Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2023 - * 47
Amendment No. (req. for Amendments *)

Filing by Nasdaq PHLX LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☑ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 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 Sections 4 and 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 duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 11/01/2023

By John Zecca (Name *)

(Title *) EVP and Chief Legal Officer

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.

John A. Zecca
Date: 2023.11.01
11:13:27 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information * Add Remove View SR-Phlx-2023-47 19b-4.doc	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View SR-Phlx-2023-47 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 * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2- Notices, Written Comments, Transcripts, Other Communications Add Remove View	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G. ☐ Exhibit Sent As Paper Document
Exhibit 3 - Form, Report, or Questionnaire Add Remove View	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change. ☐ Exhibit Sent As Paper Document
Exhibit 4 - Marked Copies Add Remove View	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-2023-47 Exhibit 5.doc	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq PHLX LLC ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend Phlx's Pricing Schedule at Options 7, Section 4, Multiply Listed Options Fees, and Options 7, Section 7, Routing Fees.

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.
215-496-5692

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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

a. Purpose

Phlx proposes to amend its Pricing Schedule at Options 7, Section 4, Multiply Listed Options Fees, and Options 7, Section 7, Routing Fees. Each pricing change will be described below.

Options 7, Section 4

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.

Today, the Exchange assesses a $.20 per contract QCC Transaction Fee for a Lead Market Maker,[3] Market Maker,[4] Firm[5] and Broker-Dealer.[6] Customers[7] and

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[3] 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).

[4] 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).

[5] 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).

[6] 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).

[7] 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).

Professionals[8] are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to electronic QCC Orders[9] and Floor QCC Orders.[10] Additionally, today, Phlx pays QCC rebates. Specifically, Phlx 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. This rebate is $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. Further, this rebate is $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.

Also, 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

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[8] 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).

[9] Electronic QCC Orders are described in Options 3, Section 12.

[10] Floor QCC Orders are described in Options 8, Section 30(e).

Maker, Broker-Dealer, or Firm order on the other side. This rebate is $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. Further, this rebate is $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.

At this time, the Exchange proposes to amend the number of qualifying QCC contracts that must be executed in a given month with respect to these aforementioned rebates. The Exchange proposes to amend the current 1,000,000 qualifying QCC contracts to 750,000 qualifying QCC contracts in. With this proposed changed, the rule text would provide:

> • 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 750,000 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 750,000 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 750,000 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 750,000 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.

The Exchange believes that lowering the number of qualifying QCC contracts for purpose of qualifying for these QCC Rebates from 1,000,000 to 750,000 qualifying QCC contracts will incentivize Phlx members and member organizations to transact a greater amount of QCC Orders on Phlx.

Options 7, Section 7

Currently, Phlx assesses a Non-Customer routing fee of $0.99 per contract and a Customer routing fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to markets other than The Nasdaq Options Market LLC ("NOM") and Nasdaq BX, Inc. ("BX"). Currently, if the away market pays a rebate, the Exchange assesses a Customer a Routing Fee of $0.13 per contract for markets other than NOM and BX. Currently, Phlx assesses a Customer a $0.13 per contract Fixed Fee in addition to the actual transaction fee assessed when routing to NOM and BX.

At this time, the Exchange proposes to assess a Non-Customer an increased routing fee to route to any options exchange of $1.20 per contract. The Exchange also proposes to assess a Customer a Fixed Fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange. The Exchange would no longer assess the lower routing of $0.13 per contract, in addition to the actual transaction fee assessed, when routing to NOM and BX. The Exchange will continue to assess a $0.13 per contract routing fee if the away market pays a rebate, including NOM and BX. The purpose of the proposed routing fees is to recoup costs incurred by the Exchange when routing orders to other options exchanges on behalf of options members and member organizations. In determining its proposed routing fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. The Exchange will continue to use its affiliated broker-dealer, Nasdaq Execution Services, to route orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as "Do Not Route" to avoid any routing fees.[11] The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. Also, the Exchange's proposal would uniformly assess the same Customer routing fees,

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[11] See Phlx Options 3, Section 7(d).

regardless of the away venue, of $0.23 per contract, in addition to the actual transaction fee assessed, or $0.13 per contract if the away market pays a rebate.

b. Statutory Basis

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

The 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 Commission[14] ("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]

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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)).

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 seventeen 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 4

The Exchange's proposal to amend a qualifier for several QCC Rebates to lower the number of qualifying QCC contracts that must be executed in a given month from 1,000,000 to 750,000 qualifying QCC contracts is reasonable because lowering the number of qualifying QCC contracts for purpose of these QCC Rebates from 1,000,000 to 750,000 qualifying QCC contracts will incentivize Phlx members and member organizations to transact a greater number of QCC Orders on Phlx.

