

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

| | | | | | |
|--|---|--|---|--|---|
| 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"/> |
| Pilot <input type="checkbox"/> | | | Rule | | |
| Extension of Time Period for Commission Action * <input type="checkbox"/> | | Date Expires * <input type="text"/> | <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 | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 |
| Section 806(e)(1) * <input type="checkbox"/> | Section 806(e)(2) * <input type="checkbox"/> |
| | Section 3C(b)(2) * <input type="checkbox"/> |

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

Description
 Provide a brief description of the action (limit 250 characters, required when Initial is checked *).
 Relating to an Affiliated Entity

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 05/24/2016 Executive Vice President and General Counsel
 By Edward S. Knight edward.knight@nasdaq.com
 (Name *)

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 *

Add Remove View

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 *

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, 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

Add Remove View

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

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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

1. Text of the Proposed Rule Change

(a) NASDAQ PHLX LLC (“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 (“Commission”) a proposal to amend the Preface, Section B and Section II of the Exchange’s Pricing Schedule to permit certain affiliated market participants to aggregate volume and qualify for various pricing incentives in the Pricing Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on June 1, 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 permit certain affiliated market participants to aggregate volume and qualify for various pricing incentives in the Pricing Schedule. Specifically, the Exchange proposes to amend the Pricing Schedule at Section B, Customer³ Rebates and at Section II, Multiply-Listed Options Fees⁴, to offer Affiliated Entities certain rebate and fee incentives.

Affiliated Entity

The Exchange proposes to add three definitions to the Preface of the Pricing Schedule. The Exchange proposes to define the terms “Appointed MM,” “Appointed OFP” and “Affiliated Entity.” The Exchange proposed to define the term “Appointed MM” as a Phlx Market Maker⁵ or Specialist⁶ who has been appointed by an Order Flow

³ 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)).

⁴ These fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

⁵ The term “Market Maker” will be utilized to describe fees and rebates applicable to Registered Options Traders (“ROTs”), Streaming Quote Traders (“SQTs”), Remote Streaming Quote Traders (“RSQTs”). An ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes SQTs and RSQTs as well as on and off-floor ROTS. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote

Provider (“OFP”)⁷ for purposes of qualifying as an Affiliated Entity. The Exchange shall define the term “Appointed OFP” as an OFP who has been appointed by a Phlx Market Maker or Specialist for purposes of qualifying as an Affiliated Entity. The term “Affiliated Entity” shall mean an Exchange approved relationship between an Appointed MM and Appointed OFP for purposes of qualifying for certain pricing as specified in the Pricing Schedule. In order to qualify as an Affiliated Entity, Market Makers and OFPs will be required to send an email to the Exchange, as specified by the Exchange,⁸ designating their Appointed MM or Appointed OFP, respectively. Once approved by the Exchange in writing, the Affiliated Entity would be eligible for applicable pricing, as specified in the Pricing Schedule, for a one (1) year period, unless either party terminates earlier in writing. The Exchange will not permit members and member organizations

Trader Organization or “RSQTO,” which may also be referred to as a Remote Market Making Organization (“RMO”), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a). RSQTOs may also be referred to as Remote Market Markers (“RMMs”).

⁶ The term “Specialist” shall apply to the account of a Specialist (as defined in Exchange Rule 1020(a)). A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

⁷ The term “Order Flow Provider” means any member or member organization that submits, as agent, orders to the Exchange. See Rule 1080(l)(i)(B).

⁸ The Exchange shall issue an Options Trader Alert specifying the email address and details required to apply to become an Affiliated Entity. Once the Exchange receives both emails, from the Affiliated MM and the Affiliated OFP, the Exchange will send a confirming email with the date of approval of the one (1) year term.

under Common Ownership⁹ to be eligible to qualify as an Affiliated Entity. Each member or member organization may qualify for one (1) Affiliated Entity relationship at any given time.

Once the Affiliated Entity has been approved by the Exchange, the Appointed MM and the Appointed OFP that have been approved as Affiliated Entities shall be eligible to aggregate their volume for purposes of qualifying for certain pricing specified in the Pricing Schedule, as described below.

