

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="27"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2016"/> - * <input type="text" value="77"/>
		Amendment No. (req. for Amendments *) <input type="text"/>

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"/>
			Rule		
Pilot <input type="checkbox"/>	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"/>
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Description

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

Proposal to amend the Exchange Pricing Schedule at Section IV, Part A, to amend Price Improvement XL Pricing.

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 * Last Name *

Title *

E-mail *

Telephone * 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 By

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 *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 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 IV, Part A, to amend Price Improvement XL (“PIXL”) Pricing.³

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on August 1, 2016.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ PIXLSM is the Exchange’s price improvement mechanism known as Price Improvement XL or PIXL. A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (“PIXL Order”) against principal interest or against any other order (except as provided in Rule 1080(n)(i)(F) it represents as agent (“Initiating Order”), provided it submits the PIXL order for electronic execution into the PIXL Auction pursuant to Rule 1080. See Exchange Rule 1080(n).

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

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

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

a. Purpose

The purpose of the proposed rule change is to amend PIXL Pricing in Section IV, Part A, to reduce the Penny Pilot Options Specialist⁴ or Market Maker⁵ Responder fee from \$0.30 to \$0.25 per contract. The Exchange believes that this reduction will further

⁴ 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 501(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.

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) is a regular member or a foreign currency options participant 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").

align pricing, taking into consideration the Marketing Fee. Additional detail on this rule change is provided below.

Amendment to Section IV, Part A – PIXL Pricing

PIXL pricing is located in Section IV, Part A, of the Exchange's Pricing Schedule. A PIXL Auction Initiating Order is assessed \$0.07 per contract. There are various incentives to lower the Initiating Order fee to \$0.05 or \$0.00.⁶ With respect to PIXL order executions in Multiply-Listed Options (including ETFs, ETNs, and indexes which are Multiply Listed), when the PIXL Order is contra to the Initiating Order a Customer PIXL Order will be assessed \$0.00 per contract and Non-Customer PIXL Orders will be assessed \$0.30 per contract. When a PIXL Order is contra to a PIXL Auction Responder,⁷ a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer PIXL Orders will be assessed \$0.30 per contract in Penny Pilot Options or \$0.38 per contract in Non-Penny Pilot Options. A Responder that is a Specialist or a Market Maker will be assessed \$0.30 per contract in Penny Pilot Options or \$0.40 per

⁶ If the member or member organization qualifies for the Tier 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract. If the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month, the member or member organization will be assessed \$0.00 per contract for Complex PIXL Orders. Any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier 4 or 5 in Section B, or executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month will receive one of the PIXL Initiating Order discounts as described above. The Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order will be reduced to \$0.00 if the Customer PIXL Order is greater than 399 contracts. See Chapter IV, Part A.

⁷ A PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction are all Non-Initiating Order interest.

contract in Non-Penny Pilot Options. Other Non-Customer Responders will be assessed \$0.48 per contract in Penny Pilot Options or \$0.70 per contract in Non-Penny Pilot Options when contra to a PIXL Order. A Responder that is a Customer will be assessed \$0.00 per contract in Penny Pilot Options and Non-Penny Pilot Options.⁸ All other fees discussed in Section II, including Marketing Fees⁹ and surcharges, will also apply as appropriate. Today, a Responder that is a Specialist or Market Maker would be assessed \$0.30 per contract in Penny Pilot Options plus an additional \$0.25 per contract Marketing Fee on that transaction for a total fee of \$0.55 per contract.

The Exchange proposes to lower the Responder Fee for a Specialist or Market Maker from \$0.30 to \$0.25 per contract in Penny Pilot Options. The total Responder Fee for a Specialist or Market Maker in Penny Pilot Options would therefore be \$0.25 per contract (Responder Fee) plus \$0.25 per contract (Marketing Fee) for a total of \$0.50 per contract. The Exchange believes that this fee reduction would better align Specialists and

⁸ When a PIXL Order is contra to a resting order or quote a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer will be assessed \$0.30 per contract and the resting order or quote will be assessed the appropriate Options Transaction Charge in Section II.

