

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ PHLX LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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|-------------------------------------|--|--------------------------|---|--------------------------------------|--------------------------|
| Initial * | Amendment * | Withdrawal | Section 19(b)(2) * | Section 19(b)(3)(A) * | Section 19(b)(3)(B) * |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| | | | Rule | | |
| Pilot | Extension of Time Period for Commission Action * | Date Expires * | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="text"/> | <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) | |

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| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 |
| Section 806(e)(1) * | Section 806(e)(2) * |
| <input type="checkbox"/> | <input type="checkbox"/> |
| | Section 3C(b)(2) * |
| | <input type="checkbox"/> |

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|----------------------------------|----------------------------------|
| Exhibit 2 Sent As Paper Document | Exhibit 3 Sent As Paper Document |
| <input type="checkbox"/> | <input type="checkbox"/> |

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Related to Customer Rebates

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 * Associate General Counsel

E-mail * angela.dunn@nasdaq.com

Telephone * (215) 496-5692 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 04/22/2016 Executive Vice President and General Counsel

By Edward S. Knight

(Name *)

edward.knight@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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 Advance 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, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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 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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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 the Exchange’s Pricing Schedule at Section B, entitled “Customer Rebate Program.”

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 2, 2016.

A notice of the proposed rule change for publication in the Federal Register is at Exhibit 1 and the text of the amended Exchange Rule is at 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”) on July 1, 2015. 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
Associate General Counsel
Nasdaq, Inc.
215-496-5692.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section B, entitled "Customer Rebate Program." Specifically, the Exchange is proposing to exclude options overlying NDX³ and MNX⁴ from receiving a Customer⁵ rebate.

Currently, the Exchange has a Customer Rebate Program consisting of five tiers that pay Customer rebates on three Categories, A,⁶ B⁷ and C⁸ of transactions.⁹ A Phlx

³ NDX represents options on the Nasdaq 100 Index traded under the symbol NDX ("NDX").

⁴ MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX").

⁵ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).

⁶ Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols.

⁷ Category B rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order are paid a rebate of \$0.14 per contract. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order for Simple PIXL Orders.

⁸ Category C rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order are not paid a rebate under any circumstances. The Category C Rebate is paid when an electronically-delivered Customer Complex Order, including Customer

member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options that it transacts monthly on Phlx. The Exchange calculates Customer volume in Multiply Listed Options by totaling electronically-delivered and executed volume, excluding volume associated with electronic Qualified Contingent Cross (“QCC”) Orders,¹⁰ as defined in Exchange Rule 1080(o).¹¹ The Exchange pays the following rebates:¹²

Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order leg for Complex PIXL Orders.

⁹ See Section B of the Pricing Schedule.

¹⁰ A QCC Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options, that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order or orders totaling an equal number of contracts. See Rule 1080(o).

¹¹ Members and member organizations under common ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership means members or member organizations under 75% common ownership or control. See the Preface of the Pricing Schedule.

¹² SPY is included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program, however, the rebates do not apply to electronic executions in SPY. Additionally, the Exchange pays a \$0.02 per contract Category A and B rebate and a \$0.03 per contract Category C rebate in addition to the applicable Tier 2 and 3 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in Section II. See Section B of the Pricing Schedule.

| Customer Rebate Tiers | Percentage Thresholds of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (Monthly) | Category A | Category B | Category C |
|------------------------------|---|-------------------|-------------------|-------------------|
| Tier 1 | 0.00% - 0.60% | \$0.00 | \$0.00 | \$0.00 |
| Tier 2 | Above 0.60% - 1.10% | \$0.10 | \$0.10 | \$0.17 |
| Tier 3 | Above 1.10% - 1.60% | \$0.15 | \$0.12 | \$0.17 |
| Tier 4 | Above 1.60% - 2.50% | \$0.20 | \$0.16 | \$0.22 |
| Tier 5 | Above 2.50% | \$0.21 | \$0.17 | \$0.22 |

Today, options overlying NDX and MNX are included in the total volume to qualify a market participant for a Customer Rebate. The Exchange is proposing to continue to permit the electronically-delivered and executed volume associated with options overlying NDX and MNX to be included in the calculation of total market volume. The Exchange proposes to exclude options overlying NDX and MNX as eligible to receive a Customer Rebate in any Category.