Section B - Customer Rebates

The Exchange proposes to amend Section B, entitled “Customer Rebates” to permit Affiliated Entities to aggregate their Customer volume for purposes of calculating Customer Rebate Tiers and receiving rebates. Currently, the Exchange has a Customer Rebate Program consisting of the following five tiers that pay Customer rebates on three Categories, A, B and C, of transactions:

| 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 |

⁹ The term “Common Ownership” shall mean members or member organizations under 75% common ownership or control.

| | | | | |
|--------|---------------------|--------|--------|--------|
| Tier 4 | Above 1.60% - 2.50% | \$0.20 | \$0.16 | \$0.22 |
| Tier 5 | Above 2.50% | \$0.21 | \$0.17 | \$0.22 |

A Phlx 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, as defined in Exchange Rule 1080(o).¹⁰ The Exchange proposes to incentivize certain members and member organizations who are not under Common Ownership to enter into an Affiliated Entity relationship for the purpose of aggregating Customer volume to qualify for Section B Customer Rebates. Customer liquidity benefits all market participants by providing more order flow to the marketplace and more trading opportunities.

Affiliated Entities would aggregate Customer volume as between the Appointed MM and Appointed OFP to qualify for any of the five tiers of Customer Rebates that pay Category, A, B or C rebates on transactions. Affiliated Entities would also be eligible to receive the additional \$0.02 per contract Category A and B rebate and the additional \$0.03 per contract Category C rebate, paid in addition to the applicable Tier 2 and 3 rebate, currently available to a Specialist or Market Maker or its member or member

¹⁰ In calculating electronically-delivered and executed Customer volume in Multiply Listed Options, the numerator of the equation includes all electronically-delivered and executed Customer volume in Multiply Listed Options. The denominator of that equation includes national customer volume in multiply-listed equity and ETF options volume, excluding SPY. See Section B of the Pricing Schedule.

organization affiliate under Common Ownership, provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in Section II.

The Exchange's proposal would incentivize certain members and member organizations, who are not under Common Ownership, to enter into an Affiliated Entity relationship for the purpose of aggregating Customer volume to qualify for Customer Rebates in Section B of the Pricing Schedule.

Section II - Options Transaction Charge

The Exchange proposes to amend Section II of the Pricing Schedule to offer non-Customer member and member organizations that are Affiliated Entities an opportunity to reduce non-Penny Pilot electronic Options Transaction Charges. Today, the Exchange assesses a Professional,¹¹ Broker-Dealer¹² and Firm¹³ a non-Penny Pilot electronic Options Transaction Charge of \$0.75 per contract and a Specialist and Market Maker a \$0.25 per contract non-Penny Pilot electronic Options Transaction Charge. The Exchange proposes to provide an Affiliated Entity with an opportunity to lower the Professional, Broker-Dealer and Firm non-Penny Pilot electronic Options Transaction Charge from \$0.75 to \$0.60 per contract provided the Affiliated Entity qualifies for

¹¹ The term "Professional" 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 Rule 1000(b)(14).

¹² The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

¹³ 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.

Customer Rebate Tiers 4¹⁴ or 5¹⁵ in Section B of the Pricing Schedule. The Exchange proposes to provide an Affiliated Entity with an opportunity to lower the Specialist and Market Maker non-Penny Pilot electronic Options Transaction Charge from \$0.25 to \$0.23 per contract provided the Affiliated Entity qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule.¹⁶

The Exchange's proposal would incentivize certain members and member organizations, who are not under Common Ownership, to enter into an Affiliated Entity relationship for the purpose of aggregating Customer volume to qualify for reduced non-Penny Pilot Options Transaction Charges.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,¹⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons

¹⁴ The Tier 4 Customer Rebate in Section B of the Pricing Schedule requires Customer volume between 1.60% and 2.50% of National Customer Volume in Multiply Listed Equity and ETF Options. This rebate tier pays a Category A \$0.20 rebate, a Category B \$0.16 rebate and a Category C \$0.22 rebate.

¹⁵ The Tier 5 Customer Rebate in Section B of the Pricing Schedule requires Customer volume above 2.50% of National Customer Volume in Multiply Listed Equity and ETF Options. This rebate tier pays a Category A \$0.21 rebate, a Category B \$0.17 rebate and a Category C \$0.22 rebate.

¹⁶ Today, any member or member organization under Common Ownership with another member or member organization that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule is assessed either a \$0.25 or \$0.75 per contract non-Penny Pilot electronic Options Transaction Charge.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4), (5).

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 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.”¹⁹

Likewise, in NetCoalition v. Securities and Exchange Commission²⁰ (“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.²¹ 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.”²²

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

¹⁹ Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7-10-04) (“Regulation NMS Adopting Release”).

²⁰ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²¹ See id. at 534-535.

²² See id. at 537.

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’....”²³ 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.

