

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 25	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2017 - * 08	Amendment No. (req. for Amendments *)
Filing by NASDAQ PHLX LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			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"/>		
Description				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="Amend the Market Access and Routing Subsidy"/>				
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 *	<input type="text" value="Angela"/>	Last Name *	<input type="text" value="Dunn"/>	
Title *	<input type="text" value="Principal Associate General Counsel"/>			
E-mail *	<input type="text" value="angela.dunn@nasdaq.com"/>			
Telephone *	<input type="text" value="(215) 496-5692"/>	Fax	<input type="text"/>	
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	<input type="text" value="02/01/2017"/>	<input type="text" value="Executive Vice President and General Counsel"/>		
By	<input type="text" value="Edward S. Knight"/>	<input type="text"/>		
(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.				
		<input type="button" value="edward.knight@nasdaq.com"/>		

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

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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

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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

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 (“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 (“Commission”) a proposal to amend the Exchange’s Pricing Schedule at Section IV, entitled “Other Transaction Fees.” Specifically, the Exchange proposes to amend its subsidy program, the Market Access and Routing Subsidy or “MARS,” for Phlx members that provide certain order routing functionalities³ to other Phlx members and/or use such functionalities themselves.

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

(b) Not applicable.

(c) Not applicable.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The order routing functionalities permit a Phlx member to provide access and connectivity to other members as well utilize such access for themselves. The Exchange notes that under this arrangement one Phlx member may be eligible for payments under MARS, while another Phlx member might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a Phlx member’s connection to the Exchange and that member qualified for the MARS Payment. Consider the following example: both members A and B are Phlx members but A does not utilize its own connections to route orders to the Exchange, and instead utilizes B’s connections. Under this program, B will be eligible for the MARS Payment while A is liable for any transaction charges resulting from the execution of orders that originate from A, arrive at the Exchange via B’s connectivity, and subsequently execute and clear at The Options Clearing Corporation or “OCC,” where A is the valid executing clearing member or give-up on the transaction. Similarly, where B utilizes its own connections to execute transactions, B will be eligible for the MARS Payment, but would also be liable for any transaction resulting from the execution of orders that originate from B, arrive at the Exchange via B’s connectivity, and subsequently execute and clear at OCC, where B is the valid executing clearing member or give-up on the transaction.

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 August 15, 2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

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

a. Purpose

Phlx proposes to amend its subsidy program, MARS, which pays a subsidy to Phlx members that provide certain order routing functionalities to other Phlx members and/or use such functionalities themselves. Generally, under MARS, Phlx pays participating Phlx members to subsidize their costs of providing routing services to route orders to Phlx. The Exchange believes that MARS will continue to attract higher volumes of electronic equity and ETF options volume to the Exchange from non-Phlx market participants as well as Phlx members with the proposed amendments.

Today, to qualify for MARS, a Phlx member's order routing functionality would be required to meet certain criteria.⁴ With respect to Complex Orders, the Exchange

⁴ Specifically the member’s routing system (hereinafter “System”) would be required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx's API to access current Phlx match engine functionality. The member’s System would also need to cause Phlx to be one of the top three default destination exchanges

would not require Complex Orders to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. Any Phlx member may apply for MARS, provided the requirements are met, including a robust and reliable System. The member is solely responsible for implementing and operating its System. The Exchange is not proposing to amend this eligibility standards.

Today, a MARS Payment would be made to Phlx members that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month, which were executed on Phlx. For the purpose of qualifying for the MARS Payment, Eligible Contracts include Firm,⁵ Broker-Dealer,⁶ Joint Back Office or “JBO”⁷ or Professional⁸ equity option orders that are electronically delivered and executed. Eligible

for individually executed marketable orders if Phlx is at the national best bid or offer (“NBBO”), regardless of size or time, but allow any user to manually override Phlx as the default destination on an order-by-order basis. The Exchange does not require Complex Orders to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges.

⁵ The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

⁶ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

⁷ The term “Joint Back Office” or “JBO” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (“JBO Broker”) subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Exchange Rule 703.

⁸ 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

Contracts do not include floor-based orders, qualified contingent cross or “QCC” orders,⁹ price improvement or “PIXL” orders,¹⁰ Mini-Option orders¹¹ or Singly-Listed Options¹² orders. The Eligible Contracts requirements are not being amended.