⁹ The Exchange assesses a Marketing Fee of \$0.25 per contract for options that are trading in the Penny Pilot Program and \$0.70 per contract for remaining equity options on trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange, the above fees will be assessed on Specialists, Market Makers and Directed ROTs on those trades when the Specialist unit or Directed ROT elects to participate in the Marketing program. No Marketing Fees are assessed on trades not delivered electronically. No Marketing Fees are assessed in Professional Orders. See Section II of the Pricing Schedule. The term "Directed Order" means any order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider, as defined in Rule 1080(l).

Market Makers responding in a PIXL auction with other responders, in Penny Pilot Options, who are not subject to the Marketing Fee.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹²

Likewise, in NetCoalition v. Securities and Exchange Commission¹³ (“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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹³ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

Congress mandated a cost-based approach.¹⁴ 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.”¹⁵

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’ . . .”¹⁶ 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.

Amendment to Section IV, Part A – PIXL Pricing

The Exchange’s proposal to amend Section IV, Part A to lower the PIXL Responder Fee for a Specialist or Market Maker from \$0.30 to \$0.25 per contract in Penny Pilot Options is reasonable because Specialists and Market Makers are subject to the Marketing Fee, whereas other types of market participants are not assessed the Marketing Fee. By lowering the PIXL Responder Fee for a Specialist or Market Maker from \$0.30 to \$0.25 per contract these market participants would be more closely aligned with other responders. The Exchange believes that Specialists and Market Makers will

¹⁴ See NetCoalition, at 534 - 535.

¹⁵ Id. at 537.

¹⁶ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

be encouraged to respond to PIXL auctions with the lower fee. The proposed Non-Customer fees are lower than fees assessed to Non-Customers by other options exchanges.¹⁷

The Exchange's proposal to amend Section IV, Part A to lower the PIXL Responder Fee for a Specialist or Market Maker from \$0.30 to \$0.25 per contract in Penny Pilot Options is equitable and not unfairly discriminatory for the following reasons. The differential as between Specialists and Market Makers and other Non-Customers (Professionals,¹⁸ Firms¹⁹ and Broker-Dealers²⁰) is not misaligned because Specialists and Market Makers pay a Marketing Fee.²¹ This proposal decreases the differential as between the Initiating Order Fee (\$0.07 presuming no discount) and the Specialist or Market Maker contra party to the PIXL Order (proposed \$0.25 per contract)

¹⁷ See NYSE MKT Inc. ("NYSE Amex") Fees and Charges. Specifically, the RFR Response Penny Pilot Option Fee (Non-Customer) is \$0.50 per contract for the CUBE auction. CUBE is NYSE Amex's electronic price improvement auction for options. This mechanism is similar to the PIXL auction. MIAX assesses a Responder to the Prime Auction a per contract Penny Pilot fee of \$0.50 per contract to all market participants (including priority customer). PRIME is MIAX's electronic price improvement auction for options. This mechanism is similar to the PIXL auction.

¹⁸ The term "Professional" applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(14) 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).

¹⁹ 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.

²⁰ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

²¹ See note 9 above.

for Penny Pilot Options. Specialists and Market Makers would receive lower prices because they have obligations to the market and regulatory requirements, which normally do not apply to other market participants in the continuous market, and as such the Exchange continues to believe Specialists and Market Makers should receive certain discounts in auctions.²² Additionally, the Marketing Fee is only paid by Specialists and Market Makers. Other Non-Customer Responders (Firms, Professionals and Broker-Dealers) are assessed \$0.48 per contract in Penny Pilot Options. All non-Customer market participants that do not engage in market making (Firms, Professionals and Broker-Dealers) are treated in a uniform manner. Customers will continue to be assessed no fee, as is the case today because 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.

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

²² See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

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 this instance, the proposed changes to the charges assessed and credits available to member firms for execution of securities in securities of all three Tapes do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed PIXL Responder fees do not impose an undue burden on inter-market competition for the reasons described herein. 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.