Section B Customer Rebates

The Exchange’s proposal to permit Affiliated Entities to aggregate Customer volume for purposes of qualifying for Section B Customer Rebates is reasonable because it will attract additional Customer order flow to the Exchange. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts 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. Market participants acting as Market Makers and directing order flow as OFPs may be eligible to qualify for a Customer Rebate or a higher Customer Rebate tier, with this proposal, as a result of aggregating volume with another appointed member. Permitting members and member organizations to affiliate for purposes of qualifying for Section B Customer Rebates may also encourage Affiliated Entities to incentivize each other to attract and seek to execute more Customer volume on Phlx. The Affiliated Entity relationship would permit the Appointed MM and the Appointed OFP to equally benefit from Customer orders executed on Phlx in terms of qualifying for higher Customer rebate tiers. In turn, market participants would benefit

²³ See *id.* at 539 (quoting Securities Exchange Act Commission at Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782-74783 (December 9, 2008) (SR-NYSEArca-2006-21)).

from the increased liquidity with which to interact, potentially tighter spreads on orders to achieve executions and increased capital commitment. Overall, incentivizing market participants with Customer rebates may increase the quality of the liquidity available on Phlx.

The Exchange's proposal to permit Affiliated Entities to aggregate Customer volume for purposes of qualifying for Section B Customer rebates is equitable and not unfairly discriminatory because all Phlx members and member organizations, other than those under Common Ownership, may qualify as an Affiliated Entity as either an Appointed MM or an Appointed OFP.²⁴ Also, each member or member organization may participate in only one Affiliated Entity relationship at a given time, which imposes a measure of exclusivity among market participants, allowing each party to rely on the other's executed Customer volume on Phlx to receive a corresponding benefit in terms of a rebate. The Exchange will apply all qualifications in a uniform manner when approving Affiliated Entities. Also, Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market Makers are subject to burdensome quoting obligations²⁵ to the market that do not apply to other market participants. Incentivizing these market participants to execute Customer volume on Phlx may result in tighter spreads.

The Exchange's proposal to exclude members and member organizations under Common Ownership from qualifying as an Affiliated Entity is reasonable because

²⁴ Both members must elect each other to qualify as an Affiliated Entity for one year. Participation is effected by an agreement of both parties. One party may elect terminate the agreement at any time.

²⁵ See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

members and member organizations under Common Ownership may aggregate volume today for purposes of Section B Customer Rebates.²⁶

The Exchange's proposal to exclude members and member organizations under Common Ownership from qualifying as an Affiliated Entity is equitable and not unfairly discriminatory because the Exchange will apply all qualifications in a uniform manner when approving Affiliated Entities. Members under Common Ownership may aggregate volume today for purposes of qualifying for Customer Rebates and, therefore, excluding members and member organizations under Common Ownership from also qualifying as an Affiliated Entity is equitable and not unfairly discriminatory.

Section II – Options Transaction Charges

The Exchange's proposal to amend Section II of the Pricing Schedule to offer non-Customer members and member organizations that are Affiliated Entities an opportunity to reduce non-Penny Pilot electronic Options Transaction Charges is reasonable because the Exchange believes it will encourage these market participants to transact a greater amount of Customer volume on Phlx. The Exchange's proposal to permit Affiliated Entities to qualify for the reduced non-Penny Pilot electronic Options Transaction Charges by qualifying for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will attract additional Customer order flow to the Exchange. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts 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. Market participants acting as Market Makers and

²⁶ See Section B of the Pricing Schedule.

directing order flow as OFPs may be eligible to qualify for these Customer rebate tiers as a result of aggregating volume with another appointed member and benefit from reduced non-Penny Pilot electronic Options Transaction Charges. Permitting members and member organizations to affiliate for purposes of qualifying for Section B Customer rebates may also encourage Affiliated Entities to incentivize each other to attract and seek to execute more Customer volume on Phlx. The Affiliated Entity relationship would permit the Appointed MM and the Appointed OFP to equally benefit from reduced non-Penny Pilot electronic Options Transaction Charges. In turn, market participants would benefit from the increased liquidity with which to interact, potentially tighter spreads on orders to achieve executions and increased capital commitment.

The Exchange's proposal to amend Section II of the Pricing Schedule to offer non-Customer member and member organizations that are Affiliated Entities an opportunity to reduce non-Penny Pilot electronic Options Transaction Charges is equitable and not unfairly discriminatory because all Phlx members and member organizations who are today assessed non-Penny Pilot electronic Options Transaction Charges are eligible to qualify for a reduced rate.²⁷ The Exchange will apply all qualifications for the reduced rate in a uniform manner.

