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Page 1 of * 32

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

File No. * SR 2023 - * 36

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 Options 7, Section 4

Contact Information

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

First Name * Angela Last Name * Dunn

Title * Principal Associate General Counsel

E-mail * Angela.Dunn@Nasdaq.com

Telephone * (215) 496-5692 Fax

Signature

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

Date 08/10/2023


(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: 2023.08.10 14:53:36 -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-2023-36 19b-4.docx

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-2023-36 Exhibit 1.docx

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

Add Remove View

SR-Phlx-2023-36 Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

Add Remove View

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

1. Text of the Proposed Rule Change

(a) Nasdaq PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Phlx’s Pricing Schedule at Options 7, Section 4, “Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A).”³

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

Angela Saccomandi Dunn
Principal Associate General Counsel
Nasdaq, Inc.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On August 2, 2023, SR-Phlx-2023-32 was withdrawn and replaced with SR-Phlx-2023-33. On August 10, 2023, SR-Phlx-2023-33 was withdrawn and replaced with the instant filing.

215-496-5692

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

a. Purpose

Phlx proposes to amend its Pricing Schedule at Options 7, Section 4, "Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A)." Specifically, Phlx proposes to amend its Qualified Contingent Cross ("QCC") Rebates in Section A, and remove the expired QCC Growth Tier Rebate in Section B of Options 7, Section 4.

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

⁴ The term "Lead Market Maker" applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 7, Section 1(c). The term "Floor Lead Market Maker" is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange's trading floor. See Options 8, Section 2(a)(3).

⁵ The term "Market Maker" is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers. See Options 7, Section 1(c). The term "Floor Market Maker" is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. See Options 8, Section 2(a)(4).

⁶ The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. See Options 7, Section 1(c).

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

⁸ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(b)(45)). See Options 7, Section 1(c).

Professionals⁹ are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to electronic QCC Orders¹⁰ and Floor QCC Orders.¹¹

Part A: QCC Rebates

Today, in Part A of Options 7, Section 4, the Exchange describes several QCC Rebates. Today, the Exchange pays a QCC Rebate of \$0.12 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. Today, the Exchange also pays a rebate of \$0.17 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month. Additionally, today, the Exchange pays a QCC Rebate of \$0.14 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. Today, the Exchange pays a rebate to \$0.19 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month.

⁹ The term “Professional” applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Options 7, Section 1(c).

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

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

Today, these QCC rebates are paid on all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional or (iv) a dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4). Further, today, volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short stock interest or reversal or conversion strategy executions, is aggregated in determining the applicable member or member organization qualifying QCC contract volume in a given month. Finally, today, members and member organizations are entitled to one QCC Rebate in a given month, which would be the greater of the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both.

Proposal

At this time, the Exchange proposes to offer two QCC Rebates in addition to the current QCC Rebates described above. The Exchange proposes to pay a rebate of \$0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, in the event that a member or member organization executes (1) greater than 1,000,000 qualifying QCC contracts in a given month; (2) Floor Originated Strategy¹²

¹² Floor Originated Strategy Executions are defined as a dividend, merger, short stock interest, reversal and conversion, jelly roll or box spread strategy as described in Options 7, Section 4. The Exchange proposes to add this defined term in the Pricing Schedule at Part A of Options 7, Section 4.

Executions in excess of 3,500,000 contracts in a given month; and (3) at least 40% of the member or member organization's QCC executed contracts in that month are comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.

Additionally, the Exchange proposes to pay a rebate of \$0.27 per contract, when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, in the event that a member or member organization executes: (1) greater than 1,000,000 qualifying QCC contracts in a given month; (2) Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month and (3) at least 40% of the member or member organization's QCC executed contracts in that month are comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.

Additionally, the Exchange would continue to pay QCC Rebates on all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional; or (iv) a dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4). Also, the Exchange would continue to aggregate volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short stock

interest, reversal and conversion, jelly roll, and box spread strategy executions, in determining the applicable member or member organization qualifying QCC contract volume in a given month.

