designed to attract additional liquidity from new members and member organizations. To the extent this proposal attracts new members and member organization volume to the Exchange, all market participants should benefit through more trading opportunities. The Exchange's proposal to utilize January 2023 as a baseline to add 250,000 or more contracts for the QCC Growth Tier Rebate and permit members or member organizations with no QCC transaction volume in January 2023, to add 250,000 or more contracts in a given month is equitable and not unfairly discriminatory for the reasons which follow. The Exchange's proposal is designed to increase participation in Phlx's trading floor and reward those

members and member organizations for the unique role they play in ensuring a robust market. As discussed above, the proposal is designed to encourage members and member organizations to substantially execute additional volume on the trading floor. To the extent the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, the Exchange will experience improvements in market quality, which stands to benefit all floor members. The Exchange believes that it is equitable and not unfairly discriminatory to consider any new volume for members and member organizations with no such volume for the month of January 2023 for those members and member organizations to qualify to receive the proposed QCC Growth Tier Rebate because the program is designed to attract additional liquidity from new members and member organizations to the Exchange. In turn, this additional liquidity should benefit all market participants through increased liquidity and order interaction.

The Exchange's proposal to pay the QCC Growth Tier Rebates per Phlx House Account is reasonable, equitable and not unfairly discriminatory. Today, each Phlx member or member organization is required to establish one Phlx House Account with the Exchange's Membership Department. Only one Phlx House Account is required to transact business on Phlx.³⁰ A Phlx member or member organization has the option of acquiring multiple Phlx House Accounts depending on a member's or member organization's business model and how they elect to organize their business.

The Exchange's proposal to pay a \$0.20 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side and a \$0.26

³⁰ The Exchange assesses a \$50.00 a month account fee for this account as provided for within Options 7, Section 8A.

per contract QCC Growth Tier Rebate on a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side is reasonable because these rebates are both higher than the rebates offered today for QCC Rebates. Today, the QCC Rebate for Tier 1 is \$0.09 per contract and the QCC Rebate for Tier 2 is \$0.20 per contract. Further, the Exchange's proposal to pay greater rebates where both sides are not a Customer or a Professional is reasonable because, today, Customers and Professionals are not assessed a QCC Transaction Fee. Lead Market Makers, Market Makers, Broker-Dealers, and Firms pay a QCC Transaction Fee of \$0.20 per contract. The Exchange's proposal to pay a \$0.20 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side and a \$0.26 per contract QCC Growth Tier Rebate on a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side is equitable and not unfairly discriminatory because the Exchange will uniformly apply the qualifications and to pay the QCC Growth Tier Rebate.

The Exchange's proposal to pay members and member organizations the greater of the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both QCC Rebates, is reasonable, equitable and not unfairly discriminatory because each of the Exchange's QCC rebates remain competitive with today's QCC Rebate and the Exchange would uniformly only pay the greater of the two QCC Rebates.

Monthly Firm Fee Cap

The Exchange's proposal to amend the Monthly Firm Fee Cap from \$150,000 to \$200,000 and assess a nominal fee of \$0.02 per capped contract once a Firm exceeds the Monthly Firm Fee Cap, instead of not assessing Firms any fee once the Monthly Firm Fee Cap is exceeded is reasonable. While the Exchange would be increasing the cap as well as fees for Firms with this proposal, the Exchange believes that the Monthly Firm Fee Cap still serves to lower fees for Firms that transact certain qualifying volume on Phlx, thus enabling these firms the ability to lower costs. The Exchange believes that the Monthly Firm Fee Cap would continue to incentivize Firms to direct order flow to the Exchange to achieve the benefits of reducing their fees. The Exchange's proposal to not assess the \$0.02 per contract transaction fee if no fee³¹ is charged or the fee is waived³² is reasonable because the Exchange wants to ensure that members and member organizations get the most favorable incentive that they qualify for under its Pricing Schedule. The Exchange's proposal to amend the Monthly Firm Fee Cap from \$150,000 to \$200,000 and assess a nominal fee of \$0.02 per capped contract once a Firm exceeds

³¹ Today, Firms pay an electronic Options Transaction Charge of \$0.48 per contract in Penny Symbols for simple orders and \$0.40 per contract in Penny Symbols for complex orders. Also, Firms pay a Floor Options Transaction Charge of \$0.25 per contract in Penny Symbols. Today, Firms pay an electronic Options Transaction Charge of \$0.75 per contract in Non-Penny Symbols and a Floor Options Transactions Charge of \$0.25 per contract in Non-Penny Symbols. See Options 7, Section 4.