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. Specifically, the Exchange does not believe that permitting Affiliated Entities to

²⁷ Customers are not assessed non-Penny Pilot electronic Options Transaction Charges.

aggregate volume to qualify for certain rebates and reduced fees will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms.

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, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange

does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. In terms of inter-market competition, the Exchange notes that other options markets have similar incentives in place to attract volume to their markets.²⁸

Section B Customer Rebates

In terms of intra-market competition, the Exchange does not believe that its proposal to permit Affiliated Entities to aggregate Customer volume for purposes of qualifying for Section B Customer Rebates imposes an undue burden on intra-market competition because all Phlx members and member organizations, other than those under Common Ownership, may qualify as an Affiliated Entity as either an Appointed MM or an Appointed OFP. Also, each Phlx member or member organization may participate in only one Affiliated Entity relationship at a given time, which imposes a measure of exclusivity among market participants, allowing each party to rely on the other's executed Customer volume on Phlx to receive a corresponding benefit in terms of a rebate.

The Exchange will apply all qualifications in a uniform manner when approving Affiliated Entities. Also, excluding members and member organizations under Common Ownership from qualifying as an Affiliated Entity does not impose an undue burden on intra-market competition because the Exchange will not permit any member and member

²⁸ See NYSE MKT LLC's ("NYSE Amex") pricing at NYSE Amex Options Fee Schedule). NYSE Amex permits aggregation of volume to qualify for the Amex Customer Engagement or ACE Program. See Bats BZX Exchange, Inc.'s ("BZX") fee schedule. BZX permits aggregation of volume to qualify for tiered pricing. See the Chicago Board Options Exchange Incorporated ("CBOE") Fees Schedule. CBOE permits aggregation of volume to qualify for credits available under an Affiliated Volume Plan or "AVP."

organization under Common Ownership from qualifying as an Affiliated Entity. The Exchange will apply all qualifications in a uniform manner when approving Affiliated Entities.

Permitting Market Makers to qualify as an Affiliated Entity with an OFP does not impose an undue burden on intra-market competition because Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market Makers are subject to burdensome quoting obligations²⁹ to the market that do not apply to other market participants. Incentivizing these market participants to execute Customer volume on Phlx may result in tighter spreads.

The ability to affiliate may also encourage affiliated members and member organizations to incentivize each other to attract and seek to execute more Customer volume on Phlx. This relationship would permit the Affiliated MM and the Affiliated OFP to equally benefit from Customer orders executed on Phlx in terms of qualifying for higher Customer rebate tiers. In turn, market participants would benefit from the increased liquidity with which to interact, potentially tighter spreads and enhanced price discovery. Overall, the Exchange believes that incentivizing market participants with Customer rebates may increase the quality of the liquidity available on Phlx.

Section II – Options Transaction Charges

The Exchange's proposal to amend Section II of the Pricing Schedule to offer non-Customer member and member organizations that are Affiliated Entities an opportunity to reduce non-Penny Pilot electronic Options Transaction Charges does not

²⁹ See note 25 above.

impose an undue burden on intra-market competition because all Phlx members and member organizations who are today assessed non-Penny Pilot electronic Options Transaction Charges are eligible to qualify for a reduced rate. The Exchange will apply all qualifications for the reduced rate in a uniform manner.

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,³⁰ 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

Not applicable.

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2016-62)

May __, 2016

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

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 May 24, 2016, NASDAQ PHLX LLC (“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 Preface, Section B and Section II of the Exchange’s Pricing Schedule to permit certain affiliated market participants to aggregate volume and qualify for various pricing incentives in the Pricing Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on June 1, 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 permit certain affiliated market participants to aggregate volume and qualify for various pricing incentives in the Pricing Schedule. Specifically, the Exchange proposes to amend the Pricing Schedule at Section B, Customer³ Rebates and at Section II, Multiply-Listed Options Fees⁴, to offer Affiliated Entities certain rebate and fee incentives.

Affiliated Entity

The Exchange proposes to add three definitions to the Preface of the Pricing Schedule. The Exchange proposes to define the terms “Appointed MM,” “Appointed OFP” and “Affiliated Entity.” The Exchange proposed to define the term “Appointed

³ 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)).

