

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 45

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

File No. * SR 2024 - * 14

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 03/15/2024


(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: 2024.03.15
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Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-Phlx-2024-14 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-2024-14 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

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SR-Phlx-2024-14 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

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

1. Text of the Proposed Rule Change

(a) Nasdaq PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Phlx’s Pricing Schedule at Options 7, Section 4.³

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed pricing change on February 29, 2024 to be operative on March 1, 2024 (SR-Phlx-2024-07). On March 12, 2024, the Exchange withdrew SR-Phlx-2024-07 and submitted SR-Phlx-2024-11. On March 15, 2024, the Exchange withdrew SR-Phlx-2024-11 and submitted this filing.

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 within 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: (1) lower the Professional⁴ Floor⁵ Options Transaction Charges⁶ in Multiply Listed Penny and Non-Penny Symbols;⁷ (2) increase the Lead Market Maker⁸ and Market Maker⁹ Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols; and (3) increase the Monthly Firm Fee Cap. Each change will be described below.

Floor Options Transaction Charges

Today, the Exchange assesses Options Transaction Charges in Multiply Listed options, including options overlying equities, ETFs, ETNs and indexes and excluding

⁴ 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 Phlx’s Pricing Schedule at Options 7, Section 1(c).

⁵ The term “floor transaction” is a transaction that is effected in open outcry on the Exchange’s Trading Floor. See Phlx’s Pricing Schedule at Options 7, Section 1(c).

⁶ Options Transaction Charges are per contract. Floor transaction fees apply to any “as of” or “reversal” adjustments for manually processed trades originally submitted electronically or through FBMS. See Phlx’s Pricing Schedule at Options 7, Section 4, footnote 8.

⁷ For consistency, the Exchange proposes to capitalize the term “non-Penny” in the table in Options 7, Section 4 of the Pricing Schedule.

⁸ 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 Phlx’s Pricing Schedule at Options 7, Section 1(c).

⁹ 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 Phlx’s Pricing Schedule at Options 7, Section 1(c).

options in SPY¹⁰ and broad-based index options symbols listed within Options 7, Section 5.A. The Exchange currently assesses the following Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols: \$0.05 per contract for a Professional, \$0.35 per contract for a Lead Market Maker and Market Maker, and \$0.25 per contract for a Broker-Dealer¹¹ and Firm.¹² Customers¹³ are not assessed an Options Transaction Charge in Multiply Listed Penny or Non-Penny Symbols.

At this time, the Exchange proposes to decrease the Professional Floor Options Transaction Charges in Penny and Non-Penny Symbols from \$0.05 to \$0.00 per contract. The Exchange believes the decreased Professional Options Transaction Charges will attract a greater amount of Professional orders to Phlx's Trading Floor. The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") also assesses no Professional Customer fee for manual executions.¹⁴

¹⁰ Transactions in SPY originating on the Exchange floor are subject to the Multiply Listed Options Fees (see Multiply Listed Options Fees in Options 7, Section 4). However, if one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then these fees will apply to the transactions which originated on the Exchange floor and contracts that are executed electronically on all sides of the transaction. The one side of the transaction which originates on the Exchange floor will count toward the volume which qualifies a participant for the Simple Order Rebate for Adding Liquidity for Lead Market Makers and Market Makers in SPY. See Options 7, Section 3, Part C.

¹¹ 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 Phlx's Pricing Schedule at Options 7, Section 1(c).

¹² 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 ("OCC"). See Phlx's Pricing Schedule at Options 7, Section 1(c).

¹³ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at 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 Phlx's Pricing Schedule at Options 7, Section 1(c).

¹⁴ NYSE Arca modified its fees for Professional Customer manual executions from a \$0.25 per contract fee for such executions, which fee had been waived for the period August 1, 2022 to December 31, 2022, to \$0.00 per contract. NYSE Arca stated that the proposed change was intended to continue to attract manually executed Professional Customer orders to the Exchange, and the Exchange believed that all market participants stood to benefit from an increase in such

At this time, the Exchange proposes to increase the Lead Market Maker and Market Maker Floor Options Transaction Charges in Penny and Non-Penny Symbols from \$0.35 to \$0.50 per contract. While the Exchange is increasing the Lead Market Maker and Market Maker Floor Options Transaction Charge by \$0.15 per contract (increase from \$0.35 to \$0.50 per contract), the Exchange believes that its pricing will continue to attract order flow to the Exchange. Today, Lead Market Makers and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) Qualified Contingent Cross or “QCC” Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)).¹⁵ The Exchange proposes this increased fee for business reasons and to encourage competition on its trading floor. The Exchange believes Lead Market Makers and Market Makers will continue to quote aggressively, adding liquidity to the trading floor, so that they may participate in transactions as they do today. Lead Market Makers and Market Makers

volume, which would promote market depth, facilitate tighter spreads and enhance price discovery, and may lead to a corresponding increase in order flow from other market participants as well. See Securities Exchange Act Release No. 96763 (January 27, 2023), 88 FR 7119 (February 2, 2023) (S (SR-NYSEARCA-2023-09).