³² Today, the Firm Floor Options Transaction Charges is waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. See Options 7, Section 4.

the Monthly Firm Fee Cap, instead of not assessing Firms any fee once the Monthly Firm Fee Cap is exceeded is equitable and not unfairly discriminatory as other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols.³³ Customer liquidity benefits all market participants by providing more trading opportunities. 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. Today, Lead Market Makers and Market Makers are subject to a Monthly Market Maker Cap.³⁴ With respect to Broker-Dealers, today, the Exchange waives the Floor Options Transaction Charge for Broker-Dealers

³³ See Options 7, Section 4.

³⁴ See Options 7, Section 4. Lead Market Makers and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) is excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows: \$0.05 per contract Fee for Adding Liquidity in Penny Symbols; \$0.18 per contract Fee for Removing Liquidity in Penny Symbols; \$0.18 per contract in Non-Penny Symbols; and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (“COLA”). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

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.³⁵ Finally, today, Professional Floor Options Transaction Charges are less favorable than Customers but more favorable than Firms.³⁶ Additionally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because members and member organizations that are JBOs³⁷ could be subject to the Monthly Firm Fee Cap,³⁸ as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not members or member organizations to seek to become members or member organizations to further reduce their transaction fees. Finally, other market participants may interact with the order flow submitted by Firms to Phlx to reach the cap. The Exchange’s proposal to not assess the \$0.02 per contract transaction fee if no fee is charged or the fee is waived is equitable and not unfairly discriminatory as the Exchange would uniformly not assess the transaction fee in this case.

³⁵ See Options 7, Section 4.

³⁶ See Options 7, Section 4.

³⁷ The term “Joint Back Office” or “JBO” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO is priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (“JBO Broker”) subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Options 6D, Section 1. See Options 7, Section 1(c).

³⁸ Firms are subject to a Monthly Firm Fee Cap. See Options 7, Section 4.

The Exchange's proposal to amend the types of strategy executions that will be included in the Monthly Firm Fee Cap to exclude all strategy executions from the Monthly Firm Fee Cap is reasonable because the Exchange offers strategy caps³⁹ for these types of open outcry transactions and, therefore, members and member organizations have the ability to pay no fees on strategy executions once the cap is met. The Exchange's proposal to amend the types of strategy executions that will be included in the Monthly Firm Fee Cap to exclude all strategy executions from the Monthly Firm Fee Cap is equitable and not unfairly discriminatory because the Exchange would uniformly calculate qualifying transactions to arrive at the Monthly Firm Fee Cap.

Floor Transaction (Open Outcry) Floor Broker Incentive Program

The Exchange's proposal to create a new incentive program for Floor Brokers that is designed to attract order flow to Phlx's trading floor for execution in open outcry is reasonable, equitable and not unfairly discriminatory because the Exchange's program seeks to attract greater order flow to the Exchange's trading floor. The Exchange notes that other Phlx floor members may interact with orders exposed in open outcry on the Exchange's trading floor. Other floor members⁴⁰ may interact with the order flow that Floor Brokers attract to Phlx's trading floor.

The Exchange's proposal to exclude Floor QCC Orders, dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions as

³⁹ Today, the Exchange offers certain strategy caps for dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions. To qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange's trading floor or as a Floor Qualified Contingent Cross Order. See Options 7, Section 4.