Phlx members that have System Eligibility and have executed the requisite number of Eligible Contracts in a month are paid rebates today as follows:

Tiers	Average Daily Volume ("ADV")	MARS Payment
1	1,000	\$0.01
2	30,000	\$0.10

The Exchange proposes to modify Tier 2 to require an ADV of 27,500 contracts. As proposed, Tier 2 would pay a reduced rebate of \$0.08 on all executed Eligible Contracts which are routed to Phlx through a participating Phlx member's System and meet the requisite Eligible Contracts ADV. The Exchange also proposes to adopt 2 new tiers. Proposed new Tier 3 would require an ADV of 32,500 contracts and pay a rebate of \$0.10 on all executed Eligible Contracts which are routed to Phlx through a

on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

⁹ A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the NBBO and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the Exchange's match engine. See Rule 1080(o).

¹⁰ PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXLSM). See Rule 1080(n).

¹¹ Mini Options are further specified in Phlx Rule 1012, Commentary .13.

¹² Singly Listed Options are options overlying currencies, equities, ETFs, ETNs treasury securities and indexes not listed on another exchange.

participating Phlx member's System and meet the requisite Eligible Contracts ADV. Proposed tier 4 would require an ADV of 40,000 contracts and pay a rebate of \$0.12 on all executed Eligible Contracts which are routed to Phlx through a participating Phlx member's System and meet the requisite Eligible Contracts ADV. The proposed tier schedule would therefore be as follows:

Tiers	Average Daily Volume (“ADV”)	MARS Payment
1	1,000	\$0.01
2	27,500	\$0.08
3	32,500	\$0.10
4	40,000	\$0.12

As is the case today, no payment will be made with respect to orders that are routed to Phlx, but not executed.¹³

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ 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

¹³ A Phlx member will not be entitled to receive any other revenue for the use of its System specifically with respect to orders routed to Phlx with the exception of the Marketing Fee.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

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.”¹⁶

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁷ (“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.¹⁸ 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.”¹⁹

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

¹⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁷ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁸ See NetCoalition, at 534 - 535.

¹⁹ Id. at 537.

otherwise, in the execution of order flow from broker dealers'"²⁰ 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.

The Exchange believes that lowering the Tier 2 ADV to 27,500 contracts and paying a lower MARS Payment of \$0.08 while offering two new tiers for ADV of 32,500 and 40,000 contracts, which pay rebates of \$0.10 and \$0.12, respectively, is reasonable because all qualifying Phlx members may qualify, provided they meet the qualifications for MARS. The proposed tiers should attract higher volumes of electronic equity and ETF options volume to the Exchange, which will benefit all Phlx members by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. The expanded MARS Payments should enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner. The amendment to add new Tiers 3 and 4 will incentivize Phlx members to achieve an even higher rebate, provided the Phlx member is eligible for MARS. Further, the tier structure will allow Phlx members to price their services at a level that will enable them to attract order flow from market participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver orders directly to the Exchange's System.

The Exchange believes that lowering the Tier 2 ADV to 27,500 contracts and paying a lower MARS Payment of \$0.08 while offering two new tiers for ADV of 32,500

²⁰ 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)).

and 40,000 contracts, which pay rebates of \$0.10 and \$0.12, respectively, is equitable and not unfairly discriminatory because the Exchange will uniformly pay all Phlx members the rebates specified in the proposed MARS Payment tiers provided the Phlx member has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange are equitable and not unfairly discriminatory because any qualifying Phlx member that offers market access and connectivity to the Exchange and/or utilize such functionality themselves may earn the MARS Payment for all Eligible Contracts.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, 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.

The Exchange believes that lowering the Tier 2 ADV to 27,500 contracts and paying a lower MARS Payment of \$0.08 while offering two new tiers for ADV of 32,500 and 40,000 contracts, which pay rebates of \$0.10 and \$0.12, respectively, does not impose an undue burden on intra-market competition because the Exchange will uniformly pay all Phlx members the rebates specified in the proposed MARS Payment tiers provided the Phlx member has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange are equitable and not unfairly discriminatory because any qualifying Phlx member that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payment for all Eligible Contracts.

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,²¹ 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.