¹⁵ The trading activity of separate Lead Market Maker and Market Maker member organizations are aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) are excluded from the Monthly Market Maker Cap. Floor Lead Market Makers or Floor Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap are assessed : \$0.05 per contract Fee for Adding Liquidity in Penny Symbols; \$0.18 per contract Fee for Removing Liquidity in Penny Symbols; \$0.18 per contract in Non-Penny Symbols; and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (“COLA”). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be assessed \$0.18 per contract.

have a time and place advantage in the trading crowd which the Exchange believes increases competition on its trading floor to the benefit of other floor participants.

Monthly Firm Fee Cap

Today, Firms are subject to a \$200,000 “Monthly Firm Fee Cap.” Today, Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month that exceed the Monthly Firm Fee Cap per member or member organization, when such members or member organizations are trading in their own proprietary account, are subject to a reduced transaction fee of \$0.02 per capped contract unless there is no fee or the fee is waived. Today, all dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in this Options 7, Section 4) are excluded from the Monthly Firm Fee Cap. Transactions in broad-based index options symbols listed within Options 7, Section 5.A. are excluded from the Monthly Firm Fee Cap and QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.¹⁶

At this time, the Exchange proposes to increase the Monthly Firm Fee Cap from a cap of \$200,000 to a monthly cap of \$250,000 as a competitive response to a similar change on NYSE Arca.¹⁷ The Exchange believes that aligning its firm cap with NYSE Arca’s firm cap will allow it to compete for transactions on its trading floor. The Exchange believes that increasing the Monthly Firm Fee Cap will continue to lower fees

¹⁶ For purposes of the Monthly Firm Fee Cap, members and member organizations must notify the Exchange in writing of all accounts in which the member or member organization is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap. See Options 7, Section 4.

¹⁷ NYSE Arca modified its Monthly Fee Cap in November 2023 by raising the cap from \$200,000 to \$250,000. See Securities Exchange Act Release No. 99021 (December 1, 2023), 88 FR 84030 (November 27, 2023) (SR-NYSEArca-2023-80).

for Firms that transact certain qualifying volume on Phlx, thus enabling these Firms the ability to lower costs while continuing to incentivize Firms to transact volume on the Exchange.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁹ 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.”²⁰

Likewise, in NetCoalition v. Securities and Exchange Commission²¹ (“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

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

²⁰ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²¹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

Congress mandated a cost-based approach.²² 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.”²³

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’ . . .”²⁴ 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.

Options Transaction Charges

The Exchange’s proposal to decrease the Professional Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols in Penny and Non-Penny Symbols from \$0.05 to \$0.00 per contract is reasonable because the decreased fee should attract a greater amount of Professional orders to Phlx’s Trading Floor. Today, Phlx assesses Professionals a lower Floor Options Transaction Charge as compared to Lead Market Makers, Broker-Dealers and Firms with respect to Floor Options Transaction Charges. Similarly, today, BOX Exchange LLC (“BOX”) assesses Professionals lower

²² See NetCoalition, at 534 - 535.

²³ Id. at 537.

²⁴ 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)).

manual transaction fees as compared to Broker Dealers and Market Makers.²⁵ By decreasing its Professional Floor Options Transaction Charge, the Exchange believes it will be able to compete more effectively for options order flow because of the lower Professional fee. Also, the Exchange believes the decreased Professional Options Transaction Charges will attract a greater number of Professional orders to Phlx's Trading Floor. The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") also assesses no Professional Customer fee for manual executions.²⁶

The Exchange's proposal to decrease the Professional Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols in Penny and Non-Penny Symbols from \$0.05 to \$0.00 per contract is equitable and not unfairly discriminatory. Today, Customers are not assessed an Options Transaction Charge in Multiply Listed Penny or Non-Penny Symbols because Customer order flow is unique. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Market Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange

²⁵ BOX assesses Professional Customers a \$0.10 per contract manual transaction fee in Penny and Non-Penny Symbols. A Broker Dealer is assessed a \$0.025 per contract manual transaction fee in Penny and Non-Penny Symbols and a Market Maker is assessed a \$0.35 per contract manual transaction fee in Penny and Non-Penny Symbols. BOX does not assess Public Customers or Broker Dealers facilitating a Public Customer a Penny and Non-Penny Interval Classes manual transactions fee. See BOX's Fee Schedule at Section V.

²⁶ NYSE Arca modified its fees for Professional Customer manual executions from a \$0.25 per contract fee for such executions, which fee had been waived for the period August 1, 2022 to December 31, 2022, to \$0.00 per contract. NYSE Arca stated that the proposed change is intended to continue to attract manually executed Professional Customer orders to the Exchange, and the Exchange believes that all market participants stand to benefit from an increase in such volume, which would promote market depth, facilitate tighter spreads and enhance price discovery, and may lead to a corresponding increase in order flow from other market participants as well. See Securities Exchange Act Release No. 96763 (January 27, 2023), 88 FR 7119 (February 2, 2023) (S (SR-NYSEARCA-2023-09)).

believes that lowering the Professional Floor Options Transaction Charges is similarly beneficial as the lower fees may cause market participants to select Phlx's Trading Floor as a venue to send Professional order flow, which benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all market participants. Today, Lead Market Makers and Market Makers are assessed the highest Penny and Non-Penny Floor Options Transaction Charges. Customers are not assessed a Penny or Non-Penny Options Transaction Charge. With this proposal, Professionals would continue to be assessed a lower Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols as compared to Lead Market Makers and Market Makers. Lead Market Makers and Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a Floor Broker to represent their trading interest on the Trading Floor as compared to a Lead Market Maker or Market Maker that could directly transact such orders on the Trading Floor. Further, the Exchange believes that to attract orders from Professionals, Broker-Dealers, or Firms, via a Floor Broker, the rates must be competitive with rates at other trading floors. With respect to Firms, the Exchange notes that Firms are subject to a Monthly Firm Fee Cap. Firm Floor Option Transaction Charges along with Qualified Contingent Cross Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account.²⁷ Finally, with respect to Broker-Dealers, today the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing

²⁷ See Options 7, Section 4.

facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.²⁸ The Exchange notes that both Firms and Broker-Dealers have the ability to reduce their Options Transaction Charges as compared to Professionals.

