

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 54

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

File No. * SR 2023 - * 26

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

Contact Information

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

First Name * Angela Last Name * Dunn

Title * Principal Associate General Counsel

E-mail * Angela.Dunn@nasdaq.com

Telephone * (215) 496-5692 Fax

Signature

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

Date 06/13/2023


(Title *)

By John Zecca

EVP and Chief Legal Officer

(Name *)

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

 Date: 2023.06.13 12:11:49 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-Phlx-2023-26 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-2023-26 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-2023-26 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 its Pricing Schedule at Options 7: Section 1, General Provisions; Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY; and Section 6, Other Transaction Fees.³

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On June 2, 2023, the Exchange withdrew SR-Phlx-2023-20 and replaced it with SR-Phlx-2023-24. On June 5, 2023, the Exchange withdrew SR-Phlx-2023-24 and replaced it with SR-Phlx-2023-25. On June 13, 2023, the Exchange withdrew SR-Phlx-2023-25 and replaced it with the instant filing.

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

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

a. Purpose

The Exchange proposes to amend Phlx’s Pricing Schedule at Options 7: Section 1, General Provisions; Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY; and Section 6, Other Transaction Fees. Specifically, Phlx proposes to: (1) introduce new references in Options 7, Section 1; and (2) amend its Price Improvement XL (“PIXL”)⁴ pricing for both options overlying SPY and other options to provide more detail regarding the pricing of unrelated market or marketable interest and make other amendments to utilize the proposed references. Each change is described below.

Options 7, Section 1

The Exchange proposes to amend Options 7, Section 1(c) to introduce four new references: “Initiating Order”, “PIXL Auction Order”, “PIXL Order”, and “PIXL Response.”

The Exchange proposes to provide that the term “Initiating Order” is one-side of a PIXL Auction Order that represents principal or other interest which is paired with a PIXL Order.

⁴ A member may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker-dealer, or any other entity (“PIXL Order”) against principal interest or against any other order it represents as agent (an “Initiating Order”) provided it submits the PIXL Order for electronic execution into the PIXL Auction pursuant to Options 3, Section 13.

The Exchange proposes to provide that a “PIXL Auction Order” is a two-sided, paired order, comprised of a PIXL Order and an Initiating Order.

The Exchange proposes to provide that a “PIXL Order” is one-side of a PIXL Auction Order that represents an agency order on behalf a Public Customer, broker-dealer or other entity which is paired with an Initiating Order.

Finally, the Exchange proposes to provide that a “PIXL Response” is interest that executed against the PIXL Order pursuant to Options 3, Section 13.

The Exchange believes that these references will bring more transparency to Phlx’s PIXL pricing.⁵

Options 7, Section 3

The Exchange proposes to amend PIXL pricing for options overlying SPY in Options 7, Section 3, Part C. The Exchange proposes to replace the current text below with a proposed table. The current text of Options 7, Section 3, related to PIXL Executions in SPY, provides,

- Initiating Order: \$0.05 per contract. Members or member organizations that qualify for Options 7, Section 2, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap are eligible for a rebate of \$0.12 per contract for all SPY Complex PIXL Orders greater than 499 contracts when contra to an Initiating Order, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.
- When the PIXL Order is contra to the Initiating Order, a Customer PIXL Order will be assessed \$0.00 per contract and all other Non-Customer market participants will be assessed a \$0.38 per contract fee when contra to an Initiating Order.
- When the PIXL Order is contra to other than the Initiating Order, the PIXL Order will be assessed \$0.00 per contract, unless the PIXL Order is a Customer, in which case the Customer will receive a rebate of \$0.40 per contract.

⁵ The Exchange also proposes a technical amendment in Options 7, Section 1(c) to add a period to the end of the reference to “floor transaction.”

- All other Non-Customer contra parties to the PIXL Order that are not the Initiating Order will be assessed a Fee for Removing Liquidity of \$0.50 per contract or will receive the Rebate for Adding Liquidity. When the PIXL Order is contra to a Lead Market Maker or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order will not be eligible for a rebate.

In lieu of the current rule text, the Exchange proposes the below table.

<u>Type of Market Participant</u>	<u>PIXL Order executes against Initiating Order¹</u>		<u>PIXL Order executes against a PIXL Response or unrelated market or marketable interest</u>			
	<u>Initiating Order fee</u>	<u>PIXL Order fee</u>	<u>PIXL Order rebate</u>	<u>PIXL Order fee</u>	<u>PIXL Response or unrelated market or marketable interest received during a PIXL Auction fee</u>	<u>Unrelated market or marketable interest received prior to a PIXL Auction fee</u>
<u>Customer</u>	<u>\$0.05</u>	<u>\$0.00</u>	<u>\$0.40²</u>	<u>N/A</u>	<u>\$0.00</u>	<u>Options 7, Section 3, Part A Rebate for Adding Liquidity/ Options 7, Section 3, Part B Fee for Adding Liquidity</u>
<u>Non-Customer</u>	<u>\$0.05</u>	<u>\$0.38</u>	<u>N/A</u>	<u>\$0.00</u>	<u>\$0.50</u>	<u>Options 7, Section 3 Part A Rebate for Adding Liquidity/ Options 7, Section 3 Part B Fee for Adding Liquidity</u>

The current rule text in the first bullet states that the Initiating Order is \$0.05 per

contract. This fee currently applies to Customers⁶ and Non-Customers⁷ and is reflected in the proposed table in a manner consistent with the current rule text. The remainder of the sentence was relocated to footnote 1. The Exchange proposes to amend the original rule text by breaking the current sentence into two sentences and restating the rebate that will be paid by the Exchange for SPY Complex Orders in a succinct manner. This non-substantive amendment to new footnote 1 would provide,

A rebate of \$0.12 will be paid to members or member organizations that qualify for Options 7, Section 2, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap. The rebate will be paid on all SPY Complex PIXL Orders greater than 499 contracts when contra to an Initiating Order, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.

The current rule text in the second bullet applies to the scenario where the PIXL Order is contra to the Initiating Order. In this case, the Customer PIXL Order is assessed \$0.00 per contract and Non-Customer PIXL Orders are assessed a \$0.38 per contract fee. The proposed table reflects these current PIXL Order fees and does not substantively amend the rule text in this second bullet.

The current rule text in the third bullet applies to the scenario when the PIXL Order is contra to a PIXL Response or unrelated market or marketable interest. In this case, the PIXL Order is \$0.00 for Non-Customers and the Customer receives a rebate of

⁶ 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).

⁷ The term “Non-Customer” applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs. See Options 7, Section 1(c).

\$0.40 per contract. The proposed table reflects these current PIXL Order fees and does not substantively amend the rule text in this third bullet.