⁴⁰ Floor members include all members who have acquired a permit to trade on Phlx's trading floor.

defined in this Options 7, Section 4; Firm Floor Options Transaction Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges); and Customer-to-Customer transactions from the Floor Transaction (Open Outcry) Floor Broker Incentive Program is reasonable. Within this proposal, the Exchange offers to pay significant QCC Rebates for Floor QCC Orders. As noted herein, with respect to strategy transactions, the Exchange offers strategy caps⁴¹ for these types of open outcry transactions and, therefore, members and member organizations have the ability to pay no fees on strategy executions once the cap is met. The Exchange is excluding Firm Floor Options Transaction Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges) because, today, Firm Floor Options Transaction Charges are waived pursuant to Options 7, Section 4. Finally, the Exchange is excluding Customer-to-Customer transaction as Customers are not subject to Options Transaction Charges within Options 7, Section 4. The Exchange's proposal to exclude Floor QCC Orders, dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions as defined in this Options 7, Section 4; Firm Floor Options Transaction Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction

⁴¹ Today, the Exchange offers certain strategy caps for dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions. To qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange's trading floor or as a Floor Qualified Contingent Cross Order. See Options 7, Section 4.

Charges); and Customer-to-Customer transactions from the Floor Transaction (Open Outcry) Floor Broker Incentive Program is equitable and not unfairly discriminatory because the Exchange would uniformly apply the qualification criteria to calculate rebates.

The Exchange's proposal to pay Floor Brokers rebates on qualifying open outcry volume at each of three threshold levels, with rebates ranging from \$0.03 to \$0.09 per contract, is reasonable because the Exchange believes that these rebates will serve to incentivize Floor Brokers to execute a greater number of orders in the Exchange's trading crowd. The Exchange's proposal to pay Floor Brokers rebates on qualifying open outcry volume at each of three threshold levels, with rebates ranging from \$0.03 to \$0.09 per contract, is equitable and not unfairly discriminatory as the Exchange would uniformly calculate all qualifying volume and uniformly pay rebates associated with the Floor Transaction (Open Outcry) Floor Broker Incentive Program.

The Exchange's proposal to cap rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program at \$1,000,000 per member or member organization in a given month is reasonable. The Exchange's program will pay Floor Brokers up to \$1,000,000 in rebates a month to incentivize them to bring additional order flow to the Exchange's trading crowd. The Exchange believes that the incentive, despite the cap, will attract order flow to Phlx. All other floor members may interact with that order flow. The Exchange's proposal to cap rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program at \$1,000,000 per member or member organization in a given month is equitable and not unfairly discriminatory as all Floor Brokers would be subject to the same cap.

Technical Amendments

The Exchange's proposal to add certain titles within Options 7, Section 4 is reasonable, equitable and not unfairly discriminatory as the titles will assist market participants in locating certain pricing within Phlx's Options 7, Section 4 rule. The addition of these titles are non-substantive amendments.

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 amendments do not impose an undue burden on intra-market

competition. In terms of intra-market competition, the Exchange does not believe that its proposals will place any category of market participant at a competitive disadvantage. The Exchange believes that the proposed QCC Rebate and QCC Rebate Growth Tier Rebates will encourage market participants to send a greater amount of electronic QCC orders and Floor QCC Orders to Phlx for execution in order to obtain greater rebates and lower their costs. Further, the proposed QCC Growth Tier Rebate should incentivize a greater amount of floor transactions on Phlx, thereby allowing Phlx to compete more effectively with other options floor models. The proposed Floor Broker Incentive Program should encourage Floor Brokers to send additional order flow to Phlx to obtain rebates and lower their costs. Any market participant may send an order to a Phlx Floor Broker for execution on Phlx's trading floor. The Exchange believes that the additional liquidity will enhance the quality of the Exchange's market and increase certain trading opportunities on the Exchange's trading floor for floor members.

QCC Rebates

Section A QCC Rebates

The Exchange's proposal to remove the existing QCC Rebate Schedule and replace those rebates with new rebates as well as a QCC Growth Tier Rebate does not impose an undue burden on competition because all members and member organizations may execute QCC rebates, electronically or on the Exchange's trading floor. The Exchange believes its proposal to offer these two new QCC Rebates does not impose an undue burden on competition because any market participant may qualify for a QCC Rebate provided they qualified for the QCC Rebate. Further, the Exchange's proposal which pays greater rebates where the two contra-parties to a QCC Order are not

Customers and Professionals does not impose an undue burden on competition because, today, the Exchange assesses greater fees to Lead Market Maker, Market Maker, Broker-Dealer and Firms for QCC Orders. Customers and Professionals are not assessed a QCC Transaction Fee, while all other market participants pay a QCC Transaction Fee of \$0.20 per contract. The Exchange's proposal to amend the QCC Rebate qualification such that all strategy executions (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread) will be excluded and, as proposed, will aggregate the applicable member or member organization qualifying QCC contract volume in a given month, excluding all strategy executions does not impose an undue burden on competition because the Exchange would uniformly apply the QCC Rebate qualifications as well as calculate the QCC Rebates.