The Exchange believes it is equitable and not unfairly discriminatory to assess Professionals no Floor Options Transaction Charge the same as a Customer and more favorable than Firms, and Broker-Dealers, Lead Market Makers, and Market Makers. The potential increased volume would create better trading opportunities that benefit all market participants. Specifically, greater volume and liquidity from increased order flow could create more trading opportunities and tighter spreads. Assessing lower Floor Options Transaction Charges for Professional Customers compared to Lead Market Makers, Market Makers, Firms, and Broker-Dealers is not novel as BOX currently assesses lower fees for Professional Customers as compared to Broker Dealers and Market Makers.²⁹

The Exchange’s proposal to increase the Lead Market Maker and the Market Maker Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols from \$0.35 to \$0.50 per contract is reasonable, equitable and not unfairly discriminatory because Lead Market Makers and Market Makers benefit from having

²⁸ See Options 7, Section 4.

²⁹ See supra 25 above.

access to interact with orders that are made available in open outcry on the Trading Floor. Lead Market Makers and Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. Further, Lead Market Makers and Market Makers have the benefit of trading on any Trading Floor or in any electronic venue if they so choose. The Exchange believes that it has set its Floor Options Transaction Charges for Lead Market Makers and Market Makers in such a way as to balance the need to attract additional orders to the trading floor while continuing to attract Lead Market Makers and Market Makers to its Trading Floor. The Exchange proposes this increased fee for business reasons and to encourage competition on its trading floor. The Exchange believes Lead Market Makers and Market Makers will continue to quote aggressively, adding liquidity to the trading floor, so that they may participate in transactions as they do today. Today, Lead Market Makers and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)).³⁰ The Exchange is not proposing to amend the

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

Monthly Market Maker Cap, which affords Lead Market Makers and Market Makers the ability to pay lower Floor Options Transaction Charges as compared to Non-Customers³¹ once they have capped for the month. To the extent that Phlx's increased fee for Lead Market Makers and Maker Makers was priced too high, the Exchange would lose liquidity providers on its Trading Floor. Competitive forces would serve to constrain the Exchange's ability to overprice certain services on its market.

Monthly Firm Fee Cap

The Exchange's proposal to increase the Monthly Firm Fee Cap from a cap of \$200,000 to a monthly cap of \$250,000 is reasonable because, despite the increase, the Monthly Firm Fee Cap will continue to lower fees for Firms that transact certain qualifying volume on Phlx, thus enabling these Firms the ability to lower costs while continuing to incentivize Firms to direct order flow to the Exchange to achieve the benefits of reducing their fees. Further, increasing the monthly firm cap to \$250,000 is a competitive response to a similar change on NYSE Arca.³² The Exchange believes that aligning its firm cap with NYSE Arca's firm cap will allow it to compete for transactions on its trading floor.

The Exchange's proposal to increase the Monthly Firm Fee Cap from a cap of \$200,000 to a monthly cap of \$250,000 is equitable and not unfairly discriminatory as other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in Multiply

³¹ The term "Non-Customer" applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs. See Options 7, Section 1(c).

³² NYSE Arca modified its Monthly Fee Cap in November 2023 by raising the cap from \$200,000 to \$250,000. See Securities Exchange Act Release No. 99021 (December 1, 2023), 88 FR 84030 (November 27, 2023 (SR-NYSEArca-2023-80)).

Listed Penny or Non-Penny Symbols.³³ Customer liquidity benefits all market participants by providing more trading opportunities. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Today, Lead Market Makers and Market Makers are subject to a Monthly Market Maker Cap.³⁴ With respect to Broker-Dealers, today, the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.³⁵ Finally, today, Professional Floor Options Transaction Charges are proposed to be \$0.00 per contract,

³³ See Options 7, Section 4.

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

³⁵ See Options 7, Section 4.

similar to Customers and more favorable than Firms.³⁶ Additionally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because members and member organizations that are JBOs³⁷ could be subject to the Monthly Firm Fee Cap, as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not members or member organizations to seek to become members or member organizations to further reduce their transaction fees. Finally, other market participants may interact with the order flow submitted by Firms to Phlx to reach the Monthly Firm Fee Cap.

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 venue in which to submit orders. 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

³⁶ See Options 7, Section 4. Professional Floor Options Transaction Charges for Penny and Non-Penny Symbols are \$0.05 per contract whereas Firm Floor Options Transaction Charges for Penny and Non-Penny Symbols are \$0.25 per contract. The Exchange is proposing to reduce the Floor Options Transaction Charges to \$0.00 per contract.