Finally, the current rule text in the fourth bullet provides that Non-Customer PIXL Responses or unrelated market or marketable interest that trades with a PIXL Order are assessed a Fee for Removing Liquidity of \$0.50 per contract. The Exchange notes that this fee is currently applicable to unrelated market or marketable interest that was received *during* the PIXL Auction. This fee is reflected in the proposed table but is not referred to as a Fee to Remove Liquidity, rather simply as a fee. The rule text states that Non-Customers could also receive a Rebate for Adding Liquidity, but such a rebate is not possible in this scenario as the PIXL Responses and unrelated market or marketable interest would be removing liquidity in this scenario. Because the Rebate for Adding Liquidity is not possible in this scenario, it is being removed. The last sentence of the final bullet is reflected in footnote 2 to the table and the language has been amended to replace the words “contra to” with “executed against.” Also, the word “unrelated” was added before Lead Market Maker or Market Maker quote because that interest would have been placed on the order book. The Exchange amended the language to clearly state “which was received prior to the PIXL Auction” instead of “established at the initiation of a PIXL auction.”⁸ The Exchange believes the proposed rule text adds clarity to understand the particular scenario.

The current rule text does not make clear the fee that a Customer PIXL Response or unrelated market or marketable interest, received *during* a PIXL Auction, would be assessed when that response or interest executes against a PIXL Order. Today, the

⁸ See Securities Exchange Act Release No. 80064 (February 24, 2017), 82 FR 11666 (February 24, 2017) (SR-Phlx-2017-15).

Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction is not assessed a fee in this scenario. The Exchange proposes to memorialize the \$0.00 per contract rate in this proposed table at this time to add transparency to the SPY PIXL pricing. This fee is not changing, rather it is being memorialized in the proposed table.

The Exchange notes that unrelated market or marketable interest received in SPY *during* a PIXL Auction is noted in the current rule text, other than the Customer PIXL Response or unrelated market or marketable interest described above. Today, unrelated market or marketable interest in SPY received *prior* to the PIXL Auction is subject to the simple order book pricing within Options 7, Section 3, Part A and the complex order book pricing within Options 7, Section 3, Part B. At this time, the Exchange proposes to memorialize this pricing in the proposed table. The Exchange applies the order book pricing within Options 7, Section 3, Parts A and B to interest received *prior to* the PIXL Auction, which is considered unrelated market or marketable interest for purposes of the PIXL Auction, because at the time the interest was submitted to the order book, the Phlx members and member organizations would have known⁹ that there was no ongoing PIXL Auction and would not expect to be subject to the PIXL pricing. Rather, these market participants would be subject to SPY order book pricing similar to all other orders entered into Phlx's order book. In contrast, the Exchange applies the SPY PIXL pricing

⁹ Phlx members and member organizations become aware of ongoing PIXL Auctions when Phlx disseminates a PIXL Auction Notification or "PAN." When the Exchange receives a PIXL Order for Auction processing, a PAN detailing the side and size and option series of the PIXL Order is sent over the Exchange's TOPO data feed pursuant to Options 3, Section 23(a)(1) and Specialized Quote Feed pursuant to Options 3, Section (a)(i)(B). See Phlx Options 3, Section 13(b)(1)(C).

within Options 7, Section 3 to the unrelated market or marketable interest that interest arrived *during* a PIXL Auction because Phlx seeks to incentivize members and member organizations to submit PIXL Auction Orders to receive a guaranteed execution and potential price improvement. Phlx members and member organizations submitting interest to the order book during a PIXL Auction are aware that they may be allocated in the PIXL Auction. The Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement. The pricing for unrelated market or marketable interest received *during* a PIXL Auction is not changing, this is the pricing being assessed today by Phlx.

Options 7, Section 6

The Exchange proposes to amend Options 7, Section 6.A, PIXL Pricing. The Exchange proposes to create paragraphs in lieu of the single block text within Options 7, Section 6.A which describes the Initiating Order, and demarcate each paragraph with a symbol. The Exchange is not otherwise amending that paragraph.

Next, the Exchange proposes to amend the rule text under the heading, “PIXL Order Executions in Options 7, Section 4, Multiply Listed Options (including ETFs, ETNs and indexes which are Multiply Listed):” The Exchange is amending the current rule text in the second bullet which currently states,

When a PIXL Order is contra to a PIXL Auction Responder, a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer

PIXL Orders will be assessed \$0.30 per contract in Penny Symbols or \$0.38 per contract in Non-Penny Symbols. A Responder that is a Lead Market Maker or a Market Maker will be assessed \$0.25 per contract in Penny Symbols or \$0.40 per contract in Non-Penny Symbols. Other Non-Customer Responders will be assessed \$0.48 per contract in Penny Symbols or \$0.70 per contract in Non-Penny Symbols when contra to a PIXL Order. A Responder that is a Customer will be assessed \$0.00 per contract in Penny Symbols and Non-Penny Symbols.

The Exchange proposes to create two separate bullets in lieu of this one bullet. The first bullet would provide,

When a PIXL Order executes against a PIXL Response or unrelated market or marketable interest received **during** a PIXL Auction, a Customer PIXL Order will be assessed \$0.00 per contract, and other Non-Customer PIXL Orders will be assessed \$0.30 per contract in Penny Symbols or \$0.38 per contract in Non-Penny Symbols.

In amending this sentence, the Exchange proposes to replace the words “is contra to” with “executes against.” Also, the Exchange proposes to replace the words “Auction Responder” with “PIXL Response or unrelated market or marketable interest received **during** a PIXL Auction.” Finally, the Exchange is adding an “and” in the sentence to make the sentence clear. These non-substantive changes utilize the references proposed within Options 7, Section 1. As amended, the second bullet would provide,

A PIXL Response or unrelated market or marketable interest received **during** a PIXL Auction from a Lead Market Maker or a Market Maker will be assessed \$0.25 per contract in Penny Symbols or \$0.40 per contract in Non-Penny Symbols. Other Non-Customer PIXL Responses and unrelated market or marketable interest received **during** a PIXL Auction will be assessed \$0.48 per contract in Penny Symbols or \$0.70 per contract in Non-Penny Symbols when contra to a PIXL Order. A PIXL Response or unrelated market or marketable interest received **during** a PIXL Auction from a Customer will be assessed \$0.00 per contract in Penny Symbols and Non-Penny Symbols.

Similar to the first bullet, the Exchange proposes to replace “Responder” with “PIXL

Response or unrelated market or marketable interest received **during** a PIXL Auction.”¹⁰

These non-substantive changes utilize the references proposed within Options 7, Section 1.

The Exchange is also amending the current rule text in the third bullet which currently states,

When a PIXL Order is contra to a resting order or quote a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer will be assessed \$0.30 per contract and the resting order or quote will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.

The Exchange proposes to create two separate bullets in lieu of this one bullet. The first bullet would provide,

When a PIXL Order is a Customer order and executes against unrelated market or marketable interest received **prior** to a PIXL Auction, the Customer order will be assessed \$0.00 per contract. Unrelated market or marketable interest received **prior** to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.