Finally, the Exchange currently only permits member and member organizations to receive either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both. The Exchange is removing this rule text from the Pricing Schedule because the QCC Growth Tier Rebate pricing was only available until July 31, 2023 as explained further below. The Exchange also proposes to remove the Part “A” reference as there is no longer a Part B.

The Exchange believes that the proposed QCC Rebates in Part A will encourage Phlx members and member organizations to transact a greater number of QCC Orders on the Exchange.

Part B: QCC Growth Tier Rebate

The Exchange offered a QCC Growth Tier Rebate¹³ to encourage Phlx members and member organizations to transact a greater number of QCC Orders on Phlx. The QCC Growth Tier Rebate expired on July 31, 2023. The Exchange proposes to remove the pricing from the Pricing Schedule at this time.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the

¹³ The QCC Growth Tier Rebate permitted Phlx members and member organizations to qualify for certain rebates by executing a certain amount of floor transactions, electronic QCC Orders and Floor QCC Orders volume in excess of the member’s or member organization’s QCC transaction volume in January 2023. The Exchange also offered an alternative qualification to achieve the QCC Growth Tier Rebate by executing transactions in open outcry along with QCC volume.

Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁷ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁸ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁹

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁷ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁸ See NetCoalition, at 534 - 535.

¹⁹ Id. at 537.

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”²⁰ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange’s proposal to offer two new QCC Rebates in Section A of Options 7, Section 4,²¹ in addition to the current QCC Rebates, is reasonable because the proposed QCC Rebates will encourage Phlx members and member organizations to transact a greater number of qualifying QCC contracts and Floor Originated Strategy Executions on Phlx. The proposal would pay a new rebate of \$0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, and the proposal would pay a new higher rebate of \$0.27 per contract, when the QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one

²⁰ 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)).

²¹ The Exchange proposes to pay a rebate of \$0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, in the event that a member or member organization both executes greater than 1,000,000 qualifying QCC contracts in a given month and executes Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month. Additionally, the Exchange proposes to pay a \$0.27 per contract, when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, in the event that a member or member organization both executes greater than 1,000,000 qualifying QCC contracts in a given month and executes Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month.

side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. The Exchange believes that the higher rebate of \$0.27 per contract, when the QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, is reasonable because the Exchange assesses a QCC Transaction Fee of \$0.20 per contract on Lead Market Makers, Market Makers, Firms and Broker-Dealers and does not assess a QCC Transaction Fee on Customers and Professionals. The third qualification, which requires that 40% of the QCC executed contracts to have a Lead Market Maker, Market Maker, Broker-Dealer, or Firm on each side of the transaction, will assist the Exchange in funding the higher \$0.27 per contract QCC Rebate.

The Exchange's proposal to offer two new QCC Rebates in Section A of Options 7, Section 4,²² in addition to the current QCC Rebates, is equitable and not unfairly discriminatory because all members and member organizations may qualify for QCC Rebates, provided they transact the requisite volume. The Exchange believes that the higher rebate of \$0.27 per contract, when the QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, is equitable and not unfairly discriminatory because the Exchange assesses a QCC Transaction Fee of \$0.20 per contract for Lead Market Makers, Market Makers, Firms and Broker-Dealers and does not assess a QCC Transaction Fee on Customers and Professionals. The proposed rebate of \$0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer,

²² See supra note 21.

or Firm order on the other side, is lower as compared to the \$0.27 per contract rebate because Customers and Professionals do not pay a QCC Transaction Fee whereas Lead Market Makers, Market Makers, Broker-Dealers, and Firms pay a \$0.20 per contract QCC Transaction Fee.

The Exchange's proposal to remove the pricing for the QCC Growth Tier Rebate in Section B of Options 7, Section 4 as well as the rule text concerning receiving either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both, is reasonable, equitable and not unfairly discriminatory because as noted in the Pricing Schedule, the QCC Growth Tier Rebate pricing was only available until July 31, 2023. This pricing is no longer available.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and

because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-market Competition

The proposed amendments do not impose an undue burden on intra-market competition. In terms of intra-market competition, the Exchange's proposal to offer two new QCC Rebates in Section A of Options 7, Section 4,²³ in addition to the current QCC Rebates, does not impose an undue burden on competition because all members and member organizations may qualify for QCC Rebates, provided they transact the requisite volume. The Exchange believes that the higher rebate of \$0.27 per contract, when the QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, does not impose an undue burden on competition because the Exchange assesses a QCC Transaction Fee of \$0.20 per contract for Lead Market Makers, Market Makers, Firms and Broker-Dealers and does not assess a QCC Transaction Fee on Customers and Professionals. The proposed rebate of \$0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, is lower as compared to the \$0.27 per contract rebate because Customers and Professionals do not pay a QCC Transaction Fee whereas Lead Market Makers, Market Makers, Broker-Dealers, and Firms pay a \$0.20 per contract QCC Transaction Fee.