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

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

Floor Options Transaction Charges

The Exchange's proposal to decrease the Professional Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols in Penny and Non-Penny Symbols from \$0.05 to \$0.00 per contract does not impose an undue burden on competition. Today, Customers are not assessed an Options Transaction Charge in Multiply Listed Penny or Non-Penny Symbols because Customer order flow is unique. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Market Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that lowering the Professional Floor Options Transaction Charges is similarly beneficial as the lower fees may cause market participants to select Phlx's Trading Floor as a venue to send Professional order flow, which benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all market participants. Today, Lead Market Makers and Market Makers are assessed the highest Penny and Non-Penny Floor Options

Transaction Charges. Customers are not assessed a Penny or Non-Penny Options Transaction Charge. With this proposal, Professionals would continue to be assessed a lower Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols as compared to Lead Market Makers and Market Makers. Lead Market Makers and Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a Floor Broker to represent their trading interest on the Trading Floor as compared to a Lead Market Maker or Market Maker that could directly transact such orders on the Trading Floor. Further, the Exchange believes that to attract orders from Professionals, Broker-Dealers, or Firms, via a Floor Broker, the rates must be competitive with rates at other trading floors. With respect to Firms, the Exchange notes that Firms are subject to a Monthly Firm Fee Cap. Firm Floor Option Transaction Charges along with Qualified Contingent Cross Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account.³⁸ Finally, with respect to Broker-Dealers, today the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.³⁹ The Exchange notes that both Firms and Broker-

³⁸ See Options 7, Section 4.

³⁹ See Options 7, Section 4.

Dealers have the ability to reduce their Options Transaction Charges as compared to Professionals. Further, the Exchange believes it does not impose an undue burden on competition to assess Professionals no Floor Options Transaction Charge the same as a Customer and more favorable than Firms, and Broker-Dealers, Lead Market Makers, and Market Makers. The potential increased volume would create better trading opportunities that benefit all market participants. Specifically, greater volume and liquidity from increased order flow could create more trading opportunities and tighter spreads. Assessing lower Floor Options Transaction Charges for Professional Customers compared to Lead Market Makers, Market Makers, Firms, and Broker-Dealers is not novel as BOX currently assesses lower fees for Professional Customers as compared to Broker Dealers and Market Makers.⁴⁰

Monthly Firm Fee Cap

The Exchange's proposal to increase the Monthly Firm Fee Cap from a cap of \$200,000 to a monthly cap of \$250,000 does not impose an undue burden on competition because other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in Multiply Listed Penny or Non-Penny Symbols.⁴¹ Customer liquidity benefits all market participants by providing more trading opportunities. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Today, Lead

⁴⁰ See supra 25 above.

⁴¹ See Options 7, Section 4.

Market Makers and Market Makers are subject to a Monthly Market Maker Cap.⁴² With respect to Broker-Dealers, today, the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.⁴³ Finally, today, Professional Floor Options Transaction Charges are proposed to be \$0.00 per contract, similar to Customers and more favorable than Firms.⁴⁴ Additionally, the Exchange believes that the proposal does not impose an undue burden on competition because members and member organizations that are JBOs⁴⁵ could be subject to the Monthly Firm

⁴² See Options 7, Section 4. Lead Market Makers and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) is excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows: \$0.05 per contract Fee for Adding Liquidity in Penny Symbols; \$0.18 per contract Fee for Removing Liquidity in Penny Symbols; \$0.18 per contract in Non-Penny Symbols; and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (“COLA”). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

⁴³ See Options 7, Section 4.

⁴⁴ See Options 7, Section 4. Professional Floor Options Transaction Charges for Penny and Non-Penny Symbols are \$0.05 per contract whereas Firm Floor Options Transaction Charges for Penny and Non-Penny Symbols are \$0.25 per contract. The Exchange is proposing to reduce the Floor Options Transaction Charges to \$0.00 per contract.

⁴⁵ The term “Joint Back Office” or “JBO” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code

Fee Cap, as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not members or member organizations to seek to become members or member organizations to further reduce their transaction fees. Finally, other market participants may interact with the order flow submitted by Firms to Phlx to reach the Monthly Firm Fee Cap.

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,⁴⁶ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

as a JBO. A JBO is priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Options 6D, Section 1. See Options 7, Section 1(c).

⁴⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

determine whether the proposed rule should be approved or disapproved.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2024-14)

March __, 2024

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 March 15, 2024, 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 4.³

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 The Exchange initially filed the proposed pricing change on February 29, 2024 to be operative on March 1, 2024 (SR-Phlx-2024-07). On March 12, 2024, the Exchange withdrew SR-Phlx-2024-07 and submitted SR-Phlx-2024-11. On March 15, 2024, the Exchange withdrew SR-Phlx-2024-11 and submitted this 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 within 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: (1) lower the Professional⁴ Floor⁵ Options Transaction Charges⁶ in Multiply Listed Penny and Non-Penny Symbols;⁷ (2) increase the Lead Market Maker⁸ and Market Maker⁹ Floor

⁴ 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 Phlx’s Pricing Schedule at Options 7, Section 1(c).

⁵ The term “floor transaction” is a transaction that is effected in open outcry on the Exchange’s Trading Floor. See Phlx’s Pricing Schedule at Options 7, Section 1(c).

⁶ Options Transaction Charges are per contract. Floor transaction fees apply to any “as of” or “reversal” adjustments for manually processed trades originally submitted electronically or through FBMS. See Phlx’s Pricing Schedule at Options 7, Section 4, footnote 8.