The Exchange's proposal to amend Section IV, Part A to lower the PIXL Responder Fee for a Specialist or Market Maker from \$0.30 to \$0.25 per contract in Penny Pilot Options does not impose an undue burden on intra-market competition because the differential between the Initiating Order Fee and the Specialist or Market Maker contra party to the PIXL Order (\$0.07 (presuming no discount) vs. \$0.25 per contract for Penny Pilot Options is being decreased. The Marketing Fee is only paid by Specialists and Market Makers and not other market participants. Specialists and Market Makers would receive lower prices because have obligations to the market and regulatory requirements, which normally do not apply to other market participants in the continuous

market, and as such the Exchange continues to believe Specialists and Market Makers should receive certain discounts in auctions.²³ Other Non-Customer Responders (Firms, Professionals and Broker-Dealers) are assessed \$0.48 per contract in Penny Pilot Options. All non-Customer market participants that do not engage in market making (Firms, Professionals and Broker-Dealers) are treated in a uniform manner. Customers will continue to be assessed no fee, as is the case today because 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.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁴ The Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed 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.

²³ Id.

²⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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.

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-2016-77)

July __, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Price Improvement XL Pricing

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 July 14, 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 IV, Part A, to amend Price Improvement XL (“PIXL”) Pricing.³

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on August 1, 2016.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ PIXLSM is the Exchange’s price improvement mechanism known as Price Improvement XL or PIXL. A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (“PIXL Order”) against principal interest or against any other order (except as provided in Rule 1080(n)(i)(F) it represents as agent (“Initiating Order”), provided it submits the PIXL order for electronic execution into the PIXL Auction pursuant to Rule 1080. See Exchange Rule 1080(n).

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at 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 PIXL Pricing in Section IV, Part A, to reduce the Penny Pilot Options Specialist⁴ or Market Maker⁵ Responder fee

⁴ 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 501(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.

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) is a regular member or a foreign currency options participant 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

from \$0.30 to \$0.25 per contract. The Exchange believes that this reduction will further align pricing, taking into consideration the Marketing Fee. Additional detail on this rule change is provided below.

Amendment to Section IV, Part A – PIXL Pricing

PIXL pricing is located in Section IV, Part A, of the Exchange's Pricing Schedule. A PIXL Auction Initiating Order is assessed \$0.07 per contract. There are various incentives to lower the Initiating Order fee to \$0.05 or \$0.00.⁶ With respect to PIXL order executions in Multiply-Listed Options (including ETFs, ETNs, and indexes which are Multiply Listed), when the PIXL Order is contra to the Initiating Order a Customer PIXL Order will be assessed \$0.00 per contract and Non-Customer PIXL Orders will be assessed \$0.30 per contract. When a PIXL Order is contra to a PIXL

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 If the member or member organization qualifies for the Tier 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract. If the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month, the member or member organization will be assessed \$0.00 per contract for Complex PIXL Orders. Any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier 4 or 5 in Section B, or executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month will receive one of the PIXL Initiating Order discounts as described above. The Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order will be reduced to \$0.00 if the Customer PIXL Order is greater than 399 contracts. See Chapter IV, Part A.

Auction Responder,⁷ a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer PIXL Orders will be assessed \$0.30 per contract in Penny Pilot Options or \$0.38 per contract in Non-Penny Pilot Options. A Responder that is a Specialist or a Market Maker will be assessed \$0.30 per contract in Penny Pilot Options or \$0.40 per contract in Non-Penny Pilot Options. Other Non-Customer Responders will be assessed \$0.48 per contract in Penny Pilot Options or \$0.70 per contract in Non-Penny Pilot Options when contra to a PIXL Order. A Responder that is a Customer will be assessed \$0.00 per contract in Penny Pilot Options and Non-Penny Pilot Options.⁸ All other fees discussed in Section II, including Marketing Fees⁹ and surcharges, will also apply as appropriate. Today, a Responder that is a Specialist or Market Maker would be assessed \$0.30 per contract in Penny Pilot Options plus an additional \$0.25 per contract Marketing Fee on that transaction for a total fee of \$0.55 per contract.