In amending this sentence, the Exchange proposes to replace the words “is contra to a resting order or quote” with “executes against unrelated market or marketable interest received prior to a PIXL Auction” and “PIXL Order” with “Customer PIXL Order.” Any order resting on the order book would have been received prior to the PIXL Auction. The Exchange also proposes to add a new sentence that states, “Unrelated market or marketable interest received **prior** to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.” Today, the rule text does not describe the manner in which the Exchange prices unrelated market or marketable interest received prior to the commencement of a PIXL Auction. This new sentence

¹⁰ The Exchange proposes other technical amendments for readability of the sentence.

memorializes the current pricing that Phlx members and member organizations are assessed for such interest, which is order book pricing. As amended, the second bullet would provide,

Non-Customer PIXL Orders will be assessed \$0.30 per contract when trading with an unrelated market or marketable interest received **prior** to the PIXL Auction and the unrelated market or marketable interest received **prior** to the PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.

The Exchange is adding the words “PIXL Order” after Non-Customer since it started a new sentence to retain the original reference to a PIXL Order at the beginning of the current sentence.¹¹ To add more context to this scenario, the Exchange is also noting that “when trading with an unrelated market or marketable interest received prior to the PIXL Auction” to make clear the type of interest trading with the Non-Customer PIXL Order. The Exchange is also replacing the phrase “resting order or quote” with “unrelated market or marketable interest received prior to the PIXL Auction.” These non-substantive amendments utilize the references within Options 7, Section 1. Also, of note, any order resting on the order book would have been received prior to the PIXL Auction.

As noted herein, the Exchange applies the order book pricing within Options 7, Section 4 to interest received *prior to* the PIXL Auction, which is considered unrelated market or marketable interest for purposes of the PIXL Auction, because at the time the interest was submitted to the order book, the Phlx members and member organizations would have known that there was no ongoing PIXL Auction and would not expect to be subject to the PIXL pricing. In contrast, the Exchange applies PIXL pricing within Options 7, Section 6 to the unrelated market or marketable interest when interest arrived

¹¹ The Exchange is also making other technical changes to start a new paragraph, removing “, other.”

during a PIXL Auction because Phlx seeks to incentivize members and member organizations to submit PIXL Auction Orders to receive a guaranteed execution, and potential price improvement. Phlx members and member organizations submitting interest to the order book during a PIXL Auction are aware that they may be allocated in the PIXL Auction. These market participants would be subject to order book pricing similar to all other orders entered into Phlx's order book. The Exchange assesses the PIXL pricing in Options 7, Section 6 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement.

The Exchange's pricing models for the order book and PIXL Auction each seek to attract liquidity to Phlx and reward members and member organizations differently for the order flow. To this end, the Exchange's pricing considers the manner in which orders interact with the PIXL Auction based on the timing of when the order entered the order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

b. Statutory Basis

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

¹² 15 U.S.C. 78f(b).

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 proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission¹⁴ (“NetCoalition”), the D.C. Circuit stated, “[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’”¹⁵

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing

¹³ 15 U.S.C. 78f(b)(4) and (5).

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

¹⁵ 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)).

context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

Options 7, Section 1

The Exchange's proposal to amend Options 7, Section 1(c) to introduce four new references: "Initiating Order", "PIXL Auction Order", "PIXL Order", and "PIXL Response" is reasonable, equitable and not unfairly discriminatory because these references will bring more transparency to Phlx's PIXL pricing and also apply in the same manner to all PIXL transactions executed on the Exchange.

Options 7, Section 3

The Exchange's proposal to amend PIXL pricing for options overlying SPY in Options 7, Section 3, Part C by replacing the current text below with a proposed table is reasonable, equitable and not unfairly discriminatory because the proposed table reflects the current pricing offered today on Phlx and adds transparency to that pricing. The proposed table does not amend the current rule text except to add the Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction, which is currently not described in the rule text, and to specify the pricing for unrelated market or marketable interest received *during* a PIXL Auction.

Assessing a SPY Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction is reasonable because the Exchange currently does not assess a Customer a PIXL Order fee when the PIXL Order trades against a PIXL Response or unrelated market or marketable interest. The Exchange believes that not assessing a fee will attract more SPY Customer liquidity to Phlx's PIXL Auction. The

proposed SPY Customer PIXL Response and unrelated market or marketable interest of \$0.00 per contract reflects the current rate assessed today to these participants.

Assessing a SPY Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction is equitable and not unfairly discriminatory because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Market Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Assessing unrelated market or marketable interest in SPY received *prior* to a PIXL Auction the simple order book pricing within Options 7, Section 3, Part A and the complex order book pricing within Options 7, Section 3, Part B is reasonable because at the time the interest was submitted to the order book, the Phlx members and member organizations would have known that there was no ongoing PIXL Auction and would not expect to be subject to the PIXL pricing. In contrast, applying SPY PIXL pricing within Options 7, Section 3 to the unrelated market or marketable interest that interest arrived *during* a PIXL Auction is reasonable because Phlx seeks to incentivize members and member organizations to submit PIXL Auction Orders to receive a guaranteed execution and potential price improvement. Phlx members and member organizations submitting interest to the order book during a PIXL Auction are aware that they may be allocated in the PIXL Auction. The Exchange's pricing models for the order book and PIXL Auction each seek to attract liquidity to Phlx and reward members and member organizations

differently for the order flow. To this end, the Exchange's pricing considers the manner in which orders interact with the PIXL Auction based on the timing of when the order entered the order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

Assessing unrelated market or marketable interest in SPY received *prior* to a PIXL Auction the simple order book pricing within Options 7, Section 3, Part A and the complex order book pricing within Options 7, Section 3, Part B is equitable and not unfairly discriminatory because all Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction will be uniformly assessed the applicable order book pricing for adding liquidity. The Exchange's proposal would treat Phlx members and member organizations who submitted unrelated market or marketable interest in SPY which rested on the order book *prior* to the commencement of a PIXL Auction in the same manner as other Phlx members and member organizations who posted liquidity on the order book as they would both be considered makers of liquidity. Conversely, the Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement.

The Exchange's proposal to amend the rule text in the last sentence of the final

bullet that is being relocated to footnote 2 to state “which was received prior to the PIXL Auction” instead of “established at the initiation of a PIXL auction” is reasonable, equitable and not unfairly discriminatory because the proposed new language continues to reflect the intent of the original language.¹⁶ The amended rule text makes clear that the Lead Market Maker or Market Maker quote that is being referenced would have been resting on the order book prior to the PIXL Order. Today, the rebate is paid to the PIXL Order where the Lead Market Maker or Market Maker executes against the PIXL Order portion of the paired order as a response. The Exchange would apply new footnote 2 uniformly to Customer PIXL Orders.