⁷ For consistency, the Exchange proposes to capitalize the term “non-Penny” in the table in Options 7, Section 4 of the Pricing Schedule.

⁸ 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 Phlx’s Pricing Schedule at Options 7, Section 1(c).

⁹ The term “Floor Market Maker” is a Market Maker who is neither an SQT or an RSQT. A Floor

Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols; and (3) increase the Monthly Firm Fee Cap. Each change will be described below.

Floor Options Transaction Charges

Today, the Exchange assesses Options Transaction Charges in Multiply Listed options, including options overlying equities, ETFs, ETNs and indexes and excluding options in SPY¹⁰ and broad-based index options symbols listed within Options 7, Section 5.A. The Exchange currently assesses the following Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols: \$0.05 per contract for a Professional, \$0.35 per contract for a Lead Market Maker and Market Maker, and \$0.25 per contract for a Broker-Dealer¹¹ and Firm.¹² Customers¹³ are not assessed an Options Transaction Charge in Multiply Listed Penny or Non-Penny Symbols.

At this time, the Exchange proposes to decrease the Professional Floor Options Transaction Charges in Penny and Non-Penny Symbols from \$0.05 to \$0.00 per contract.

Market Maker may provide a quote in open outcry. See Phlx's Pricing Schedule at Options 7, Section 1(c).

¹⁰ Transactions in SPY originating on the Exchange floor are subject to the Multiply Listed Options Fees (see Multiply Listed Options Fees in Options 7, Section 4). However, if one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then these fees will apply to the transactions which originated on the Exchange floor and contracts that are executed electronically on all sides of the transaction. The one side of the transaction which originates on the Exchange floor will count toward the volume which qualifies a participant for the Simple Order Rebate for Adding Liquidity for Lead Market Makers and Market Makers in SPY. See Options 7, Section 3, Part C.

¹¹ 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 Phlx's Pricing Schedule at Options 7, Section 1(c).

¹² 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 ("OCC"). See Phlx's Pricing Schedule at Options 7, Section 1(c).

¹³ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at 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 Phlx's Pricing Schedule at Options 7, Section 1(c).

The Exchange believes the decreased Professional Options Transaction Charges will attract a greater amount of Professional orders to Phlx's Trading Floor. The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") also assesses no Professional Customer fee for manual executions.¹⁴

At this time, the Exchange proposes to increase the Lead Market Maker and Market Maker Floor Options Transaction Charges in Penny and Non-Penny Symbols from \$0.35 to \$0.50 per contract. While the Exchange is increasing the Lead Market Maker and Market Maker Floor Options Transaction Charge by \$0.15 per contract (increase from \$0.35 to \$0.50 per contract), the Exchange believes that its pricing will continue to attract order flow to the Exchange. Today, Lead Market Makers and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) Qualified Contingent Cross or "QCC" Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)).¹⁵ The

¹⁴ NYSE Arca modified its fees for Professional Customer manual executions from a \$0.25 per contract fee for such executions, which fee had been waived for the period August 1, 2022 to December 31, 2022, to \$0.00 per contract. NYSE Arca stated that the proposed change was intended to continue to attract manually executed Professional Customer orders to the Exchange, and the Exchange believed that all market participants stood to benefit from an increase in such volume, which would promote market depth, facilitate tighter spreads and enhance price discovery, and may lead to a corresponding increase in order flow from other market participants as well. See Securities Exchange Act Release No. 96763 (January 27, 2023), 88 FR 7119 (February 2, 2023) (S (SR-NYSEARCA-2023-09)).

¹⁵ The trading activity of separate Lead Market Maker and Market Maker member organizations are aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) are excluded from the Monthly Market Maker Cap. Floor Lead Market Makers or Floor Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap are assessed : \$0.05 per contract Fee for Adding Liquidity in Penny Symbols; \$0.18 per contract Fee for

Exchange proposes this increased fee for business reasons and to encourage competition on its trading floor. The Exchange believes Lead Market Makers and Market Makers will continue to quote aggressively, adding liquidity to the trading floor, so that they may participate in transactions as they do today. Lead Market Makers and Market Makers have a time and place advantage in the trading crowd which the Exchange believes increases competition on its trading floor to the benefit of other floor participants.

Monthly Firm Fee Cap

Today, Firms are subject to a \$200,000 “Monthly Firm Fee Cap.” Today, Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month that exceed the Monthly Firm Fee Cap per member or member organization, when such members or member organizations are trading in their own proprietary account, are subject to a reduced transaction fee of \$0.02 per capped contract unless there is no fee or the fee is waived. Today, all dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in this Options 7, Section 4) are excluded from the Monthly Firm Fee Cap. Transactions in broad-based index options symbols listed within Options 7, Section 5.A. are excluded from the Monthly Firm Fee Cap and QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.¹⁶

Removing Liquidity in Penny Symbols; \$0.18 per contract in Non-Penny Symbols; and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (“COLA”). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be assessed \$0.18 per contract.

¹⁶ For purposes of the Monthly Firm Fee Cap, members and member organizations must notify the Exchange in writing of all accounts in which the member or member organization is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap. See Options 7, Section 4.