²³ See supra note 21.

The Exchange's proposal to remove the pricing for the QCC Growth Tier Rebate in Section B of Options 7, Section 4, as well as the rule text concerning receiving either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both, does not impose an undue burden on competition because, as noted in the Pricing Schedule, the QCC Growth Tier Rebate pricing was only available until July 31, 2023. This pricing is no longer available.

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,²⁴ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

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

Not applicable.

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

²⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Applicable portion of the Exchange's Pricing Schedule.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2023-36)

August __, 2023

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on August 10, 2023, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Phlx’s Pricing Schedule at Options 7, Section 4, “Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A).”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 August 2, 2023, SR-Phlx-2023-32 was withdrawn and replaced with SR-Phlx-2023-33. On August 10, 2023, SR-Phlx-2023-33 was withdrawn and replaced with the instant filing.

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

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

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

1. Purpose

Phlx proposes to amend its Pricing Schedule at Options 7, Section 4, "Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A)." Specifically, Phlx proposes to amend its Qualified Contingent Cross ("QCC") Rebates in Section A, and remove the expired QCC Growth Tier Rebate in Section B of Options 7, Section 4.

Today, the Exchange assesses a \$.20 per contract QCC Transaction Fee for a

Lead Market Maker,⁴ Market Maker,⁵ Firm⁶ and Broker-Dealer.⁷ Customers⁸ and Professionals⁹ are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to electronic QCC Orders¹⁰ and Floor QCC Orders.¹¹

Part A: QCC Rebates

Today, in Part A of Options 7, Section 4, the Exchange describes several QCC Rebates. Today, the Exchange pays a QCC Rebate of \$0.12 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order

⁴ The term “Lead Market Maker” applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 7, Section 1(c). The term “Floor Lead Market Maker” is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange’s trading floor. See Options 8, Section 2(a)(3).

⁵ The term “Market Maker” is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers. See Options 7, Section 1(c). The term “Floor Market Maker” is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. See Options 8, Section 2(a)(4).

⁶ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. See Options 7, Section 1(c).

⁷ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Options 7, Section 1(c).

⁸ The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of a broker or dealer or for the account of a “Professional” (as that term is defined in Options 1, Section 1(b)(45)). See Options 7, Section 1(c).

⁹ The term “Professional” applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Options 7, Section 1(c).

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

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

on the other side. Today, the Exchange also pays a rebate of \$0.17 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month. Additionally, today, the Exchange pays a QCC Rebate of \$0.14 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. Today, the Exchange pays a rebate to \$0.19 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month.

Today, these QCC rebates are paid on all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional or (iv) a dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4). Further, today, volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short stock interest or reversal or conversion strategy executions, is aggregated in determining the applicable member or member organization qualifying QCC contract volume in a given month. Finally, today, members and member organizations are entitled to one QCC Rebate in a given month, which would be the

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

Proposal

At this time, the Exchange proposes to offer two QCC Rebates in addition to the current QCC Rebates described above. The Exchange proposes to pay a rebate of \$0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, in the event that a member or member organization executes (1) greater than 1,000,000 qualifying QCC contracts in a given month; (2) Floor Originated Strategy¹² Executions in excess of 3,500,000 contracts in a given month; and (3) at least 40% of the member or member organization's QCC executed contracts in that month are comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.