Options 7, Section 6

The Exchange’s proposal to amend Options 7, Section 6.A, PIXL Pricing to make technical non-substantive rule changes and replace certain text with the proposed references within Options 7, Section 1 is reasonable, equitable and not unfairly discriminatory as it will clarify and harmonize the current rule text by utilizing specified terms.

The Exchange’s proposal to add a new sentence that states, “Unrelated market or marketable interest received **prior** to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4,” is reasonable because the proposed rule text will describe the manner in which the Exchange prices unrelated market or marketable interest received prior to the commencement of a PIXL Auction. This new sentence memorializes the current pricing that Phlx members and member organizations are assessed for such interest, which is order book pricing. The Exchange applies the

¹⁶ See Securities Exchange Act Release No. 80064 (February 24, 2017), 82 FR 11666 (February 24, 2017) (SR-Phlx-2017-15).

order book pricing within Options 7, Section 4 to interest received *prior to* the PIXL Auction, which is considered unrelated market or marketable interest for purposes of the PIXL Auction, because at the time the interest was submitted to the order book, the Phlx members and member organizations would have known that there was no ongoing PIXL Auction and would not expect to be subject to the PIXL pricing. In contrast, the Exchange applies PIXL pricing within Options 7, Section 6 to the unrelated market or marketable interest when interest arrived *during* a PIXL Auction because Phlx seeks to incentivize Participants to submit PIXL Auction Orders to receive a guaranteed execution and potential price improvement. Phlx members and member organizations submitting interest to the order book during a PIXL Auction are aware that they may be allocated in the PIXL Auction. Additionally, the Exchange's pricing models for the order book and PIXL Auction each seek to attract liquidity to Phlx and reward members and member organizations differently for the order flow. To this end, the Exchange's pricing considers the manner in which orders interact with the PIXL Auction based on the timing of when the order entered the order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

The Exchange's proposal to add a new sentence that states, "Unrelated market or marketable interest received **prior** to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4," is equitable and not unfairly discriminatory because all Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior to* the commencement of a PIXL Auction will be uniformly assessed the applicable order book

pricing for adding liquidity. The Exchange's proposal would treat Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction in the same manner as other Phlx members and member organizations who posted liquidity on the order book as they would both be considered makers of liquidity. Conversely, the Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement.

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.

Intermarket 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 to initiate a price improvement auction. 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.

Intramarket Competition

The Exchange's proposal to amend Options 7, Section 1(c) to introduce four new references: "Initiating Order", "PIXL Auction Order", "PIXL Order", and "PIXL Response" does not impose an undue burden on competition because these references will apply in the same manner to all PIXL transactions executed on the Exchange.

Assessing a Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction does not impose an undue burden on competition because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Market Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Assessing unrelated market or marketable interest within Options 7, Section 3, related to SPY, that was received *prior* to a PIXL Auction the simple order book pricing within Options 7, Section 3, Part A and the complex order book pricing within Options 7, Section 3, Part B does not impose an undue burden on competition because all Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction

will be uniformly assessed the applicable order book pricing for adding liquidity. The Exchange's proposal would treat Phlx members and member organizations who submitted unrelated market or marketable interest in SPY which rested on the order book *prior* to the commencement of a PIXL Auction in the same manner as other Phlx members and member organizations who posted liquidity on the order book as they would both be considered makers of liquidity. Conversely, the Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement. The Exchange would apply new footnote 2 uniformly to Customer PIXL Orders.

The Exchange's proposal to add a new sentence that states, "Unrelated market or marketable interest received **prior** to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4," does not impose an undue burden on competition because all Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction will be uniformly assessed the applicable order book pricing for adding liquidity. The Exchange's proposal would treat Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction in the same manner as other Phlx members and member organizations who posted liquidity on the

order book as they would both be considered makers of liquidity. Conversely, the Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement.

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,¹⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2023-26)

June __, 2023

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on June 13, 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 its Pricing Schedule at Options 7: Section 1, General Provisions; Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY; and Section 6, Other Transaction Fees.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 June 2, 2023, the Exchange withdrew SR-Phlx-2023-20 and replaced it with SR-Phlx-2023-24. On June 5, 2023, the Exchange withdrew SR-Phlx-2023-24 and replaced it with SR-Phlx-2023-25. On June 13, 2023, the Exchange withdrew SR-Phlx-2023-25 and replaced it 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

The Exchange proposes to amend Phlx’s Pricing Schedule at Options 7: Section 1, General Provisions; Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY; and Section 6, Other Transaction Fees. Specifically, Phlx proposes to: (1) introduce new references in Options 7, Section 1; and (2) amend its Price Improvement XL (“PIXL”)⁴ pricing for both options overlying SPY and other options to provide more detail regarding the pricing of unrelated market or marketable interest and make other amendments to utilize the proposed references. Each change is described below.

Options 7, Section 1

The Exchange proposes to amend Options 7, Section 1(c) to introduce four new references: “Initiating Order”, “PIXL Auction Order”, “PIXL Order”, and “PIXL Response.”

⁴ A member may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker-dealer, or any other entity (“PIXL Order”) against principal interest or against any other order it represents as agent (an “Initiating Order”) provided it submits the PIXL Order for electronic execution into the PIXL Auction pursuant to Options 3, Section 13.

The Exchange proposes to provide that the term “Initiating Order” is one-side of a PIXL Auction Order that represents principal or other interest which is paired with a PIXL Order.

The Exchange proposes to provide that a “PIXL Auction Order” is a two-sided, paired order, comprised of a PIXL Order and an Initiating Order.

The Exchange proposes to provide that a “PIXL Order” is one-side of a PIXL Auction Order that represents an agency order on behalf a Public Customer, broker-dealer or other entity which is paired with an Initiating Order.

Finally, the Exchange proposes to provide that a “PIXL Response” is interest that executed against the PIXL Order pursuant to Options 3, Section 13.

The Exchange believes that these references will bring more transparency to Phlx’s PIXL pricing.⁵

Options 7, Section 3

The Exchange proposes to amend PIXL pricing for options overlying SPY in Options 7, Section 3, Part C. The Exchange proposes to replace the current text below with a proposed table. The current text of Options 7, Section 3, related to PIXL Executions in SPY, provides,

- Initiating Order: \$0.05 per contract. Members or member organizations that qualify for Options 7, Section 2, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap are eligible for a rebate of \$0.12 per contract for all SPY Complex PIXL Orders greater than 499 contracts when contra to an Initiating Order, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.

⁵ The Exchange also proposes a technical amendment in Options 7, Section 1(c) to add a period to the end of the reference to “floor transaction.”