⁴ These fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

MM” as a Phlx Market Maker⁵ or Specialist⁶ who has been appointed by an Order Flow Provider (“OFP”)⁷ for purposes of qualifying as an Affiliated Entity. The Exchange shall define the term “Appointed OFP” as an OFP who has been appointed by a Phlx Market Maker or Specialist for purposes of qualifying as an Affiliated Entity. The term “Affiliated Entity” shall mean an Exchange approved relationship between an Appointed MM and Appointed OFP for purposes of qualifying for certain pricing as specified in the Pricing Schedule. In order to qualify as an Affiliated Entity, Market Makers and OFPs will be required to send an email to the Exchange, as specified by the Exchange,⁸

⁵ The term “Market Maker” will be utilized to describe fees and rebates applicable to Registered Options Traders (“ROTs”), Streaming Quote Traders (“SQTs”), Remote Streaming Quote Traders (“RSQTs”). An ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes SQTs and RSQTs as well as on and off-floor ROTs. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or “RSQTO,” which may also be referred to as a Remote Market Making Organization (“RMO”), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a). RSQTs may also be referred to as Remote Market Markers (“RMMs”).

⁶ The term “Specialist” shall apply to the account of a Specialist (as defined in Exchange Rule 1020(a)). A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

⁷ The term “Order Flow Provider” means any member or member organization that submits, as agent, orders to the Exchange. See Rule 1080(l)(i)(B).

⁸ The Exchange shall issue an Options Trader Alert specifying the email address and details required to apply to become an Affiliated Entity. Once the Exchange

designating their Appointed MM or Appointed OFP, respectively. Once approved by the Exchange in writing, the Affiliated Entity would be eligible for applicable pricing, as specified in the Pricing Schedule, for a one (1) year period, unless either party terminates earlier in writing. The Exchange will not permit members and member organizations under Common Ownership⁹ to be eligible to qualify as an Affiliated Entity. Each member or member organization may qualify for one (1) Affiliated Entity relationship at any given time.

Once the Affiliated Entity has been approved by the Exchange, the Appointed MM and the Appointed OFP that have been approved as Affiliated Entities shall be eligible to aggregate their volume for purposes of qualifying for certain pricing specified in the Pricing Schedule, as described below.

Section B - Customer Rebates

The Exchange proposes to amend Section B, entitled “Customer Rebates” to permit Affiliated Entities to aggregate their Customer volume for purposes of calculating Customer Rebate Tiers and receiving rebates. Currently, the Exchange has a Customer Rebate Program consisting of the following five tiers that pay Customer rebates on three Categories, A, B and C, of transactions:

| Customer Rebate Tiers | Percentage Thresholds of National Customer Volume in Multiply- | Category | Category | Category |
|------------------------------|---|-----------------|-----------------|-----------------|
| | | A | B | C |

receives both emails, from the Affiliated MM and the Affiliated OFP, the Exchange will send a confirming email with the date of approval of the one (1) year term.

⁹ The term “Common Ownership” shall mean members or member organizations under 75% common ownership or control.

**Listed Equity and ETF
Options
Classes, excluding SPY
Options (Monthly)**

| | | | | |
|--------|---------------------|--------|--------|--------|
| 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 |

A Phlx 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, as defined in Exchange Rule 1080(o).¹⁰ The Exchange proposes to incentivize certain members and member organizations who are not under Common Ownership to enter into an Affiliated Entity relationship for the purpose of aggregating Customer volume to qualify for Section B Customer Rebates. Customer liquidity benefits all market participants by providing more order flow to the marketplace and more trading opportunities.

¹⁰ In calculating electronically-delivered and executed Customer volume in Multiply Listed Options, the numerator of the equation includes all electronically-delivered and executed Customer volume in Multiply Listed Options. The denominator of that equation includes national customer volume in multiply-listed equity and ETF options volume, excluding SPY. See Section B of the Pricing Schedule.

Affiliated Entities would aggregate Customer volume as between the Appointed MM and Appointed OFP to qualify for any of the five tiers of Customer Rebates that pay Category, A, B or C rebates on transactions. Affiliated Entities would also be eligible to receive the additional \$0.02 per contract Category A and B rebate and the additional \$0.03 per contract Category C rebate, paid in addition to the applicable Tier 2 and 3 rebate, currently available 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.

The Exchange's proposal would incentivize certain members and member organizations, who are not under Common Ownership, to enter into an Affiliated Entity relationship for the purpose of aggregating Customer volume to qualify for Customer Rebates in Section B of the Pricing Schedule.

Section II - Options Transaction Charge

The Exchange proposes to amend Section II of the Pricing Schedule to offer non-Customer member and member organizations that are Affiliated Entities an opportunity to reduce non-Penny Pilot electronic Options Transaction Charges. Today, the Exchange assesses a Professional,¹¹ Broker-Dealer¹² and Firm¹³ a non-Penny Pilot electronic

¹¹ The term "Professional" 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 Rule 1000(b)(14).