The Exchange's proposal to amend a qualifier for several QCC Rebates to lower the number of qualifying QCC contracts that must be executed in a given month from 1,000,000 qualifying QCC contracts to 750,000 qualifying QCC contracts is equitable and not unfairly discriminatory because all members and member organizations may qualify for QCC Rebates, provided they transact the requisite volume.

Options 7, Section 7

The Exchange's proposal to assess a Non-Customer an increased routing fee of

$1.20 to route to another options exchange and a Customer a Fixed Fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange[16] is reasonable because the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. In determining its proposed routing fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. While the Exchange is no longer offering a discounted Routing Fee to route to NOM and BX, the Exchange notes that the Routing Fee will be $0.13 for these markets, similar to other options markets, if they pay a rebate.[17] Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as "Do Not Route" to avoid any routing fees.[18]

The Exchange's proposal to assess a Non-Customer an increased routing fee of $1.20 to route to another options exchange and a Customer a Fixed Fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange is equitable and not unfairly discriminatory as all Non-Customers would be assessed a uniform routing fee. Additionally, Customers will be

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16 The Exchange would no longer assess the lower routing of $0.13 per contract, in addition to the actual transaction fee assessed, when routing to NOM and BX.

17 Both NOM and BX offer rebates. See NOM's Pricing Schedule at Options 7, Section 2 and BX's Pricing Schedule at Options 7, Section 2.

18 See Phlx Options 3, Section 7(d).

uniformly assessed the same fee, regardless of the destination market. Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Finally, the Exchange notes that market participants may elect to market orders as Do Not Route to avoid any routing fees.

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.

Options 7, Section 4

The Exchange's proposal to amend a qualifier for several QCC Rebates to lower the number of qualifying QCC contracts that must be executed in a given month from 1,000,000 qualifying QCC contracts to 750,000 qualifying QCC contracts 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.

Options 7, Section 7

The Exchange's proposal to assess a Non-Customer an increased routing fee of $1.20 to route to another options exchange and a Customer a Fixed Fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange does not impose an undue burden on competition as all Non-Customers would be assessed a uniform routing fee. Additionally, Customers will be uniformly assessed the same fee, regardless of the destination market. Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Finally, the Exchange notes that market participants may elect to market orders as Do Not Route to avoid any routing fees.

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

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

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

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

Not applicable.

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

Not applicable.

11. Exhibits

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

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

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-Phlx-2023-47)

November __, 2023

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx Options 7, Sections 4 and 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 November 1, 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, and Options 7, Section 7, Routing Fees.

The text of the proposed rule change is available on the Exchange's Website at https://listingcenter.nasdaq.com/rulebook/phlx/rules, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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, and Options 7, Section 7, Routing Fees. Each pricing change will be described below.

Options 7, Section 4

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.

Today, the Exchange assesses a $.20 per contract QCC Transaction Fee for a Lead Market Maker,[3] Market Maker,[4] Firm[5] and Broker-Dealer.[6] Customers[7] and

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3 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).

4 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).

5 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).

Professionals[8] are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to electronic QCC Orders[9] and Floor QCC Orders.[10] Additionally, today, Phlx pays QCC rebates. Specifically, Phlx 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. This rebate is $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. Further, this rebate is $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.

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6 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).

7 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).

8 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).

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

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

Also, 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. This rebate is $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. Further, this rebate is $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.

At this time, the Exchange proposes to amend the number of qualifying QCC contracts that must be executed in a given month with respect to these aforementioned rebates. The Exchange proposes to amend the current 1,000,000 qualifying QCC contracts to 750,000 qualifying QCC contracts in. With this proposed changed, the rule text would provide:

> • 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 750,000 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 750,000 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 750,000 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 750,000 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.

The Exchange believes that lowering the number of qualifying QCC contracts for purpose of qualifying for these QCC Rebates from 1,000,000 to 750,000 qualifying QCC contracts will incentivize Phlx members and member organizations to transact a greater amount of QCC Orders on Phlx.

Options 7, Section 7

Currently, Phlx assesses a Non-Customer routing fee of $0.99 per contract and a Customer routing fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to markets other than The Nasdaq Options Market LLC ("NOM") and Nasdaq BX, Inc. ("BX"). Currently, if the away market pays a rebate, the Exchange assesses a Customer a Routing Fee of $0.13 per contract for markets other than NOM and BX. Currently, Phlx assesses a Customer a

$0.13 per contract Fixed Fee in addition to the actual transaction fee assessed when routing to NOM and BX.

At this time, the Exchange proposes to assess a Non-Customer an increased routing fee to route to any options exchange of $1.20 per contract. The Exchange also proposes to assess a Customer a Fixed Fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange. The Exchange would no longer assess the lower routing of $0.13 per contract, in addition to the actual transaction fee assessed, when routing to NOM and BX. The Exchange will continue to assess a $0.13 per contract routing fee if the away market pays a rebate, including NOM and BX. The purpose of the proposed routing fees is to recoup costs incurred by the Exchange when routing orders to other options exchanges on behalf of options members and member organizations. In determining its proposed routing fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. The Exchange will continue to use its affiliated broker-dealer, Nasdaq Execution Services, to route orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as "Do Not Route" to avoid any routing fees.[11] The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges.