²¹ 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 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-2017-08)

February __, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Market Access and Routing Subsidy

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 February 1, 2017, 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, entitled “Other Transaction Fees.” Specifically, the Exchange proposes to amend its subsidy program, the Market Access and Routing Subsidy or “MARS,” for Phlx members that provide certain order routing functionalities³ to other Phlx members and/or use such functionalities themselves.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The order routing functionalities permit a Phlx member to provide access and connectivity to other members as well utilize such access for themselves. The Exchange notes that under this arrangement one Phlx member may be eligible for payments under MARS, while another Phlx member might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a Phlx member’s connection to the

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

Phlx proposes to amend its subsidy program, MARS, which pays a subsidy to Phlx members that provide certain order routing functionalities to other Phlx members and/or use such functionalities themselves. Generally, under MARS, Phlx pays participating Phlx members to subsidize their costs of providing routing services to route orders to Phlx. The Exchange believes that MARS will continue to attract higher

Exchange and that member qualified for the MARS Payment. Consider the following example: both members A and B are Phlx members but A does not utilize its own connections to route orders to the Exchange, and instead utilizes B's connections. Under this program, B will be eligible for the MARS Payment while A is liable for any transaction charges resulting from the execution of orders that originate from A, arrive at the Exchange via B's connectivity, and subsequently execute and clear at The Options Clearing Corporation or "OCC," where A is the valid executing clearing member or give-up on the transaction. Similarly, where B utilizes its own connections to execute transactions, B will be eligible for the MARS Payment, but would also be liable for any transaction resulting from the execution of orders that originate from B, arrive at the Exchange via B's connectivity, and subsequently execute and clear at OCC, where B is the valid executing clearing member or give-up on the transaction.

volumes of electronic equity and ETF options volume to the Exchange from non-Phlx market participants as well as Phlx members with the proposed amendments.

Today, to qualify for MARS, a Phlx member's order routing functionality would be required to meet certain criteria.⁴ With respect to Complex Orders, the Exchange would not require Complex Orders to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. Any Phlx member may apply for MARS, provided the requirements are met, including a robust and reliable System. The member is solely responsible for implementing and operating its System. The Exchange is not proposing to amend this eligibility standards.

Today, a MARS Payment would be made to Phlx members that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month, which were executed on Phlx. For the purpose of qualifying for the MARS Payment, Eligible Contracts include Firm,⁵ Broker-Dealer,⁶ Joint Back Office or “JBO”⁷ or

⁴ Specifically the member's routing system (hereinafter “System”) would be required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx's API to access current Phlx match engine functionality. The member's System would also need to cause Phlx to be one of the top three default destination exchanges for individually executed marketable orders if Phlx is at the national best bid or offer (“NBBO”), regardless of size or time, but allow any user to manually override Phlx as the default destination on an order-by-order basis. The Exchange does not require Complex Orders to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges.

⁵ The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

⁶ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

Professional⁸ equity option orders that are electronically delivered and executed. Eligible Contracts do not include floor-based orders, qualified contingent cross or “QCC” orders,⁹ price improvement or “PIXL” orders,¹⁰ Mini-Option orders¹¹ or Singly-Listed Options¹² orders. The Eligible Contracts requirements are not being amended.

Phlx members that have System Eligibility and have executed the requisite number of Eligible Contracts in a month are paid rebates today as follows:

Tiers	Average Daily Volume ("ADV")	MARS Payment
1	1,000	\$0.01
2	30,000	\$0.10

⁷ The term “Joint Back Office” or “JBO” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (“JBO Broker”) subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Exchange Rule 703.

⁸ 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).

⁹ A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the NBBO and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the Exchange’s match engine. See Rule 1080(o).

¹⁰ PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXLSM). See Rule 1080(n).

¹¹ Mini Options are further specified in Phlx Rule 1012, Commentary .13.

¹² Singly Listed Options are options overlying currencies, equities, ETFs, ETNs treasury securities and indexes not listed on another exchange.