¹² The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

¹³ 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.

Options Transaction Charge of \$0.75 per contract and a Specialist and Market Maker a \$0.25 per contract non-Penny Pilot electronic Options Transaction Charge. The Exchange proposes to provide an Affiliated Entity with an opportunity to lower the Professional, Broker-Dealer and Firm non-Penny Pilot electronic Options Transaction Charge from \$0.75 to \$0.60 per contract provided the Affiliated Entity qualifies for Customer Rebate Tiers 4¹⁴ or 5¹⁵ in Section B of the Pricing Schedule. The Exchange proposes to provide an Affiliated Entity with an opportunity to lower the Specialist and Market Maker non-Penny Pilot electronic Options Transaction Charge from \$0.25 to \$0.23 per contract provided the Affiliated Entity qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule.¹⁶

The Exchange's proposal would incentivize certain members and member organizations, who are not under Common Ownership, to enter into an Affiliated Entity relationship for the purpose of aggregating Customer volume to qualify for reduced non-Penny Pilot Options Transaction Charges.

¹⁴ The Tier 4 Customer Rebate in Section B of the Pricing Schedule requires Customer volume between 1.60% and 2.50% of National Customer Volume in Multiply Listed Equity and ETF Options. This rebate tier pays a Category A \$0.20 rebate, a Category B \$0.16 rebate and a Category C \$0.22 rebate.

¹⁵ The Tier 5 Customer Rebate in Section B of the Pricing Schedule requires Customer volume above 2.50% of National Customer Volume in Multiply Listed Equity and ETF Options. This rebate tier pays a Category A \$0.21 rebate, a Category B \$0.17 rebate and a Category C \$0.22 rebate.

¹⁶ Today, any member or member organization under Common Ownership with another member or member organization that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule is assessed either a \$0.25 or \$0.75 per contract non-Penny Pilot electronic Options Transaction Charge.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,¹⁸ 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 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.”¹⁹

Likewise, in NetCoalition v. Securities and Exchange Commission²⁰ (“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.²¹ As the court emphasized, the Commission

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4), (5).

¹⁹ Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7-10-04) (“Regulation NMS Adopting Release”).

²⁰ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²¹ See id. at 534-535.

“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.”²²

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’”²³ 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.

Section B Customer Rebates

The Exchange’s proposal to permit Affiliated Entities to aggregate Customer volume for purposes of qualifying for Section B Customer Rebates is reasonable because it will attract additional Customer order flow to the Exchange. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts 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. Market participants acting as Market Makers and directing order flow as OFPs may be eligible to qualify for a Customer Rebate or a higher

²² See id. at 537.

²³ See id. at 539 (quoting Securities Exchange Act Commission at Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782-74783 (December 9, 2008) (SR-NYSEArca-2006-21)).

Customer Rebate tier, with this proposal, as a result of aggregating volume with another appointed member. Permitting members and member organizations to affiliate for purposes of qualifying for Section B Customer Rebates may also encourage Affiliated Entities to incentivize each other to attract and seek to execute more Customer volume on Phlx. The Affiliated Entity relationship would permit the Appointed MM and the Appointed OFP to equally benefit from Customer orders executed on Phlx in terms of qualifying for higher Customer rebate tiers. In turn, market participants would benefit from the increased liquidity with which to interact, potentially tighter spreads on orders to achieve executions and increased capital commitment. Overall, incentivizing market participants with Customer rebates may increase the quality of the liquidity available on Phlx.

The Exchange's proposal to permit Affiliated Entities to aggregate Customer volume for purposes of qualifying for Section B Customer rebates is equitable and not unfairly discriminatory because all Phlx members and member organizations, other than those under Common Ownership, may qualify as an Affiliated Entity as either an Appointed MM or an Appointed OFP.²⁴ Also, each member or member organization may participate in only one Affiliated Entity relationship at a given time, which imposes a measure of exclusivity among market participants, allowing each party to rely on the other's executed Customer volume on Phlx to receive a corresponding benefit in terms of a rebate. The Exchange will apply all qualifications in a uniform manner when approving Affiliated Entities. Also, Market Makers are valuable market participants that

²⁴ Both members must elect each other to qualify as an Affiliated Entity for one year. Participation is effected by an agreement of both parties. One party may elect terminate the agreement at any time.

provide liquidity in the marketplace and incur costs that other market participants do not incur. Market Makers are subject to burdensome quoting obligations²⁵ to the market that do not apply to other market participants. Incentivizing these market participants to execute Customer volume on Phlx may result in tighter spreads.