- When the PIXL Order is contra to the Initiating Order, a Customer PIXL Order will be assessed \$0.00 per contract and all other Non-Customer market participants will be assessed a \$0.38 per contract fee when contra to an Initiating Order.
- When the PIXL Order is contra to other than the Initiating Order, the PIXL Order will be assessed \$0.00 per contract, unless the PIXL Order is a Customer, in which case the Customer will receive a rebate of \$0.40 per contract.
- All other Non-Customer contra parties to the PIXL Order that are not the Initiating Order will be assessed a Fee for Removing Liquidity of \$0.50 per contract or will receive the Rebate for Adding Liquidity. When the PIXL Order is contra to a Lead Market Maker or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order will not be eligible for a rebate.

In lieu of the current rule text, the Exchange proposes the below table.

<u>Type of Market Participant</u>	<u>PIXL Order executes against Initiating Order¹</u>		<u>PIXL Order executes against a PIXL Response or unrelated market or marketable interest</u>			
	<u>Initiating Order fee</u>	<u>PIXL Order fee</u>	<u>PIXL Order rebate</u>	<u>PIXL Order fee</u>	<u>PIXL Response or unrelated market or marketable interest received during a PIXL Auction fee</u>	<u>Unrelated market or marketable interest received prior to a PIXL Auction fee</u>
<u>Customer</u>	<u>\$0.05</u>	<u>\$0.00</u>	<u>\$0.40²</u>	<u>N/A</u>	<u>\$0.00</u>	<u>Options 7, Section 3, Part A Rebate for Adding Liquidity/ Options 7, Section 3, Part B Fee for Adding Liquidity</u>
<u>Non-Customer</u>	<u>\$0.05</u>	<u>\$0.38</u>	<u>N/A</u>	<u>\$0.00</u>	<u>\$0.50</u>	<u>Options 7, Section 3 Part A Rebate for Adding Liquidity/ Options 7, Section 3 Part</u>

						<u>B Fee for Adding Liquidity</u>
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The current rule text in the first bullet states that the Initiating Order is \$0.05 per contract. This fee currently applies to Customers⁶ and Non-Customers⁷ and is reflected in the proposed table in a manner consistent with the current rule text. The remainder of the sentence was relocated to footnote 1. The Exchange proposes to amend the original rule text by breaking the current sentence into two sentences and restating the rebate that will be paid by the Exchange for SPY Complex Orders in a succinct manner. This non-substantive amendment to new footnote 1 would provide,

A rebate of \$0.12 will be paid to members or member organizations that qualify for Options 7, Section 2, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap. The rebate will be paid on all SPY Complex PIXL Orders greater than 499 contracts when contra to an Initiating Order, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.

The current rule text in the second bullet applies to the scenario where the PIXL Order is contra to the Initiating Order. In this case, the Customer PIXL Order is assessed \$0.00 per contract and Non-Customer PIXL Orders are assessed a \$0.38 per contract fee. The proposed table reflects these current PIXL Order fees and does not substantively amend the rule text in this second bullet.

⁶ 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).

⁷ The term “Non-Customer” applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs. See Options 7, Section 1(c).

The current rule text in the third bullet applies to the scenario when the PIXL Order is contra to a PIXL Response or unrelated market or marketable interest. In this case, the PIXL Order is \$0.00 for Non-Customers and the Customer receives a rebate of \$0.40 per contract. The proposed table reflects these current PIXL Order fees and does not substantively amend the rule text in this third bullet.

Finally, the current rule text in the fourth bullet provides that Non-Customer PIXL Responses or unrelated market or marketable interest that trades with a PIXL Order are assessed a Fee for Removing Liquidity of \$0.50 per contract. The Exchange notes that this fee is currently applicable to unrelated market or marketable interest that was received *during* the PIXL Auction. This fee is reflected in the proposed table but is not referred to as a Fee to Remove Liquidity, rather simply as a fee. The rule text states that Non-Customers could also receive a Rebate for Adding Liquidity, but such a rebate is not possible in this scenario as the PIXL Responses and unrelated market or marketable interest would be removing liquidity in this scenario. Because the Rebate for Adding Liquidity is not possible in this scenario, it is being removed. The last sentence of the final bullet is reflected in footnote 2 to the table and the language has been amended to replace the words “contra to” with “executed against.” Also, the word “unrelated” was added before Lead Market Maker or Market Maker quote because that interest would have been placed on the order book. The Exchange amended the language to clearly state “which was received prior to the PIXL Auction” instead of “established at the initiation of a PIXL auction.”⁸ The Exchange believes the proposed rule text adds clarity to understand the particular scenario.

⁸ See Securities Exchange Act Release No. 80064 (February 24, 2017), 82 FR 11666 (February 24, 2017) (SR-Phlx-2017-15).

The current rule text does not make clear the fee that a Customer PIXL Response or unrelated market or marketable interest, received *during* a PIXL Auction, would be assessed when that response or interest executes against a PIXL Order. Today, the Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction is not assessed a fee in this scenario. The Exchange proposes to memorialize the \$0.00 per contract rate in this proposed table at this time to add transparency to the SPY PIXL pricing. This fee is not changing, rather it is being memorialized in the proposed table.

The Exchange notes that unrelated market or marketable interest received in SPY *during* a PIXL Auction is noted in the current rule text, other than the Customer PIXL Response or unrelated market or marketable interest described above. Today, unrelated market or marketable interest in SPY received *prior* to the PIXL Auction is subject to the simple order book pricing within Options 7, Section 3, Part A and the complex order book pricing within Options 7, Section 3, Part B. At this time, the Exchange proposes to memorialize this pricing in the proposed table. The Exchange applies the order book pricing within Options 7, Section 3, Parts A and B to interest received *prior to* the PIXL Auction, which is considered unrelated market or marketable interest for purposes of the PIXL Auction, because at the time the interest was submitted to the order book, the Phlx members and member organizations would have known⁹ that there was no ongoing PIXL

⁹ Phlx members and member organizations become aware of ongoing PIXL Auctions when Phlx disseminates a PIXL Auction Notification or “PAN.” When the Exchange receives a PIXL Order for Auction processing, a PAN detailing the side and size and option series of the PIXL Order is sent over the Exchange's TOPO data feed pursuant to Options 3, Section 23(a)(1) and Specialized Quote Feed pursuant to Options 3, Section (a)(i)(B). See Phlx Options 3, Section 13(b)(1)(C).

Auction and would not expect to be subject to the PIXL pricing. Rather, these market participants would be subject to SPY order book pricing similar to all other orders entered into Phlx's order book. In contrast, the Exchange applies the SPY PIXL pricing within Options 7, Section 3 to the unrelated market or marketable interest that interest arrived *during* a PIXL Auction because Phlx seeks to incentivize members and member organizations to submit PIXL Auction Orders to receive a guaranteed execution and potential price improvement. Phlx members and member organizations submitting interest to the order book during a PIXL Auction are aware that they may be allocated in the PIXL Auction. The Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement. The pricing for unrelated market or marketable interest received *during* a PIXL Auction is not changing, this is the pricing being assessed today by Phlx.