⁷ A PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction are all Non-Initiating Order interest.

⁸ When a PIXL Order is contra to a resting order or quote a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer will be assessed \$0.30 per contract and the resting order or quote will be assessed the appropriate Options Transaction Charge in Section II.

⁹ The Exchange assesses a Marketing Fee of \$0.25 per contract for options that are trading in the Penny Pilot Program and \$0.70 per contract for remaining equity options on trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange, the above fees will be assessed on Specialists, Market Makers and Directed ROTs on those trades when the Specialist unit or Directed ROT elects to participate in the Marketing program. No Marketing Fees are assessed on trades not delivered electronically. No Marketing Fees are assessed in Professional Orders. See Section II of the Pricing Schedule. The term "Directed Order" means any order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider, as defined in Rule 1080(l).

The Exchange proposes to lower the Responder Fee for a Specialist or Market Maker from \$0.30 to \$0.25 per contract in Penny Pilot Options. The total Responder Fee for a Specialist or Market Maker in Penny Pilot Options would therefore be \$0.25 per contract (Responder Fee) plus \$0.25 per contract (Marketing Fee) for a total of \$0.50 per contract. The Exchange believes that this fee reduction would better align Specialists and Market Makers responding in a PIXL auction with other responders, in Penny Pilot Options, who are not subject to the Marketing Fee.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹²

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Likewise, in NetCoalition v. Securities and Exchange Commission¹³ (“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.¹⁴ 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.”¹⁵

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’”¹⁶ 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.

Amendment to Section IV, Part A – PIXL Pricing

The Exchange’s proposal to amend Section IV, Part A to lower the PIXL Responder Fee for a Specialist or Market Maker from \$0.30 to \$0.25 per contract in Penny Pilot Options is reasonable because Specialists and Market Makers are subject to

¹³ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁴ See NetCoalition, at 534 - 535.

¹⁵ Id. at 537.

¹⁶ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

the Marketing Fee, whereas other types of market participants are not assessed the Marketing Fee. By lowering the PIXL Responder Fee for a Specialist or Market Maker from \$0.30 to \$0.25 per contract these market participants would be more closely aligned with other responders. The Exchange believes that Specialists and Market Makers will be encouraged to respond to PIXL auctions with the lower fee. The proposed Non-Customer fees are lower than fees assessed to Non-Customers by other options exchanges.¹⁷

The Exchange's proposal to amend Section IV, Part A to lower the PIXL Responder Fee for a Specialist or Market Maker from \$0.30 to \$0.25 per contract in Penny Pilot Options is equitable and not unfairly discriminatory for the following reasons. The differential as between Specialists and Market Makers and other Non-Customers (Professionals,¹⁸ Firms¹⁹ and Broker-Dealers²⁰) is not misaligned because

¹⁷ See NYSE MKT Inc. ("NYSE Amex") Fees and Charges. Specifically, the RFR Response Penny Pilot Option Fee (Non-Customer) is \$0.50 per contract for the CUBE auction. CUBE is NYSE Amex's electronic price improvement auction for options. This mechanism is similar to the PIXL auction. MIAX assesses a Responder to the Prime Auction a per contract Penny Pilot fee of \$0.50 per contract to all market participants (including priority customer). PRIME is MIAX's electronic price improvement auction for options. This mechanism is similar to the PIXL auction.

¹⁸ The term "Professional" applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(14) 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).

¹⁹ 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.