The Exchange's proposal to exclude members and member organizations under Common Ownership from qualifying as an Affiliated Entity is reasonable because members and member organizations under Common Ownership may aggregate volume today for purposes of Section B Customer Rebates.²⁶

The Exchange's proposal to exclude members and member organizations under Common Ownership from qualifying as an Affiliated Entity is equitable and not unfairly discriminatory because the Exchange will apply all qualifications in a uniform manner when approving Affiliated Entities. Members under Common Ownership may aggregate volume today for purposes of qualifying for Customer Rebates and, therefore, excluding members and member organizations under Common Ownership from also qualifying as an Affiliated Entity is equitable and not unfairly discriminatory.

Section II – Options Transaction Charges

The Exchange's proposal to amend Section II of the Pricing Schedule to offer non-Customer members and member organizations that are Affiliated Entities an opportunity to reduce non-Penny Pilot electronic Options Transaction Charges is reasonable because the Exchange believes it will encourage these market participants to transact a greater amount of Customer volume on Phlx. The Exchange's proposal to

²⁵ See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

²⁶ See Section B of the Pricing Schedule.

permit Affiliated Entities to qualify for the reduced non-Penny Pilot electronic Options Transaction Charges by qualifying for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will attract additional Customer order flow to the Exchange. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts 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. Market participants acting as Market Makers and directing order flow as OFPs may be eligible to qualify for these Customer rebate tiers as a result of aggregating volume with another appointed member and benefit from reduced non-Penny Pilot electronic Options Transaction Charges. Permitting members and member organizations to affiliate for purposes of qualifying for Section B Customer rebates may also encourage Affiliated Entities to incentivize each other to attract and seek to execute more Customer volume on Phlx. The Affiliated Entity relationship would permit the Appointed MM and the Appointed OFP to equally benefit from reduced non-Penny Pilot electronic Options Transaction Charges. In turn, market participants would benefit from the increased liquidity with which to interact, potentially tighter spreads on orders to achieve executions and increased capital commitment.

The Exchange's proposal to amend Section II of the Pricing Schedule to offer non-Customer member and member organizations that are Affiliated Entities an opportunity to reduce non-Penny Pilot electronic Options Transaction Charges is equitable and not unfairly discriminatory because all Phlx members and member organizations who are today assessed non-Penny Pilot electronic Options Transaction

Charges are eligible to qualify for a reduced rate.²⁷ The Exchange will apply all qualifications for the reduced rate in a uniform manner.

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.

Specifically, the Exchange does not believe that permitting Affiliated Entities to aggregate volume to qualify for certain rebates and reduced fees will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms.

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

²⁷ Customers are not assessed non-Penny Pilot electronic Options Transaction Charges.

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, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. In terms of inter-market competition, the Exchange notes that other options markets have similar incentives in place to attract volume to their markets.²⁸

Section B Customer Rebates

In terms of intra-market competition, the Exchange does not believe that its proposal to permit Affiliated Entities to aggregate Customer volume for purposes of qualifying for Section B Customer Rebates imposes an undue burden on intra-market competition because all Phlx members and member organizations, other than those under Common Ownership, may qualify as an Affiliated Entity as either an Appointed MM or an Appointed OFP. Also, each Phlx member or member organization may participate in only one Affiliated Entity relationship at a given time, which imposes a measure of

²⁸ See NYSE MKT LLC's ("NYSE Amex") pricing at NYSE Amex Options Fee Schedule). NYSE Amex permits aggregation of volume to qualify for the Amex Customer Engagement or ACE Program. See Bats BZX Exchange, Inc.'s ("BZX") fee schedule. BZX permits aggregation of volume to qualify for tiered pricing. See the Chicago Board Options Exchange Incorporated ("CBOE") Fees Schedule. CBOE permits aggregation of volume to qualify for credits available under an Affiliated Volume Plan or "AVP."

exclusivity among market participants, allowing each party to rely on the other's executed Customer volume on Phlx to receive a corresponding benefit in terms of a rebate.

The Exchange will apply all qualifications in a uniform manner when approving Affiliated Entities. Also, excluding members and member organizations under Common Ownership from qualifying as an Affiliated Entity does not impose an undue burden on intra-market competition because the Exchange will not permit any member and member organization under Common Ownership from qualifying as an Affiliated Entity. The Exchange will apply all qualifications in a uniform manner when approving Affiliated Entities.