Options 7, Section 6

The Exchange proposes to amend Options 7, Section 6.A, PIXL Pricing. The Exchange proposes to create paragraphs in lieu of the single block text within Options 7, Section 6.A which describes the Initiating Order, and demarcate each paragraph with a symbol. The Exchange is not otherwise amending that paragraph.

Next, the Exchange proposes to amend the rule text under the heading, "PIXL Order Executions in Options 7, Section 4, Multiply Listed Options (including ETFs,

ETNs and indexes which are Multiply Listed):” The Exchange is amending the current rule text in the second bullet which currently states,

When a PIXL Order is contra to a PIXL Auction Responder, a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer PIXL Orders will be assessed \$0.30 per contract in Penny Symbols or \$0.38 per contract in Non-Penny Symbols. A Responder that is a Lead Market Maker or a Market Maker will be assessed \$0.25 per contract in Penny Symbols or \$0.40 per contract in Non-Penny Symbols. Other Non-Customer Responders will be assessed \$0.48 per contract in Penny Symbols or \$0.70 per contract in Non-Penny Symbols when contra to a PIXL Order. A Responder that is a Customer will be assessed \$0.00 per contract in Penny Symbols and Non-Penny Symbols.

The Exchange proposes to create two separate bullets in lieu of this one bullet. The first bullet would provide,

When a PIXL Order executes against a PIXL Response or unrelated market or marketable interest received **during** a PIXL Auction, a Customer PIXL Order will be assessed \$0.00 per contract, and other Non-Customer PIXL Orders will be assessed \$0.30 per contract in Penny Symbols or \$0.38 per contract in Non-Penny Symbols.

In amending this sentence, the Exchange proposes to replace the words “is contra to” with “executes against.” Also, the Exchange proposes to replace the words “Auction Responder” with “PIXL Response or unrelated market or marketable interest received **during** a PIXL Auction.” Finally, the Exchange is adding an “and” in the sentence to make the sentence clear. These non-substantive changes utilize the references proposed within Options 7, Section 1. As amended, the second bullet would provide,

A PIXL Response or unrelated market or marketable interest received **during** a PIXL Auction from a Lead Market Maker or a Market Maker will be assessed \$0.25 per contract in Penny Symbols or \$0.40 per contract in Non-Penny Symbols. Other Non-Customer PIXL Responses and unrelated market or marketable interest received **during** a PIXL Auction will be assessed \$0.48 per contract in Penny Symbols or \$0.70 per contract in Non-Penny Symbols when contra to a PIXL Order. A PIXL Response or unrelated market or marketable interest received **during** a PIXL Auction from a Customer will be assessed \$0.00 per contract in Penny Symbols and Non-Penny Symbols.

Similar to the first bullet, the Exchange proposes to replace “Responder” with “PIXL Response or unrelated market or marketable interest received **during** a PIXL Auction.”¹⁰

These non-substantive changes utilize the references proposed within Options 7, Section 1.

The Exchange is also amending the current rule text in the third bullet which currently states,

When a PIXL Order is contra to a resting order or quote a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer will be assessed \$0.30 per contract and the resting order or quote will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.

The Exchange proposes to create two separate bullets in lieu of this one bullet. The first bullet would provide,

When a PIXL Order is a Customer order and executes against unrelated market or marketable interest received **prior** to a PIXL Auction, the Customer order will be assessed \$0.00 per contract. Unrelated market or marketable interest received **prior** to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.

In amending this sentence, the Exchange proposes to replace the words “is contra to a resting order or quote” with “executes against unrelated market or marketable interest received prior to a PIXL Auction” and “PIXL Order” with “Customer PIXL Order.” Any order resting on the order book would have been received prior to the PIXL Auction. The Exchange also proposes to add a new sentence that states, “Unrelated market or marketable interest received **prior** to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.” Today, the rule text does not describe the manner in which the Exchange prices unrelated market or marketable

¹⁰ The Exchange proposes other technical amendments for readability of the sentence.

interest received prior to the commencement of a PIXL Auction. This new sentence memorializes the current pricing that Phlx members and member organizations are assessed for such interest, which is order book pricing. As amended, the second bullet would provide,

Non-Customer PIXL Orders will be assessed \$0.30 per contract when trading with an unrelated market or marketable interest received **prior** to the PIXL Auction and the unrelated market or marketable interest received **prior** to the PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.

The Exchange is adding the words “PIXL Order” after Non-Customer since it started a new sentence to retain the original reference to a PIXL Order at the beginning of the current sentence.¹¹ To add more context to this scenario, the Exchange is also noting that “when trading with an unrelated market or marketable interest received prior to the PIXL Auction” to make clear the type of interest trading with the Non-Customer PIXL Order. The Exchange is also replacing the phrase “resting order or quote” with “unrelated market or marketable interest received prior to the PIXL Auction.” These non-substantive amendments utilize the references within Options 7, Section 1. Also, of note, any order resting on the order book would have been received prior to the PIXL Auction.

As noted herein, the Exchange applies the order book pricing within Options 7, Section 4 to interest received *prior to* the PIXL Auction, which is considered unrelated market or marketable interest for purposes of the PIXL Auction, because at the time the interest was submitted to the order book, the Phlx members and member organizations would have known that there was no ongoing PIXL Auction and would not expect to be subject to the PIXL pricing. In contrast, the Exchange applies PIXL pricing within

¹¹ The Exchange is also making other technical changes to start a new paragraph, removing “, other.”

Options 7, Section 6 to the unrelated market or marketable interest when interest arrived *during* a PIXL Auction because Phlx seeks to incentivize members and member organizations to submit PIXL Auction Orders to receive a guaranteed execution, and potential price improvement. Phlx members and member organizations submitting interest to the order book during a PIXL Auction are aware that they may be allocated in the PIXL Auction. These market participants would be subject to order book pricing similar to all other orders entered into Phlx's order book. The Exchange assesses the PIXL pricing in Options 7, Section 6 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement.

The Exchange's pricing models for the order book and PIXL Auction each seek to attract liquidity to Phlx and reward members and member organizations differently for the order flow. To this end, the Exchange's pricing considers the manner in which orders interact with the PIXL Auction based on the timing of when the order entered the order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹³ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission¹⁴ (“NetCoalition”), the D.C. Circuit stated, “[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’”¹⁵

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

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

¹⁵ 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)).

services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

Options 7, Section 1

The Exchange's proposal to amend Options 7, Section 1(c) to introduce four new references: "Initiating Order", "PIXL Auction Order", "PIXL Order", and "PIXL Response" is reasonable, equitable and not unfairly discriminatory because these references will bring more transparency to Phlx's PIXL pricing and also apply in the same manner to all PIXL transactions executed on the Exchange.