At this time, the Exchange proposes to increase the Monthly Firm Fee Cap from a cap of \$200,000 to a monthly cap of \$250,000 as a competitive response to a similar change on NYSE Arca.¹⁷ The Exchange believes that aligning its firm cap with NYSE Arca's firm cap will allow it to compete for transactions on its trading floor. The Exchange believes that increasing the Monthly Firm Fee Cap will continue to lower fees for Firms that transact certain qualifying volume on Phlx, thus enabling these Firms the ability to lower costs while continuing to incentivize Firms to transact volume on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁹ 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

¹⁷ NYSE Arca modified its Monthly Fee Cap in November 2023 by raising the cap from \$200,000 to \$250,000. See Securities Exchange Act Release No. 99021 (December 1, 2023), 88 FR 84030 (November 27, 2023) (SR-NYSEArca-2023-80).

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

broader forms that are most important to investors and listed companies.”²⁰

Likewise, in NetCoalition v. Securities and Exchange Commission²¹ (“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.²² 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.”²³

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’ . . .”²⁴ 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.

Options Transaction Charges

The Exchange’s proposal to decrease the Professional Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols in Penny and Non-Penny

²⁰ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²¹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²² See NetCoalition, at 534 - 535.

²³ Id. at 537.

²⁴ 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)).

Symbols from \$0.05 to \$0.00 per contract is reasonable because the decreased fee should attract a greater amount of Professional orders to Phlx's Trading Floor. Today, Phlx assesses Professionals a lower Floor Options Transaction Charge as compared to Lead Market Makers, Broker-Dealers and Firms with respect to Floor Options Transaction Charges. Similarly, today, BOX Exchange LLC ("BOX") assesses Professionals lower manual transaction fees as compared to Broker Dealers and Market Makers.²⁵ By decreasing its Professional Floor Options Transaction Charge, the Exchange believes it will be able to compete more effectively for options order flow because of the lower Professional fee. Also, the Exchange believes the decreased Professional Options Transaction Charges will attract a greater number of Professional orders to Phlx's Trading Floor. The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") also assesses no Professional Customer fee for manual executions.²⁶

The Exchange's proposal to decrease the Professional Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols in Penny and Non-Penny Symbols from \$0.05 to \$0.00 per contract is equitable and not unfairly discriminatory. Today, Customers are not assessed an Options Transaction Charge in Multiply Listed

²⁵ BOX assesses Professional Customers a \$0.10 per contract manual transaction fee in Penny and Non-Penny Symbols. A Broker Dealer is assessed a \$0.025 per contract manual transaction fee in Penny and Non-Penny Symbols and a Market Maker is assessed a \$0.35 per contract manual transaction fee in Penny and Non-Penny Symbols. BOX does not assess Public Customers or Broker Dealers facilitating a Public Customer a Penny and Non-Penny Interval Classes manual transactions fee. See BOX's Fee Schedule at Section V.

²⁶ NYSE Arca modified its fees for Professional Customer manual executions from a \$0.25 per contract fee for such executions, which fee had been waived for the period August 1, 2022 to December 31, 2022, to \$0.00 per contract. NYSE Arca stated that the proposed change is intended to continue to attract manually executed Professional Customer orders to the Exchange, and the Exchange believes that all market participants stand to benefit from an increase in such volume, which would promote market depth, facilitate tighter spreads and enhance price discovery, and may lead to a corresponding increase in order flow from other market participants as well. See Securities Exchange Act Release No. 96763 (January 27, 2023), 88 FR 7119 (February 2, 2023) (S (SR-NYSEARCA-2023-09)).

Penny or Non-Penny Symbols because Customer order flow is unique. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Market Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that lowering the Professional Floor Options Transaction Charges is similarly beneficial as the lower fees may cause market participants to select Phlx's Trading Floor as a venue to send Professional order flow, which benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all market participants. Today, Lead Market Makers and Market Makers are assessed the highest Penny and Non-Penny Floor Options Transaction Charges. Customers are not assessed a Penny or Non-Penny Options Transaction Charge. With this proposal, Professionals would continue to be assessed a lower Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols as compared to Lead Market Makers and Market Makers. Lead Market Makers and Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a Floor Broker to represent their trading interest on the Trading Floor as compared to a Lead Market Maker or Market Maker that could directly transact such orders on the Trading Floor. Further, the Exchange believes that to attract orders from Professionals, Broker-Dealers, or Firms, via a Floor Broker, the rates must be competitive with rates at other trading floors. With respect to Firms, the Exchange notes that Firms are subject to a Monthly Firm Fee Cap. Firm Floor Option Transaction Charges along with Qualified

Contingent Cross Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account.²⁷ Finally, with respect to Broker-Dealers, today the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.²⁸ The Exchange notes that both Firms and Broker-Dealers have the ability to reduce their Options Transaction Charges as compared to Professionals.

The Exchange believes it is equitable and not unfairly discriminatory to assess Professionals no Floor Options Transaction Charge the same as a Customer and more favorable than Firms, and Broker-Dealers, Lead Market Makers, and Market Makers. The potential increased volume would create better trading opportunities that benefit all market participants. Specifically, greater volume and liquidity from increased order flow could create more trading opportunities and tighter spreads. Assessing lower Floor Options Transaction Charges for Professional Customers compared to Lead Market Makers, Market Makers, Firms, and Broker-Dealers is not novel as BOX currently assesses lower fees for Professional Customers as compared to Broker Dealers and Market Makers.²⁹

²⁷ See Options 7, Section 4.