Additionally, the Exchange proposes to pay a rebate of \$0.27 per contract, when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, in the event that a member or member organization executes: (1) greater than 1,000,000 qualifying QCC contracts in a given month; (2) Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month and (3) at least 40% of the member or member organization's QCC executed contracts in that month are comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one

¹² Floor Originated Strategy Executions are defined as a dividend, merger, short stock interest, reversal and conversion, jelly roll or box spread strategy as described in Options 7, Section 4. The Exchange proposes to add this defined term in the Pricing Schedule at Part A of Options 7, Section 4.

side and Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.

Additionally, the Exchange would continue to pay QCC Rebates on all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional; or (iv) a dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4). Also, the Exchange would continue to aggregate volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions, in determining the applicable member or member organization qualifying QCC contract volume in a given month.

Finally, the Exchange currently only permits member and member organizations to receive either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both. The Exchange is removing this rule text from the Pricing Schedule because the QCC Growth Tier Rebate pricing was only available until July 31, 2023 as explained further below. The Exchange also proposes to remove the Part “A” reference as there is no longer a Part B.

The Exchange believes that the proposed QCC Rebates in Part A will encourage Phlx members and member organizations to transact a greater number of QCC Orders on the Exchange.

Part B: QCC Growth Tier Rebate

The Exchange offered a QCC Growth Tier Rebate¹³ to encourage Phlx members and member organizations to transact a greater number of QCC Orders on Phlx. The QCC Growth Tier Rebate expired on July 31, 2023. The Exchange proposes to remove the pricing from the Pricing Schedule at this time.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶

¹³ The QCC Growth Tier Rebate permitted Phlx members and member organizations to qualify for certain rebates by executing a certain amount of floor transactions, electronic QCC Orders and Floor QCC Orders volume in excess of the member’s or member organization’s QCC transaction volume in January 2023. The Exchange also offered an alternative qualification to achieve the QCC Growth Tier Rebate by executing transactions in open outcry along with QCC volume.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁷ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁸ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁹

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁰ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange’s proposal to offer two new QCC Rebates in Section A of Options 7, Section 4,²¹ in addition to the current QCC Rebates, is reasonable because the

¹⁷ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁸ See NetCoalition, at 534 - 535.

¹⁹ Id. at 537.

²⁰ 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)).

²¹ The Exchange proposes to pay a rebate of \$0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, in the event that a member or member organization both executes greater than 1,000,000 qualifying QCC contracts in a given month and executes Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month. Additionally, the Exchange proposes to pay a \$0.27 per contract, when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market

proposed QCC Rebates will encourage Phlx members and member organizations to transact a greater number of qualifying QCC contracts and Floor Originated Strategy Executions on Phlx. The proposal would pay a new rebate of \$0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, and the proposal would pay a new higher rebate of \$0.27 per contract, when the QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. The Exchange believes that the higher rebate of \$0.27 per contract, when the QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, is reasonable because the Exchange assesses a QCC Transaction Fee of \$0.20 per contract on Lead Market Makers, Market Makers, Firms and Broker-Dealers and does not assess a QCC Transaction Fee on Customers and Professionals. The third qualification, which requires that 40% of the QCC executed contracts to have a Lead Market Maker, Market Maker, Broker-Dealer, or Firm on each side of the transaction, will assist the Exchange in funding the higher \$0.27 per contract QCC Rebate.

The Exchange's proposal to offer two new QCC Rebates in Section A of Options 7, Section 4,²² in addition to the current QCC Rebates, is equitable and not unfairly discriminatory because all members and member organizations may qualify for QCC

Maker, Market Maker, Broker-Dealer, or Firm order on the other side, in the event that a member or member organization both executes greater than 1,000,000 qualifying QCC contracts in a given month and executes Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month.

²² See supra note 21.

Rebates, provided they transact the requisite volume. The Exchange believes that the higher rebate of \$0.27 per contract, when the QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, is equitable and not unfairly discriminatory because the Exchange assesses a QCC Transaction Fee of \$0.20 per contract for Lead Market Makers, Market Makers, Firms and Broker-Dealers and does not assess a QCC Transaction Fee on Customers and Professionals. The proposed rebate of \$0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, is lower as compared to the \$0.27 per contract rebate because Customers and Professionals do not pay a QCC Transaction Fee whereas Lead Market Makers, Market Makers, Broker-Dealers, and Firms pay a \$0.20 per contract QCC Transaction Fee.