²⁰ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

Specialists and Market Makers pay a Marketing Fee.²¹ This proposal decreases the differential as between the Initiating Order Fee (\$0.07 presuming no discount) and the Specialist or Market Maker contra party to the PIXL Order (proposed \$0.25 per contract) for Penny Pilot Options. Specialists and Market Makers would receive lower prices because they have obligations to the market and regulatory requirements, which normally do not apply to other market participants in the continuous market, and as such the Exchange continues to believe Specialists and Market Makers should receive certain discounts in auctions.²² Additionally, the Marketing Fee is only paid by Specialists and Market Makers. Other Non-Customer Responders (Firms, Professionals and Broker-Dealers) are assessed \$0.48 per contract in Penny Pilot Options. All non-Customer market participants that do not engage in market making (Firms, Professionals and Broker-Dealers) are treated in a uniform manner. Customers will continue to be assessed no fee, as is the case today because 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.

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

²¹ See note 9 above.

²² See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

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 this instance, the proposed changes to the charges assessed and credits available to member firms for execution of securities in securities of all three Tapes do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed PIXL Responder fees do not impose an undue burden on inter-market competition for the reasons described herein. 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.

The Exchange's proposal to amend Section IV, Part A to lower the PIXL Responder Fee for a Specialist or Market Maker from \$0.30 to \$0.25 per contract in Penny Pilot Options does not impose an undue burden on intra-market competition because the differential between the Initiating Order Fee and the Specialist or Market Maker contra party to the PIXL Order (\$0.07 (presuming no discount) vs. \$0.25 per

contract for Penny Pilot Options is being decreased. The Marketing Fee is only paid by Specialists and Market Makers and not other market participants. Specialists and Market Makers would receive lower prices because have obligations to the market and regulatory requirements, which normally do not apply to other market participants in the continuous market, and as such the Exchange continues to believe Specialists and Market Makers should receive certain discounts in auctions.²³ Other Non-Customer Responders (Firms, Professionals and Broker-Dealers) are assessed \$0.48 per contract in Penny Pilot Options. All non-Customer market participants that do not engage in market making (Firms, Professionals and Broker-Dealers) are treated in a uniform manner. Customers will continue to be assessed no fee, as is the case today because 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁴

²³ Id.

²⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2016-77 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-2016-77. 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-2016-77 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.²⁵

Robert W. Errett
Deputy Secretary

²⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

NASDAQ PHLX 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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IV. Other Transaction Fees**A. PIXL Pricing****Initiating Order**
(Section II)

\$0.07 per contract. If the member or member organization qualifies for the Tier 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract. If the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month, the member or member organization will be assessed \$0.00 per contract for Complex PIXL Orders. Any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier 4 or 5 in Section B, or executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and

ETF Options Classes (excluding SPY Options) in a given month will receive one of the PIXL Initiating Order discounts as described above. The Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order will be reduced to \$0.00 if the Customer PIXL Order is greater than 399 contracts.

PIXL Order Executions in Section II Multiply Listed Options (including ETFs, ETNs and indexes which are Multiply Listed):

- When the PIXL Order is contra to the Initiating Order a Customer PIXL Order will be assessed \$0.00 per contract and Non-Customer PIXL Orders will be assessed \$0.30 per contract.
- When a PIXL Order is contra to a PIXL Auction Responder, a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer PIXL Orders will be assessed \$0.30 per contract in Penny Pilot Options or \$0.38 per contract in Non-Penny Pilot Options. A Responder that is a Specialist or a Market Maker will be assessed \$0.~~30~~25 per contract in Penny Pilot Options or \$0.40 per contract in Non-Penny Pilot Options. Other Non-Customer Responders will be assessed \$0.48 per contract in Penny Pilot Options or \$0.70 per contract in Non-Penny Pilot Options when contra to a PIXL Order. A Responder that is a Customer will be assessed \$0.00 per contract in Penny Pilot Options and Non-Penny Pilot Options.
- When a PIXL Order is contra to a resting order or quote a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer will be assessed \$0.30 per contract and the resting order or quote will be assessed the appropriate Options Transaction Charge in Section II.

All other fees discussed in Section II, including Marketing Fees and surcharges, will also apply as appropriate.

Executions in Singly Listed Options in Section III (Includes options overlying currencies, equities, ETFs, ETNs and indexes not listed on another exchange):

- The fees described in Section III will apply in all instances.

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