²⁸ See Options 7, Section 4.

²⁹ See supra 25 above.

The Exchange's proposal to increase the Lead Market Maker and the Market Maker Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols from \$0.35 to \$0.50 per contract is reasonable, equitable and not unfairly discriminatory because Lead Market Makers and Market Makers benefit from having access to interact with orders that are made available in open outcry on the Trading Floor. Lead Market Makers and Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. Further, Lead Market Makers and Market Makers have the benefit of trading on any Trading Floor or in any electronic venue if they so choose. The Exchange believes that it has set its Floor Options Transaction Charges for Lead Market Makers and Market Makers in such a way as to balance the need to attract additional orders to the trading floor while continuing to attract Lead Market Makers and Market Makers to its Trading Floor. The Exchange proposes this increased fee for business reasons and to encourage competition on its trading floor. The Exchange believes Lead Market Makers and Market Makers will continue to quote aggressively, adding liquidity to the trading floor, so that they may participate in transactions as they do today. Today, Lead Market Makers and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)).³⁰ The Exchange is not proposing to amend the

³⁰ The trading activity of separate Lead Market Maker and Market Maker member organizations are aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion,

Monthly Market Maker Cap, which affords Lead Market Makers and Market Makers the ability to pay lower Floor Options Transaction Charges as compared to Non-Customers³¹ once they have capped for the month. To the extent that Phlx's increased fee for Lead Market Makers and Maker Makers was priced too high, the Exchange would lose liquidity providers on its Trading Floor. Competitive forces would serve to constrain the Exchange's ability to overprice certain services on its market.

Monthly Firm Fee Cap

The Exchange's proposal to increase the Monthly Firm Fee Cap from a cap of \$200,000 to a monthly cap of \$250,000 is reasonable because, despite the increase, the Monthly Firm Fee Cap will continue to lower fees for Firms that transact certain qualifying volume on Phlx, thus enabling these Firms the ability to lower costs while continuing to incentivize Firms to direct order flow to the Exchange to achieve the benefits of reducing their fees. Further, increasing the monthly firm cap to \$250,000 is a competitive response to a similar change on NYSE Arca.³² The Exchange believes that

jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) are excluded from the Monthly Market Maker Cap. Floor Lead Market Makers or Floor Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap are assessed : \$0.05 per contract Fee for Adding Liquidity in Penny Symbols; \$0.18 per contract Fee for Removing Liquidity in Penny Symbols; \$0.18 per contract in Non-Penny Symbols; and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction ("COLA"). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be assessed \$0.18 per contract.

³¹ The term "Non-Customer" applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs. See Options 7, Section 1(c).

³² NYSE Arca modified its Monthly Fee Cap in November 2023 by raising the cap from \$200,000 to \$250,000. See Securities Exchange Act Release No. 99021 (December 1, 2023), 88 FR 84030 (November 27, 2023 (SR-NYSEArca-2023-80)).

aligning its firm cap with NYSE Arca's firm cap will allow it to compete for transactions on its trading floor.

The Exchange's proposal to increase the Monthly Firm Fee Cap from a cap of \$200,000 to a monthly cap of \$250,000 is equitable and not unfairly discriminatory as other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in Multiply Listed Penny or Non-Penny Symbols.³³ Customer liquidity benefits all market participants by providing more trading opportunities. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Today, Lead Market Makers and Market Makers are subject to a Monthly Market Maker Cap.³⁴ With respect to Broker-Dealers, today, the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own

³³ See Options 7, Section 4.

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

proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.³⁵ Finally, today, Professional Floor Options Transaction Charges are proposed to be \$0.00 per contract, similar to Customers and more favorable than Firms.³⁶ Additionally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because members and member organizations that are JBOs³⁷ could be subject to the Monthly Firm Fee Cap, as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not members or member organizations to seek to become members or member organizations to further reduce their transaction fees. Finally, other market participants may interact with the order flow submitted by Firms to Phlx to reach the Monthly Firm Fee Cap.

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

³⁵ See Options 7, Section 4.

³⁶ See Options 7, Section 4. Professional Floor Options Transaction Charges for Penny and Non-Penny Symbols are \$0.05 per contract whereas Firm Floor Options Transaction Charges for Penny and Non-Penny Symbols are \$0.25 per contract. The Exchange is proposing to reduce the Floor Options Transaction Charges to \$0.00 per contract.

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

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 venue in which to submit orders. 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

Floor Options Transaction Charges

The Exchange's proposal to decrease the Professional Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols in Penny and Non-Penny Symbols from \$0.05 to \$0.00 per contract does not impose an undue burden on competition. Today, Customers are not assessed an Options Transaction Charge in Multiply Listed Penny or Non-Penny Symbols because Customer order flow is unique. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Marker Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that lowering the Professional Floor Options Transaction Charges

is similarly beneficial as the lower fees may cause market participants to select Phlx's Trading Floor as a venue to send Professional order flow, which benefits all market participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency for all market participants. Today, Lead Market Makers and Market Makers are assessed the highest Penny and Non-Penny Floor Options Transaction Charges. Customers are not assessed a Penny or Non-Penny Options Transaction Charge. With this proposal, Professionals would continue to be assessed a lower Floor Options Transaction Charges in Multiply Listed Penny and Non-Penny Symbols as compared to Lead Market Makers and Market Makers. Lead Market Makers and Market Makers have a time and place advantage on the Trading Floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a Floor Broker to represent their trading interest on the Trading Floor as compared to a Lead Market Maker or Market Maker that could directly transact such orders on the Trading Floor. Further, the Exchange believes that to attract orders from Professionals, Broker-Dealers, or Firms, via a Floor Broker, the rates must be competitive with rates at other trading floors. With respect to Firms, the Exchange notes that Firms are subject to a Monthly Firm Fee Cap. Firm Floor Option Transaction Charges along with Qualified Contingent Cross Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account.³⁸ Finally, with respect to Broker-Dealers, today the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members