In calculating electronically-delivered and executed Customer volume in Multiply Listed Options, the numerator of the equation will remain unchanged and will continue to include all electronically-delivered and executed Customer volume in Multiply Listed Options, including NDX and MNX. The denominator of that equation will also remain unchanged and will continue to include national customer volume in multiply-listed equity and ETF options volume. By including options overlying NDX and MNX in the

computation for Customer Rebates, members will continue to receive the benefit of those transactions toward calculating their eligible rebate tiers and earning a rebate on all qualifying transactions.

At this time, the Exchange proposes to not pay Customer Rebates on options overlying NDX and MNX because of the exclusivity of these options. NDX and MNX are Phlx proprietary index options which currently trade on Phlx and one other options exchange. Therefore, the Exchange would not pay rebates on options overlying NDX and MNX as part of the Customer Rebate Program. The Exchange believes members will continue to be afforded an opportunity to achieve new Customer Rebate Program tiers or maintain their current level of Customer Rebate Program tiers.

b. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁴ 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 or system which the Exchange operates or controls, 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

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

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.”¹⁵

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁶ 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.¹⁷ 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.”¹⁸

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’ . . .”¹⁹ 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.

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37497, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005) at 534-535.

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005) at 534.

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005) at 537.

¹⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005) at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

It is reasonable to no longer pay Customer Rebates on options overlying NDX and MNX in any Category (A, B or C) because these proprietary index options only trade on two options markets at this time. The original intent of the Customer Rebate Program was to pay rebates on electronically-delivered Multiply-Listed Options. By definition, these indices qualify as Multiply-Listed Options because they trade on more than one options exchange. These proprietary index options trade on Phlx and one other options exchange. The Exchange does not desire to pay rebates on options overlying NDX and MNX because of their exclusivity. Despite the fact that technically these options trade on more than one venue, other exchanges cannot list these options. The Exchange believes it is reasonable to continue to count options overlying NDX and MNX in the total volume to qualify a market participant for a Customer Rebate, however, options overlying NDX and MNX will no longer be paid the Customer rebates in any Category because of the exclusivity of this option. Market participants would continue to benefit from NDX and MNX options volume in terms of qualifying for Customer Rebate Tiers. The Exchange believes that not paying Customer Rebates on options overlying NDX and MNX further aligns these products with other Singly Listed Options as compared to Multiply-Listed Options.

It is equitable and not unfairly discriminatory to no longer pay Customer Rebates on options overlying NDX and MNX in any Category because the Exchange would apply its calculation to determine the eligibility and payment of Customer rebates in a uniform manner. The Exchange's proposal to no longer pay Customer Rebates on options overlying NDX and MNX in any Category is equitable and not unfairly discriminatory because the Exchange would no longer pay Customer Rebates on any transaction with

options overlying either NDX or MNX to any market participant. Also, any market participant is eligible to earn a Customer Rebate.

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. In terms of inter-market competition, 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 and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange's proposal to no longer pay Customer Rebates on options overlying NDX and MNX in any Category does not impose an undue burden on intra-market competition because the Exchange would apply the calculation of Customer rebates and would pay rebates on qualifying orders in a uniform manner. No market participant would be paid a Customer Rebate in options overlying NDX or MNX. All market participants may participate in the Customer Rebate Program. Members would continue to benefit from the inclusion of options overlying NDX and MNX in the total volume to qualify a market participant for a Customer Rebate.

Also, the Exchange's proposal to no longer pay Customer Rebates on options

overlying NDX and MNX in any Category does not impose an undue burden on inter-market competition because there is only one other exchange that transacts options overlying NDX and MNX through a contractual agreement with the Exchange. That venue may choose to also not pay rebates on options overlying NDX or MNX. Other venues may not list these proprietary indices.

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,²⁰ 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 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

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2016-54)

April __, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Customer Rebates

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 April 25, 2016, 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 the Exchange’s Pricing Schedule at Section B, entitled “Customer Rebate Program.”

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 2, 2016.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqomxphlx.cchwallstreet.com/>, 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.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section B, entitled "Customer Rebate Program." Specifically, the Exchange is proposing to exclude options overlying NDX³ and MNX⁴ from receiving a Customer⁵ rebate.

Currently, the Exchange has a Customer Rebate Program consisting of five tiers that pay Customer rebates on three Categories, A,⁶ B⁷ and C⁸ of transactions.⁹ A Phlx

³ NDX represents options on the Nasdaq 100 Index traded under the symbol NDX ("NDX").