Options 7, Section 3

The Exchange's proposal to amend PIXL pricing for options overlying SPY in Options 7, Section 3, Part C by replacing the current text below with a proposed table is reasonable, equitable and not unfairly discriminatory because the proposed table reflects the current pricing offered today on Phlx and adds transparency to that pricing. The proposed table does not amend the current rule text except to add the Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction, which is currently not described in the rule text, and to specify the pricing for unrelated market or marketable interest received *during* a PIXL Auction.

Assessing a SPY Customer PIXL Response or unrelated market or marketable

interest received *during* a PIXL Auction is reasonable because the Exchange currently does not assess a Customer a PIXL Order fee when the PIXL Order trades against a PIXL Response or unrelated market or marketable interest. The Exchange believes that not assessing a fee will attract more SPY Customer liquidity to Phlx's PIXL Auction. The proposed SPY Customer PIXL Response and unrelated market or marketable interest of \$0.00 per contract reflects the current rate assessed today to these participants.

Assessing a SPY Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction is equitable and not unfairly discriminatory because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Market Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Assessing unrelated market or marketable interest in SPY received *prior* to a PIXL Auction the simple order book pricing within Options 7, Section 3, Part A and the complex order book pricing within Options 7, Section 3, Part B is reasonable because at the time the interest was submitted to the order book, the Phlx members and member organizations would have known that there was no ongoing PIXL Auction and would not expect to be subject to the PIXL pricing. In contrast, applying SPY PIXL pricing within Options 7, Section 3 to the unrelated market or marketable interest that interest arrived *during* a PIXL Auction is reasonable because Phlx seeks to incentivize members and member organizations to submit PIXL Auction Orders to receive a guaranteed execution

and potential price improvement. Phlx members and member organizations submitting interest to the order book during a PIXL Auction are aware that they may be allocated in the PIXL Auction. The Exchange's pricing models for the order book and PIXL Auction each seek to attract liquidity to Phlx and reward members and member organizations differently for the order flow. To this end, the Exchange's pricing considers the manner in which orders interact with the PIXL Auction based on the timing of when the order entered the order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

Assessing unrelated market or marketable interest in SPY received *prior* to a PIXL Auction the simple order book pricing within Options 7, Section 3, Part A and the complex order book pricing within Options 7, Section 3, Part B is equitable and not unfairly discriminatory because all Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction will be uniformly assessed the applicable order book pricing for adding liquidity. The Exchange's proposal would treat Phlx members and member organizations who submitted unrelated market or marketable interest in SPY which rested on the order book *prior* to the commencement of a PIXL Auction in the same manner as other Phlx members and member organizations who posted liquidity on the order book as they would both be considered makers of liquidity. Conversely, the Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL

Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement.

The Exchange's proposal to amend the rule text in the last sentence of the final bullet that is being relocated to footnote 2 to state "which was received prior to the PIXL Auction" instead of "established at the initiation of a PIXL auction" is reasonable, equitable and not unfairly discriminatory because the proposed new language continues to reflect the intent of the original language.¹⁶ The amended rule text makes clear that the Lead Market Maker or Market Maker quote that is being referenced would have been resting on the order book prior to the PIXL Order. Today, the rebate is paid to the PIXL Order where the Lead Market Maker or Market Maker executes against the PIXL Order portion of the paired order as a response. The Exchange would apply new footnote 2 uniformly to Customer PIXL Orders.

Options 7, Section 6

The Exchange's proposal to amend Options 7, Section 6.A, PIXL Pricing to make technical non-substantive rule changes and replace certain text with the proposed references within Options 7, Section 1 is reasonable, equitable and not unfairly discriminatory as it will clarify and harmonize the current rule text by utilizing specified terms.

The Exchange's proposal to add a new sentence that states, "Unrelated market or marketable interest received **prior** to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4," is reasonable because the proposed

¹⁶ See Securities Exchange Act Release No. 80064 (February 24, 2017), 82 FR 11666 (February 24, 2017) (SR-Phlx-2017-15).

rule text will describe the manner in which the Exchange prices unrelated market or marketable interest received prior to the commencement of a PIXL Auction. This new sentence memorializes the current pricing that Phlx members and member organizations are assessed for such interest, which is order book pricing. The Exchange applies the order book pricing within Options 7, Section 4 to interest received *prior to* the PIXL Auction, which is considered unrelated market or marketable interest for purposes of the PIXL Auction, because at the time the interest was submitted to the order book, the Phlx members and member organizations would have known that there was no ongoing PIXL Auction and would not expect to be subject to the PIXL pricing. In contrast, the Exchange applies PIXL pricing within Options 7, Section 6 to the unrelated market or marketable interest when interest arrived *during* a PIXL Auction because Phlx seeks to incentivize Participants to submit PIXL Auction Orders to receive a guaranteed execution and potential price improvement. Phlx members and member organizations submitting interest to the order book during a PIXL Auction are aware that they may be allocated in the PIXL Auction. Additionally, the Exchange's pricing models for the order book and PIXL Auction each seek to attract liquidity to Phlx and reward members and member organizations differently for the order flow. To this end, the Exchange's pricing considers the manner in which orders interact with the PIXL Auction based on the timing of when the order entered the order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

The Exchange's proposal to add a new sentence that states, "Unrelated market or marketable interest received **prior** to a PIXL Auction will be assessed the appropriate

Options Transaction Charge in Options 7, Section 4,” is equitable and not unfairly discriminatory because all Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction will be uniformly assessed the applicable order book pricing for adding liquidity. The Exchange’s proposal would treat Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction in the same manner as other Phlx members and member organizations who posted liquidity on the order book as they would both be considered makers of liquidity. Conversely, the Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement.

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.

Intermarket 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 to initiate a price improvement auction.

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.

Intramarket Competition

The Exchange's proposal to amend Options 7, Section 1(c) to introduce four new references: "Initiating Order", "PIXL Auction Order", "PIXL Order", and "PIXL Response" does not impose an undue burden on competition because these references will apply in the same manner to all PIXL transactions executed on the Exchange.

Assessing a Customer PIXL Response or unrelated market or marketable interest received *during* a PIXL Auction does not impose an undue burden on competition because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Market Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Assessing unrelated market or marketable interest within Options 7, Section 3, related to SPY, that was received *prior* to a PIXL Auction the simple order book pricing

within Options 7, Section 3, Part A and the complex order book pricing within Options 7, Section 3, Part B does not impose an undue burden on competition because all Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction will be uniformly assessed the applicable order book pricing for adding liquidity. The Exchange's proposal would treat Phlx members and member organizations who submitted unrelated market or marketable interest in SPY which rested on the order book *prior* to the commencement of a PIXL Auction in the same manner as other Phlx members and member organizations who posted liquidity on the order book as they would both be considered makers of liquidity. Conversely, the Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement. The Exchange would apply new footnote 2 uniformly to Customer PIXL Orders.