Section B QCC Growth Tier Rebate

The Exchange's proposal to establish a new QCC Growth Tier Rebate does not impose an undue burden on competition, rather is it pro-competitive in that would serve to increase liquidity on Phlx, thus rendering Phlx a more attractive and vibrant venue to market participants. The QCC Growth Tier Rebate qualifications do not impose an undue burden on competition because all members and member organizations may qualify for the QCC Growth Tier Rebate.⁴² All members and member organizations may enter order flow to obtain a QCC Growth Tier Rebate. The Exchange's exclusion of strategy executions, cabinet transactions and Customer-to-Customer transactions does not

⁴² The Exchange notes that while all Phlx member organizations may transact an options business electronically or on the Exchange's trading floor, each member located on Phlx's trading floor must have an individual permit. Alternatively, Phlx members or member organizations may transact business on the trading floor through a Floor Broker.

impose an undue burden on competition as the qualifications for the QCC Growth Tier Rebate will be uniformly applied. The Exchange's proposal to utilize January 2023 as a baseline to add 250,000 or more contracts for the QCC Growth Tier Rebate and permit members or member organizations with no QCC transaction volume in January 2023, to add 250,000 or more contracts in a given month does not impose an undue burden on competition because the proposal is designed to increase participation in Phlx's trading floor and reward those members and member organizations for the unique role they play in ensuring a robust market. Further, the proposal is designed to encourage members and member organizations to substantially add liquidity to the trading floor. To the extent the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, the Exchange will experience improvements in market quality, which stands to benefit all floor members. The proposal considers any new volume for members and member organizations with no such volume for the month of January 2023 for those members and member organizations to qualify to receive the proposed QCC Growth Tier Rebate. This does not impose an undue burden on competition because the program is designed to attract additional liquidity from new members and member organizations to the Exchange. In turn, this additional liquidity should benefit all market participants through increased liquidity and order interaction. The Exchange's proposal to pay the QCC Growth Tier Rebates per Phlx House Account does not impose an undue burden on competition. Today, each Phlx member or member organization is required to establish one Phlx House Account with the Exchange's Membership Department. Only one Phlx House Account is required to transact business on Phlx.⁴³ A Phlx member or member

⁴³ The Exchange assesses a \$50.00 a month account fee for this account as provided

organization has the option of acquiring multiple Phlx House Accounts depending on a member's or member organization's business model and how they elect to organize their business. The Exchange's proposal to pay a \$0.20 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side and a \$0.26 per contract QCC Growth Tier Rebate on a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side does not impose an undue burden on competition because the Exchange will uniformly apply the qualifications and to pay the QCC Growth Tier Rebate. The Exchange's proposal to pay members and member organizations the greater of the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both QCC Rebates, does not impose an undue burden on competition because each of the Exchange's QCC rebates remain competitive with today's QCC Rebate and the Exchange would uniformly only pay the greater of the two QCC Rebates.

Monthly Firm Fee Cap

The Exchange's proposal to amend the Monthly Firm Fee Cap from \$150,000 to \$200,000 and assess a nominal fee of \$0.02 per capped contract once a Firm exceeds the Monthly Firm Fee Cap, instead of not assessing Firms any fee once the Monthly Firm Fee Cap is exceeded does not impose an undue burden on competition as other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or

for within Options 7, Section 8A.

non-Penny Symbols.⁴⁴ Customer liquidity benefits all market participants by providing more trading opportunities. 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. Today, Lead Market Makers and Market Makers are subject to a Monthly Market Maker Cap.⁴⁵ 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

⁴⁴ See Options 7, Section 4.