⁴ MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX").

⁵ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).

⁶ Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols.

member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options that it transacts monthly on Phlx. The Exchange calculates Customer volume in Multiply Listed Options by totaling electronically-delivered and executed volume, excluding volume associated with electronic Qualified Contingent Cross (“QCC”) Orders,¹⁰ as defined in Exchange Rule 1080(o).¹¹ The Exchange pays the following rebates:¹²

⁷ Category B rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order are paid a rebate of \$0.14 per contract. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order for Simple PIXL Orders.

⁸ Category C rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order are not paid a rebate under any circumstances. The Category C Rebate is paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order leg for Complex PIXL Orders.

⁹ See Section B of the Pricing Schedule.

¹⁰ A QCC Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options, that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order or orders totaling an equal number of contracts. See Rule 1080(o).

¹¹ Members and member organizations under common ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership means members or member organizations under 75% common ownership or control. See the Preface of the Pricing Schedule.

| Customer Rebate Tiers | Percentage Thresholds of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (Monthly) | Category A | Category B | Category C |
|------------------------------|---|-------------------|-------------------|-------------------|
| Tier 1 | 0.00% - 0.60% | \$0.00 | \$0.00 | \$0.00 |
| Tier 2 | Above 0.60% - 1.10% | \$0.10 | \$0.10 | \$0.17 |
| Tier 3 | Above 1.10% - 1.60% | \$0.15 | \$0.12 | \$0.17 |
| Tier 4 | Above 1.60% - 2.50% | \$0.20 | \$0.16 | \$0.22 |
| Tier 5 | Above 2.50% | \$0.21 | \$0.17 | \$0.22 |

Today, options overlying NDX and MNX are included in the total volume to qualify a market participant for a Customer Rebate. The Exchange is proposing to continue to permit the electronically-delivered and executed volume associated with options overlying NDX and MNX to be included in the calculation of total market volume. The Exchange proposes to exclude options overlying NDX and MNX as eligible to receive a Customer Rebate in any Category.

In calculating electronically-delivered and executed Customer volume in Multiply

¹² SPY is included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program, however, the rebates do not apply to electronic executions in SPY. Additionally, the Exchange pays a \$0.02 per contract Category A and B rebate and a \$0.03 per contract Category C rebate in addition to the applicable Tier 2 and 3 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in Section II. See Section B of the Pricing Schedule.

Listed Options, the numerator of the equation will remain unchanged and will continue to include all electronically-delivered and executed Customer volume in Multiply Listed Options, including NDX and MNX. The denominator of that equation will also remain unchanged and will continue to include national customer volume in multiply-listed equity and ETF options volume. By including options overlying NDX and MNX in the computation for Customer Rebates, members will continue to receive the benefit of those transactions toward calculating their eligible rebate tiers and earning a rebate on all qualifying transactions.

At this time, the Exchange proposes to not pay Customer Rebates on options overlying NDX and MNX because of the exclusivity of these options. NDX and MNX are Phlx proprietary index options which currently trade on Phlx and one other options exchange. Therefore, the Exchange would not pay rebates on options overlying NDX and MNX as part of the Customer Rebate Program. The Exchange believes members will continue to be afforded an opportunity to achieve new Customer Rebate Program tiers or maintain their current level of Customer Rebate Program tiers.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁴ 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 or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers,

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

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.”¹⁵

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁶ 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.¹⁷ 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.”¹⁸

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

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37497, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005) at 534-535.

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005) at 534.

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005) at 537.

otherwise, in the execution of order flow from broker dealers'"¹⁹ 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.

It is reasonable to no longer pay Customer Rebates on options overlying NDX and MNX in any Category (A, B or C) because these proprietary index options only trade on two options markets at this time. The original intent of the Customer Rebate Program was to pay rebates on electronically-delivered Multiply-Listed Options. By definition, these indices qualify as Multiply-Listed Options because they trade on more than one options exchange. These proprietary index options trade on Phlx and one other options exchange. The Exchange does not desire to pay rebates on options overlying NDX and MNX because of their exclusivity. Despite the fact that technically these options trade on more than one venue, other exchanges cannot list these options. The Exchange believes it is reasonable to continue to count options overlying NDX and MNX in the total volume to qualify a market participant for a Customer Rebate, however, options overlying NDX and MNX will no longer be paid the Customer rebates in any Category because of the exclusivity of this option. Market participants would continue to benefit from NDX and MNX options volume in terms of qualifying for Customer Rebate Tiers. The Exchange believes that not paying Customer Rebates on options overlying NDX and MNX further aligns these products with other Singly Listed Options as compared to Multiply-Listed Options.