The Exchange's proposal to add a new sentence that states, "Unrelated market or marketable interest received **prior** to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4," does not impose an undue burden on competition because all Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction will be uniformly assessed the applicable order book

pricing for adding liquidity. The Exchange's proposal would treat Phlx members and member organizations who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PIXL Auction in the same manner as other Phlx members and member organizations who posted liquidity on the order book as they would both be considered makers of liquidity. Conversely, the Exchange assesses the SPY PIXL pricing within Options 7, Section 3 in the same manner that responders to the PIXL Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PIXL Auction would be uniformly subject to the same fees as those Phlx members and member organizations who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement.

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.¹⁷

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

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2023-26 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2023-26. 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-2023-26 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 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 1 General Provisions

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

* * * * *

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

The term “**Initiating Order**” is one-side of a PIXL Auction Order that represents principal or other interest which is paired with a PIXL Order.

* * * * *

The term “**Non-Customer**” applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs.

The term “**PIXL Auction Order**” is a two-sided, paired order, comprised of a PIXL Order and an Initiating Order.

The term “**PIXL Order**” is one-side of a PIXL Auction Order that represents an agency order on behalf a Public Customer, broker-dealer or other entity which is paired with an Initiating Order.

The term “**PIXL Response**” is interest that executed against the PIXL Order pursuant to Options 3, Section 13.

* * * * *

Section 3. Rebates and Fees for Adding and Removing Liquidity in SPY

* * * * *

Part C. The following will apply to fees in Parts A and B:

* * * * *

PIXL Executions in SPY (per contract):

[• Initiating Order: \$0.05 per contract. Members or member organizations that qualify for Options 7, Section 2, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap are eligible for a rebate of \$0.12 per contract for all SPY Complex PIXL Orders greater than 499 contracts when contra to an Initiating Order, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.]

[• When the PIXL Order is contra to the Initiating Order, a Customer PIXL Order will be assessed \$0.00 per contract and all other Non-Customer market participants will be assessed a \$0.38 per contract fee when contra to an Initiating Order.]

[• When the PIXL Order is contra to other than the Initiating Order, the PIXL Order will be assessed \$0.00 per contract, unless the PIXL Order is a Customer, in which case the Customer will receive a rebate of \$0.40 per contract.]

[• All other Non-Customer contra parties to the PIXL Order that are not the Initiating Order will be assessed a Fee for Removing Liquidity of \$0.50 per contract or will receive the Rebate for Adding Liquidity. When the PIXL Order is contra to a Lead Market Maker or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order will not be eligible for a rebate.]

<u>Type of Market Participant</u>	<u>PIXL Order executes against Initiating Order¹</u>		<u>PIXL Order executes against a PIXL Response or unrelated market or marketable interest</u>			
	<u>Initiating Order fee</u>	<u>PIXL Order fee</u>	<u>PIXL Order rebate</u>	<u>PIXL Order fee</u>	<u>PIXL Response or unrelated market or marketable interest received during a PIXL Auction fee</u>	<u>Unrelated market or marketable interest received prior to a PIXL Auction fee</u>
<u>Customer</u>	<u>\$0.05</u>	<u>\$0.00</u>	<u>\$0.40²</u>	<u>N/A</u>	<u>\$0.00</u>	<u>Options 7, Section 3,</u>

						<u>Part A Rebate for Adding Liquidity/ Options 7, Section 3, Part B Fee for Adding Liquidity</u>
<u>Non-Customer</u>	<u>\$0.05</u>	<u>\$0.38</u>	<u>N/A</u>	<u>\$0.00</u>	<u>\$0.50</u>	<u>Options 7, Section 3 Part A Rebate for Adding Liquidity/ Options 7, Section 3 Part B Fee for Adding Liquidity</u>

¹ A rebate of \$0.12 per contract will be paid to members or member organizations that qualify for Options 7, Section 2, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap. The rebate will be paid on all SPY Complex PIXL Orders greater than 499 contracts when contra to an Initiating Order, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.

² When a PIXL Order executes against an unrelated Lead Market Maker or Market Maker quote, which was received prior to the PIXL Auction, a Customer PIXL Order will not receive a rebate.

* * * * *

Section 6. Other Transaction Fees

A. PIXL Pricing*

*Options overlying broad-based index options symbols listed within Options 7, Section 5.A. are not subject to Options 7, Section 6.A. PIXL Pricing, Options 7, Section 5.A pricing applies to these broad-based options symbols.

Initiating Order \$0.07 per contract.
(Options 7, Section 4)

➤ If the member or member organization qualifies for the Tier 3, 4 or 5 Customer Rebate in Options 7, Section 2 the member or member organization will be assessed \$0.05 per contract.

➤ If the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month, the member or member organization will be assessed \$0.00 per contract for Complex PIXL Orders.

➤ Any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier 4 or 5 in Options 7, Section 2, or executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month will receive one of the PIXL Initiating Order discounts as described above.

➤ Members or member organizations that qualify for Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap are eligible for a rebate of \$0.12 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts when contra to an Initiating Order, provided the member executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.

PIXL Order Executions in Options 7, Section 4 Multiply Listed Options (including ETFs, ETNs and indexes which are Multiply Listed):

- When the PIXL Order is contra to the Initiating Order a Customer PIXL Order will be assessed \$0.00 per contract and Non-Customer PIXL Orders will be assessed \$0.30 per contract.
- When a PIXL Order [is contra to]executes against a PIXL Response or unrelated market or marketable interest received **during** a PIXL Auction[Auction Responder], a Customer PIXL Order will be assessed \$0.00 per contract, and other Non-Customer PIXL Orders will be assessed \$0.30 per contract in Penny Symbols or \$0.38 per contract in Non-Penny Symbols.
- A PIXL Response or unrelated market or marketable interest received **during** a PIXL Auction from[Responder that is] a Lead Market Maker or a Market Maker will be assessed \$0.25 per contract in Penny Symbols or \$0.40 per contract in Non-Penny Symbols. Other Non-Customer [Responders]PIXL Responses and unrelated market or marketable interest received **during** a PIXL Auction will be assessed

\$0.48 per contract in Penny Symbols or \$0.70 per contract in Non-Penny Symbols when contra to a PIXL Order. A [Responder that is] PIXL Response or unrelated market or marketable interest received **during** a PIXL Auction from a Customer will be assessed \$0.00 per contract in Penny Symbols and Non-Penny Symbols.

- When a PIXL Order [is contra to a resting order or quote] is a Customer order and executes against unrelated market or marketable interest received **prior** to a PIXL Auction, the Customer PIXL Order will be assessed \$0.00 per contract. Unrelated market or marketable interest received **prior** to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.
- [, other] Non-Customer PIXL Orders will be assessed \$0.30 per contract when trading with an unrelated market or marketable interest received **prior** to the PIXL Auction and the [resting order or quote] unrelated market or marketable interest received **prior** to a PIXL Auction will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.

* * * * *