⁴⁵ See Options 7, Section 4. Lead Market Makers and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) is excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows: \$0.05 per contract Fee for Adding Liquidity in Penny Symbols; \$0.18 per contract Fee for Removing Liquidity in Penny Symbols; \$0.18 per contract in Non-Penny Symbols; and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (“COLA”). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

10,000 contracts per day in a given month.⁴⁶ Finally, today, Professional Floor Options Transaction Charges are less favorable than Customers but more favorable than Firms.⁴⁷ Additionally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because members and member organizations that are JBOs⁴⁸ could be subject to the Firm Related Equity Option Cap, as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not members or member organizations to seek to become members or member organizations to further reduce their transaction fees. Finally, other market participants may interact with the order flow submitted by Firms to Phlx to reach the cap. The Exchange's proposal to not assess the \$0.02 per contract transaction fee if no fee is charged or the fee is waived does not impose an undue burden on competition as the Exchange would uniformly not assess the transaction fee in this case.

Floor Transaction (Open Outcry) Floor Broker Incentive Program

The Exchange's proposal to create a new incentive program for Floor Brokers that is designed to attract order flow to Phlx's trading floor for execution in open outcry does not impose an undue burden on competition because the Exchange's program seeks to attract greater order flow to the Exchange. Other floor members may interact with the

⁴⁶ See Options 7, Section 4.

⁴⁷ See Options 7, Section 4.

⁴⁸ The term "Joint Back Office" or "JBO" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO is priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Options 6D, Section 1. See Options 7, Section 1(c).

order flow that Floor Brokers attract to Phlx's trading floor. The Exchange's proposal to exclude Floor QCC Orders, dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions as defined in this Options 7, Section 4; Firm Floor Options Transaction Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges); and Customer-to-Customer transactions from the Floor Transaction (Open Outcry) Floor Broker Incentive Program does not impose an undue burden on competition because the Exchange would uniformly apply the qualification criteria to calculate rebates. The Exchange's proposal to pay Floor Brokers rebates on qualifying open outcry volume at each of three threshold levels, with rebates ranging from \$0.03 to \$0.09 per contract, does not impose an undue burden on competition as the Exchange would uniformly calculate all qualifying volume and uniformly pay rebates associated with the Floor Transaction (Open Outcry) Floor Broker Incentive Program. The Exchange's proposal to cap rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program at \$1,000,000 per member or member organization in a given month does not impose an undue burden on competition as all Floor Brokers would be subject to the same cap.

Technical Amendments

The Exchange's proposal to add certain titles within Options 7, Section 4 does not impose an undue burden on competition as the titles will assist market participants in locating certain pricing within Phlx's Options 7, Section 4 rule. The addition of these titles are non-substantive amendments.

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.⁴⁹

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-2023-06 on the subject line.

⁴⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2023-06. 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-2023-06 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.⁵⁰

J. Matthew DeLesDernier
Assistant Secretary

⁵⁰ 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)

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QCC Transaction Fee

• 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).

A. QCC Rebates

• A QCC Rebate of \$0.12 per contract will be paid on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. This rebate will be \$0.17 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month.

• A QCC Rebate of \$0.14 per contract will be paid on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. This rebate will be \$0.19 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month.

➤ The above QCC Rebates [A rebate, as specified in the below QCC Rebate Schedule,] will be paid for all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), except where

the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional; or (iv) a dividend, merger, short stock interest, [or] reversal [or]and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4).

➤ Volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short stock interest, [or] reversal [or]and conversion, jelly roll, and box spread strategy executions, will be aggregated in determining the applicable [volume tier]member or member organization qualifying QCC contract volume in a given month.

◆ Members and member organizations will be entitled to one QCC Rebate in a given month, which would be the greater of the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both.

[QCC Rebate Schedule

Tier	Threshold	Rebate per Contract
Tier 1	0 to 999,999 contracts in a month	\$0.09
Tier 2	1,000,000 contracts or more in a month	\$0.20]

B. QCC Growth Tier Rebate

◆ To qualify for the QCC Growth Tier Rebate:

➤ a member's or member organization's total floor transaction and electronic QCC Orders and Floor QCC Orders volume ("QCC transaction volume") must exceed 12,500,000 contracts in a given month; and

➤ the member's or member organization's respective Phlx House Account must execute QCC transaction volume of 250,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 250,000 or more contracts in a given month;

or

➤ a member's or member organization's Open Outcry Floor Transaction volume in a given month must exceed 500,000 contracts; and

➤ a member's or member organization's respective Phlx House Account must execute QCC transaction volume of 2,500,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or

member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 2,500,000 or more contracts in a given month.