Permitting Market Makers to qualify as an Affiliated Entity with an OFP does not impose an undue burden on intra-market competition because Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market Makers are subject to burdensome quoting obligations²⁹ to the market that do not apply to other market participants. Incentivizing these market participants to execute Customer volume on Phlx may result in tighter spreads.

The ability to affiliate may also encourage affiliated members and member organizations to incentivize each other to attract and seek to execute more Customer volume on Phlx. This relationship would permit the Affiliated MM and the Affiliated OFP to equally benefit from Customer orders executed on Phlx in terms of qualifying for higher Customer rebate tiers. In turn, market participants would benefit from the

²⁹ See note 25 above.

increased liquidity with which to interact, potentially tighter spreads and enhanced price discovery. Overall, the Exchange believes that incentivizing market participants with Customer rebates may increase the quality of the liquidity available on Phlx.

Section II – Options Transaction Charges

The Exchange's proposal to amend Section II of the Pricing Schedule to offer non-Customer member and member organizations that are Affiliated Entities an opportunity to reduce non-Penny Pilot electronic Options Transaction Charges does not impose an undue burden on intra-market competition because all Phlx members and member organizations who are today assessed non-Penny Pilot electronic Options Transaction Charges are eligible to qualify for a reduced rate. The Exchange will apply all qualifications for the reduced rate in a uniform manner.

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.³⁰

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

³⁰ 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-2016-62 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-2016-62. 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-2016-62 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.³¹

Robert W. Errett
Deputy Secretary

³¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined.

**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.

* * * * *

PREFACE

* * * * *

For purposes of determining average daily volume or volume-based pricing hereunder, any day that the market is not open for the entire trading day will be excluded from such calculation.

The term “**Appointed MM**” is a Phlx Market Maker or Specialist who has been appointed by an Order Flow Provider (“OFP”) for purposes of qualifying as an Affiliated Entity.

The term “**Appointed OFP**” is an Order Flow Provider (“OFP”) who has been appointed by a Phlx Market Maker or Specialist for purposes of qualifying as an Affiliated Entity.

The term “**Affiliated Entity**” shall mean an Exchange approved relationship between an Appointed MM and Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Appointed MMs and Appointed OFPs are required to send an email to the Exchange, as specified by the Exchange, appointing their counterpart. Once approved by the Exchange in writing, the Affiliated Entity would be eligible for applicable pricing as specified in the Pricing Schedule for a one (1) year period, unless either party terminates earlier in writing. Members and member organizations under Common Ownership are not eligible to qualify as an Affiliated Entity. Each member or member organization may qualify for one (1) Affiliated Entity relationship at any given time.

* * * * *

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. Affiliated Entities 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 | Category | 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 or alternatively an Affiliated Entity, provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in Section II.

* * * * *

II. Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed)

| | Customer Professional | | Specialist and Market Maker | | Broker-Dealer | | Firm | | |
|---|------------------------------|------------------------|------------------------------------|---------------------|-------------------------|------------------------|-------------------------|---------------------------|--------|
| | Electronic Floor | | Electronic Floor | | Electronic Floor | | Electronic Floor | | |
| Options Transaction Charge (Penny Pilot) | \$0.00 | \$0.48 ² | \$0.25 | \$0.22 | \$0.35 | \$0.48 ² | \$0.25 | \$0.48 ^{1, 2} | \$0.25 |
| Options Transaction Charge (non-Penny Pilot) | \$0.00 | \$0.75 ^{2, 3} | \$0.25 | \$0.25 ⁴ | \$0.35 | \$0.75 ^{2, 3} | \$0.25 | \$0.75 ^{1, 2, 3} | \$0.25 |
| Options Surcharge in MNX and NDX | N/A | \$0.25 | \$0.25 | \$0.25 | \$0.25 | \$0.25 | \$0.25 | \$0.25 | \$0.25 |
| Options Surcharge in BKK | N/A | \$0.10 | \$0.10 | \$0.10 | \$0.10 | \$0.10 | \$0.10 | \$0.10 | \$0.10 |
| Cabinet Options | \$0.00 | N/A | \$0.10 | N/A | \$0.10 | N/A | \$0.10 | N/A | \$0.10 |

• These fees are per contract.

¹Firm electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF will be assessed \$0.37.

²Electronic Complex Orders will be assessed \$0.35 per contract.

³Any member or member organization under Common Ownership with another member or member organization or alternatively an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed \$0.60 per contract.

⁴Any member or member organization under Common Ownership with another member or

member organization or alternatively an Affiliate Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed \$0.23 per contract.

* * * * *