It is equitable and not unfairly discriminatory to no longer pay Customer Rebates

¹⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005) at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

on options overlying NDX and MNX in any Category because the Exchange would apply its calculation to determine the eligibility and payment of Customer rebates in a uniform manner. The Exchange's proposal to no longer pay Customer Rebates on options overlying NDX and MNX in any Category is equitable and not unfairly discriminatory because the Exchange would no longer pay Customer Rebates on any transaction with options overlying either NDX or MNX to any market participant. Also, any market participant is eligible to earn a Customer Rebate.

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. In terms of inter-market competition, 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 and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange's proposal to no longer pay Customer Rebates on options overlying NDX and MNX in any Category does not impose an undue burden on intra-market competition because the Exchange would apply the calculation of Customer

rebates and would pay rebates on qualifying orders in a uniform manner. No market participant would be paid a Customer Rebate in options overlying NDX or MNX. All market participants may participate in the Customer Rebate Program. Members would continue to benefit from the inclusion of options overlying NDX and MNX in the total volume to qualify a market participant for a Customer Rebate.

Also, the Exchange's proposal to no longer pay Customer Rebates on options overlying NDX and MNX in any Category does not impose an undue burden on inter-market competition because there is only one other exchange that transacts options overlying NDX and MNX through a contractual agreement with the Exchange. That venue may choose to also not pay rebates on options overlying NDX or MNX. Other venues may not list these proprietary indices.

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.²⁰

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

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2016-54 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2016-54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the

Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2016-54 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Robert W. Errett
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined.

NASDAQ PHLX Rules

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Options Rules

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**NASDAQ PHLX LLC PRICING SCHEDULE
THE EXCHANGE CALCULATES FEES ON A TRADE DATE BASIS.**

POLICY FOR AMENDING BILLING INFORMATION: CORRECTIONS SUBMITTED AFTER TRADE DATE AND PRIOR TO THE ISSUANCE OF AN INVOICE BY THE EXCHANGE MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ONLY MEMBERS MAY SUBMIT TRADE CORRECTIONS.

ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. THE EXCHANGE CALCULATES FEES ON A TRADE DATE BASIS. ONLY MEMBERS MAY SUBMIT BILLING DISPUTES.

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B. Customer Rebate Program

The Customer Rebate Tiers described below will be calculated by totaling Customer volume in Multiply Listed Options (including SPY) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o). Rebates will be paid on Customer Rebate Tiers according to the below categories. Members and member organizations under Common Ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates.

| Customer Rebate Tiers | Percentage Thresholds of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (Monthly) | Category | | |
|-----------------------|--|----------|---------|---------|
| | | A | B | C |
| Tier 1 | 0.00% - 0.60% | \$0.00 | \$0.00 | \$0.00 |
| Tier 2 | Above 0.60% - 1.10% | \$0.10* | \$0.10* | \$0.17* |
| Tier 3 | Above 1.10% - 1.60% | \$0.15 | \$0.12* | \$0.17* |
| Tier 4 | Above 1.60% - 2.50% | \$0.20 | \$0.16 | \$0.22 |
| Tier 5 | Above 2.50% | \$0.21 | \$0.17 | \$0.22 |

Category A: Rebate will be paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols.

Category B: Rebate will be paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order will be paid a rebate of \$0.14 per contract. Rebates on Customer PIXL Orders will be capped at 4,000 contracts per order for Simple PIXL Orders.

Category C: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebate will be paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category C Rebate will not be paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. Rebates on Customer PIXL Orders will be capped at 4,000 contracts per order leg for Complex PIXL Orders.

Rebates will not be paid on NDX and MNX contracts in any Category, however NDX and MNX contracts will count toward the volume requirement to qualify for a Customer Rebate Tier.

*The Exchange will pay a \$0.02 per contract Category A and B rebate and a \$0.03 per contract Category C rebate in addition to the applicable Tier 2 and 3 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in Section II.

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