◆ “Open Outcry Floor Transaction” shall include all transactions executed in open outcry on Phlx’s trading floor except:

▪ Dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions as defined in this Options 7, Section 4; and

▪ Cabinet Transactions as defined in Options 8, Section 33; and

▪ Customer-to-Customer transactions.

◆ The below QCC Growth Tier Rebates will be paid per Phlx House Account per below:

▪ QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side will be paid a \$0.20 per contract QCC Growth Tier Rebate.

▪ QCC Order comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side will be paid a \$0.26 per contract QCC Growth Tier Rebate.

◆ Members and member organizations will be entitled to one QCC Rebate in a given month, which would be the greater of the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both.

Monthly Market Maker Cap

• Lead Market Makers and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The trading activity of separate Lead Market Maker and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows:

* * * * *

Monthly Firm Fee Cap and Facilitation

• Firms are subject to a [maximum fee of] \$[150,000]200,000 [(]“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 that [will not]exceed the Monthly Firm Fee Cap per member or member organization, when such members or member organizations are trading in their own proprietary account, will be subject to a reduced transaction fee of \$0.02 per capped contract unless there is no fee or the fee is waived.

➤ All dividend, merger, [and] short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Firm Fee Cap.

➤ Transactions in broad-based index options symbols listed within Options 7, Section 5.A. 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.

Members and member organizations must notify the Exchange in writing of all accounts in which the member or member organization 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.

* * * * *

• Proprietary orders of affiliates of member organizations (non-member organizations) that qualify for the Monthly Firm Fee Cap (“Qualifying Member Organization”) effected for purposes of hedging the proprietary over-the-counter trading of the Qualifying Member Organization or its affiliates will be included in calculating the Monthly Firm Fee Cap. Member organizations must notify the Exchange in writing of the account(s) designated for purposes of hedging the proprietary over-the-counter trading of the Qualifying Member Organization or its affiliates. The Exchange would require member organizations to segregate other orders from that of its affiliates for those orders to be eligible for the Monthly Firm Fee Cap. 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.

Floor Transaction (Open Outcry) Floor Broker Incentive Program

◆ Floor Brokers will be paid the below rebates for transactions executed on the trading floor, in open outcry, excluding the following transactions:

(1) Floor QCC Orders, as defined in Options 8, Section 30(e);

(2) dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions as defined in this Options 7, Section 4;

(3) Firm Floor Options Transactions for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges); and

(4) Customer-to-Customer transactions.

◆ Rebates will be paid on qualifying volume at each threshold level based on the below schedule.

<u>Qualifying Contracts</u>	<u>Per Contract Rebate</u>
<u>0 -5,000,000</u>	<u>\$0.03</u>
<u>5,000,001-10,000,000</u>	<u>\$0.06</u>
<u>Greater than 10,000,000</u>	<u>\$0.09</u>

Examples:

▪ A Floor Broker that executes floor transactions in a given month totaling 10,500,000 contracts will be paid \$0.03 for the first 5,000,000 floor transaction contracts (\$150,000), \$0.06 for the next 5,000,000 floor transaction contracts (\$300,000), and \$0.09 for the final 500,000 floor transaction contracts (\$45,000) for a total rebate of \$495,000 for that month.

▪ If a Floor Broker executes a floor transaction in the amount of 1,000,000 contracts, represents both sides of the floor transaction, and executes the floor transaction as a crossing transaction pursuant to Options 8, Section 30(a) for 700,000 of the 1,000,000 contracts, then trades the remaining 300,000 contracts with the trading crowd, the Floor Transaction (Open Outcry) Floor Broker Incentive Program rebate for this transaction will be paid on the qualifying floor transaction volume of 1,000,000 contracts.

◆ Rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program will be capped at \$1,000,000 per member or member organization in a given month.

Floor Originated Strategy Executions

Strategies Defined:

* * * * *

• Reversal and conversion, jelly roll and box spread strategy executions will not be included in the Monthly Strategy Cap for a Firm. [Reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) are included in the Monthly Firm Fee Cap.] All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Firm Fee Cap and the Monthly Market Maker Cap. Transactions in broad-based index options symbols listed within Options 7, Section 5.A. will be excluded from Strategy Cap pricing.

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