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11 See Phlx Options 3, Section 7(d).

Also, the Exchange's proposal would uniformly assess the same Customer routing fees, regardless of the away venue, of $0.23 per contract, in addition to the actual transaction fee assessed, or $0.13 per contract if the away market pays a rebate.

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 Commission[14] ("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

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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).

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 seventeen 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 4

The Exchange's proposal to amend a qualifier for several QCC Rebates to lower the number of qualifying QCC contracts that must be executed in a given month from 1,000,000 to 750,000 qualifying QCC contracts is reasonable because lowering the number of qualifying QCC contracts for purpose of these QCC Rebates from 1,000,000 to 750,000 qualifying QCC contracts will incentivize Phlx members and member organizations to transact a greater number of QCC Orders on Phlx.

The Exchange's proposal to amend a qualifier for several QCC Rebates to lower the number of qualifying QCC contracts that must be executed in a given month from 1,000,000 qualifying QCC contracts to 750,000 qualifying QCC contracts is equitable and not unfairly discriminatory because all members and member organizations may qualify for QCC Rebates, provided they transact the requisite volume.

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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)).

Options 7, Section 7

The Exchange's proposal to assess a Non-Customer an increased routing fee of $1.20 to route to another options exchange and a Customer a Fixed Fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange[16] is reasonable because the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. In determining its proposed routing fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. While the Exchange is no longer offering a discounted Routing Fee to route to NOM and BX, the Exchange notes that the Routing Fee will be $0.13 for these markets, similar to other options markets, if they pay a rebate.[17] Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as "Do Not Route" to avoid any routing fees.[18]

The Exchange's proposal to assess a Non-Customer an increased routing fee of $1.20 to route to another options exchange and a Customer a Fixed Fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing

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16 The Exchange would no longer assess the lower routing of $0.13 per contract, in addition to the actual transaction fee assessed, when routing to NOM and BX.

17 Both NOM and BX offer rebates. See NOM's Pricing Schedule at Options 7, Section 2 and BX's Pricing Schedule at Options 7, Section 2.

18 See Phlx Options 3, Section 7(d).

contracts to any options exchange is equitable and not unfairly discriminatory as all Non-Customers would be assessed a uniform routing fee. Additionally, Customers will be uniformly assessed the same fee, regardless of the destination market. Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Finally, the Exchange notes that market participants may elect to market orders as Do Not Route to avoid any routing fees.

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.

Options 7, Section 4

The Exchange's proposal to amend a qualifier for several QCC Rebates to lower the number of qualifying QCC contracts that must be executed in a given month from 1,000,000 qualifying QCC contracts to 750,000 qualifying QCC contracts 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.

Options 7, Section 7

The Exchange's proposal to assess a Non-Customer an increased routing fee of $1.20 to route to another options exchange and a Customer a Fixed Fee of $0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange does not impose an undue burden on competition as all Non-Customers would be assessed a uniform routing fee. Additionally, Customers will be uniformly assessed the same fee, regardless of the destination market. Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Finally, the Exchange notes that market participants may elect to market orders as Do Not Route to avoid any routing fees.

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.[19]

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2023-47 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.

19 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to file number SR-Phlx-2023-47. 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-2023-47 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.[20]

Sherry R. Haywood,

Assistant Secretary.

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[20] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq PHLX LLC Rules

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Options Rules

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Options 7 Pricing Schedule

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

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QCC 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]750,000 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]750,000 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]750,000 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]750,000 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.

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Section 7. Routing Fees

Non-Customer	• $[0.99]<u>1.20</u> per contract to any options exchange.
Customer	[• Routing Fees to NOM: $0.13 per contract fee ("Fixed Fee") in addition to the actual transaction fee assessed.] [• Routing Fees to BX Options: $0.13 per contract fee ("Fixed Fee") in addition to the actual transaction fee assessed.] • [Routing Fees to all other options exchanges:]$0.23 per contract fee ("Fixed Fee") <u>to any options exchange</u> in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee will be $0.13. • A member organization that: (1) qualifies for a Tier 2, 3, 4 or 5 rebate in the Customer Rebate Program in Options 7, Section 2 of the Pricing Schedule; and (2) routes away more than 5,000 Customer contracts per day in a given month to an away market is entitled to receive a credit equal to the applicable Fixed Fee plus $0.01 per contract, unless the away market transaction fee is $0.00 or the away market pays a rebate, in which case the member organization is entitled to receive a credit equal to the applicable Fixed Fee. Members and member organizations under Common Ownership may aggregate their Customer volume routed away for purposes of calculating discount thresholds and receiving discounted routing fees.

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