The Exchange's proposal to remove the pricing for the QCC Growth Tier Rebate in Section B of Options 7, Section 4 as well as the rule text concerning receiving either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both, is reasonable, equitable and not unfairly discriminatory because as noted in the Pricing Schedule, the QCC Growth Tier Rebate pricing was only available until July 31, 2023. This pricing is no longer available.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-market Competition

The proposed amendments do not impose an undue burden on intra-market competition. In terms of intra-market competition, the Exchange's proposal to offer two new QCC Rebates in Section A of Options 7, Section 4,²³ in addition to the current QCC Rebates, does not impose an undue burden on competition because all members and member organizations may qualify for QCC Rebates, provided they transact the requisite volume. The Exchange believes that the higher rebate of \$0.27 per contract, when the QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, does not impose an undue burden on competition because the

²³ See supra note 21.

Exchange assesses a QCC Transaction Fee of \$0.20 per contract for Lead Market Makers, Market Makers, Firms and Broker-Dealers and does not assess a QCC Transaction Fee on Customers and Professionals. The proposed rebate of \$0.22 per contract, when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side, is lower as compared to the \$0.27 per contract rebate because Customers and Professionals do not pay a QCC Transaction Fee whereas Lead Market Makers, Market Makers, Broker-Dealers, and Firms pay a \$0.20 per contract QCC Transaction Fee.

The Exchange's proposal to remove the pricing for the QCC Growth Tier Rebate in Section B of Options 7, Section 4, as well as the rule text concerning receiving either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both, does not impose an undue burden on competition because, as noted in the Pricing Schedule, the QCC Growth Tier Rebate pricing was only available until July 31, 2023. This pricing is no longer available.

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.²⁴

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

²⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2023-36 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-2023-36. This file number should be included on the subject line if email 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2023-36 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

²⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq PHLX LLC Rules

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Options Rules

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Options 7 Pricing Schedule

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

* * * * *

QCC Transaction Fee

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

[A.]QCC Rebates

- A QCC Rebate of \$0.12 per contract will be paid on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. This rebate will be \$0.17 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month. This rebate will be \$0.22 per contract in the event that a member or member organization executes: (1) greater than 1,000,000 qualifying QCC contracts in a given month, (2) Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month, and (3) at least 40% of the member or member organization's QCC executed contracts in that month are comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.

- A QCC Rebate of \$0.14 per contract will be paid on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other

side. This rebate will be \$0.19 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month. This rebate will be \$0.27 per contract in the event that a member or member organization executes: (1) greater than 1,000,000 qualifying QCC contracts in a given month, (2) Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month, and (3) at least 40% of the member or member organization's QCC executed contracts in that month are comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.

▪ Floor Originated Strategy Executions are defined as a dividend, merger, short stock interest, reversal and conversion, jelly roll or box spread strategy as described in Options 7, Section 4.

➤ The above QCC Rebates will be paid for all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional; or (iv) a dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4).

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

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

[B. QCC Growth Tier Rebate

◆ To qualify for the QCC Growth Tier Rebate:

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

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

or

- a member's or member organization's Open Outcry Floor Transaction volume in a given month must exceed 500,000 contracts; **and**
- a member's or member organization's respective Phlx House Account must execute QCC transaction volume of 2,500,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 2,500,000 or more contracts in a given month.
- ◆ "Open Outcry Floor Transaction" shall include all transactions executed in open outcry on Phlx's trading floor except:
 - Dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions as defined in this Options 7, Section 4; and
 - Cabinet Transactions as defined in Options 8, Section 33; and
 - Customer-to-Customer transactions.
- ◆ The below QCC Growth Tier Rebates will be paid per Phlx House Account per below:
 - QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side will be paid a \$0.22 per contract QCC Growth Tier Rebate.
 - QCC Order comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side will be paid a \$0.27 per contract QCC Growth Tier Rebate.
 - QCC Growth Tier Rebates will be paid for all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional; or (iv) a dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4).
- ◆ Members and member organizations will be entitled to one QCC Rebate in a given month, which would be the greater of the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both.
- ◆ The QCC Growth Tier Rebate will be available through July 31, 2023.]

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