³⁸ See Options 7, Section 4.

would otherwise incur this charge for trading in their own proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.³⁹ The Exchange notes that both Firms and Broker-Dealers have the ability to reduce their Options Transaction Charges as compared to Professionals. Further, the Exchange believes it does not impose an undue burden on competition to assess Professionals no Floor Options Transaction Charge the same as a Customer and more favorable than Firms, and Broker-Dealers, Lead Market Makers, and Market Makers. The potential increased volume would create better trading opportunities that benefit all market participants. Specifically, greater volume and liquidity from increased order flow could create more trading opportunities and tighter spreads. Assessing lower Floor Options Transaction Charges for Professional Customers compared to Lead Market Makers, Market Makers, Firms, and Broker-Dealers is not novel as BOX currently assesses lower fees for Professional Customers as compared to Broker Dealers and Market Makers.⁴⁰

Monthly Firm Fee Cap

The Exchange’s proposal to increase the Monthly Firm Fee Cap from a cap of \$200,000 to a monthly cap of \$250,000 does not impose an undue burden on competition because other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in Multiply Listed Penny or Non-Penny Symbols.⁴¹ Customer liquidity benefits all market

³⁹ See Options 7, Section 4.

⁴⁰ See supra 25 above.

⁴¹ See Options 7, Section 4.

participants by providing more trading opportunities. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Today, Lead Market Makers and Market Makers are subject to a Monthly Market Maker Cap.⁴² With respect to Broker-Dealers, today, the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.⁴³ Finally, today, Professional Floor Options Transaction Charges are proposed to be \$0.00 per contract, similar to Customers and more favorable than Firms.⁴⁴ Additionally, the Exchange

⁴² See Options 7, Section 4. Lead Market Makers and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) is excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows: \$0.05 per contract Fee for Adding Liquidity in Penny Symbols; \$0.18 per contract Fee for Removing Liquidity in Penny Symbols; \$0.18 per contract in Non-Penny Symbols; and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (“COLA”). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

⁴³ See Options 7, Section 4.

⁴⁴ See Options 7, Section 4. Professional Floor Options Transaction Charges for Penny and Non-Penny Symbols are \$0.05 per contract whereas Firm Floor Options Transaction Charges for Penny and Non-Penny Symbols are \$0.25 per contract. The Exchange is proposing to reduce the Floor Options Transaction Charges to \$0.00 per contract.

believes that the proposal does not impose an undue burden on competition because members and member organizations that are JBOs⁴⁵ could be subject to the Monthly Firm Fee Cap, as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not members or member organizations to seek to become members or member organizations to further reduce their transaction fees. Finally, other market participants may interact with the order flow submitted by Firms to Phlx to reach the Monthly Firm Fee Cap.

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.⁴⁶

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.

⁴⁵ The term “Joint Back Office” or “JBO” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO is priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (“JBO Broker”) subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Options 6D, Section 1. See Options 7, Section 1(c).

⁴⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-14 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-2024-14. 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-2024-14 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.⁴⁷

Sherry R. Haywood,

Assistant Secretary.

⁴⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq PHLX LLC Rules

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Options Rules

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Options 7 Pricing Schedule

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

	Customer	Professional		Lead Market Maker and Market Maker		Broker-Dealer		Firm	
		Electronic	Floor	Electronic	Floor	Electronic	Floor	Electronic	Floor
Options Transaction Charge (Penny Symbol)⁶	\$0.00	\$0.48 ²	\$0.0[5]0 ⁸	\$0.22	\$0.[35]50 ⁸	\$0.48 ²	\$0.25 ⁸	\$0.48 ²	\$0.25 ⁸
Options Transaction Charge ([n]Non-Penny Symbol)⁷	\$0.00	\$0.75 ³	\$0.0[5]0 ⁸	\$0.25 ⁴	\$0.[35]50 ⁸	\$0.75 ³	\$0.25 ⁸	\$0.75 ³	\$0.25 ⁸
Options Surcharge in BKX	N/A	\$0.10	\$0.10 ⁸	\$0.10	\$0.10 ⁸	\$0.10	\$0.10 ⁸	\$0.10	\$0.10 ⁸
Cabinet Options	\$0.00	N/A	\$0.10 ⁸	N/A	\$0.10 ⁸	N/A	\$0.10 ⁸	N/A	\$0.10 ⁸

* * * * *

Monthly Firm Fee Cap and Facilitation

- Firms are subject to a \$2[0]50,000 “Monthly Firm Fee Cap”. Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month that exceed the Monthly Firm Fee Cap per member or member organization, when such members or member organizations are trading in their own proprietary account, will be subject to a reduced transaction fee of \$0.02 per capped contract unless there is no fee or the fee is waived.

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