The Exchange proposes to modify Tier 2 to require an ADV of 27,500 contracts. As proposed, Tier 2 would pay a reduced rebate of \$0.08 on all executed Eligible Contracts which are routed to Phlx through a participating Phlx member's System and meet the requisite Eligible Contracts ADV. The Exchange also proposes to adopt 2 new tiers. Proposed new Tier 3 would require an ADV of 32,500 contracts and pay a rebate of \$0.10 on all executed Eligible Contracts which are routed to Phlx through a participating Phlx member's System and meet the requisite Eligible Contracts ADV. Proposed tier 4 would require an ADV of 40,000 contracts and pay a rebate of \$0.12 on all executed Eligible Contracts which are routed to Phlx through a participating Phlx member's System and meet the requisite Eligible Contracts ADV. The proposed tier schedule would therefore be as follows:

Tiers	Average Daily Volume (“ADV”)	MARS Payment
1	1,000	\$0.01
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4	40,000	\$0.12

As is the case today, no payment will be made with respect to orders that are routed to Phlx, but not executed.¹³

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵

¹³ A Phlx member will not be entitled to receive any other revenue for the use of its System specifically with respect to orders routed to Phlx with the exception of the Marketing Fee.

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.”¹⁶

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁷ (“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.¹⁸ 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.”¹⁹

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁷ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁸ See NetCoalition, at 534 - 535.

¹⁹ Id. at 537.

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’”²⁰ 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.

The Exchange believes that lowering the Tier 2 ADV to 27,500 contracts and paying a lower MARS Payment of \$0.08 while offering two new tiers for ADV of 32,500 and 40,000 contracts, which pay rebates of \$0.10 and \$0.12, respectively, is reasonable because all qualifying Phlx members may qualify, provided they meet the qualifications for MARS. The proposed tiers should attract higher volumes of electronic equity and ETF options volume to the Exchange, which will benefit all Phlx members by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. The expanded MARS Payments should enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner. The amendment to add new Tiers 3 and 4 will incentivize Phlx members to achieve an even higher rebate, provided the Phlx member is eligible for MARS. Further, the tier structure will allow Phlx members to price their services at a level that will enable them to attract order flow from market participants who would otherwise utilize an existing front-end order entry

²⁰ 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)).

mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver orders directly to the Exchange's System.

The Exchange believes that lowering the Tier 2 ADV to 27,500 contracts and paying a lower MARS Payment of \$0.08 while offering two new tiers for ADV of 32,500 and 40,000 contracts, which pay rebates of \$0.10 and \$0.12, respectively, is equitable and not unfairly discriminatory because the Exchange will uniformly pay all Phlx members the rebates specified in the proposed MARS Payment tiers provided the Phlx member has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange are equitable and not unfairly discriminatory because any qualifying Phlx member that offers market access and connectivity to the Exchange and/or utilize such functionality themselves may earn the MARS Payment for all Eligible Contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing

practices, 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.

The Exchange believes that lowering the Tier 2 ADV to 27,500 contracts and paying a lower MARS Payment of \$0.08 while offering two new tiers for ADV of 32,500 and 40,000 contracts, which pay rebates of \$0.10 and \$0.12, respectively, does not impose an undue burden on intra-market competition because the Exchange will uniformly pay all Phlx members the rebates specified in the proposed MARS Payment tiers provided the Phlx member has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange are equitable and not unfairly discriminatory because any qualifying Phlx member that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payment for all Eligible Contracts.

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.²¹

²¹ 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-2017-08 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-2017-08. 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-2017-08 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.²²

Robert W. Errett
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

**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.

* * * * *

IV. Other Transaction Fees

A. – D. No change

**.Market Access and Routing Subsidy (“MARS”)
MARS System Eligibility**

To qualify for MARS, a Phlx member's routing system (“hereinafter System”) would be required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx's API to access current Phlx match engine functionality. Further, the member's System would also need to cause Phlx to be the one of the top three default destination exchanges for individually executed marketable orders if Phlx is at the national best bid or offer (“NBBO”), regardless of size or time, but allow any user to manually override Phlx as a default destination on an order-by-order basis. Notwithstanding the above, with respect to Complex Orders a Phlx member's routing system would not be required to enable the electronic routing of

orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. Any Phlx member would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies Phlx that it appears to be robust and reliable. The member remains solely responsible for implementing and operating its system.

MARS Eligible Contracts

MARS Payment would be made to Phlx members that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month, which were executed on Phlx. For the purpose of qualifying for the MARS Payment, Eligible Contracts include the following: Firm, Broker-Dealer, Joint Back Office or “JBO” or Professional equity option orders that are electronically delivered and executed. Eligible Contracts do not include floor-based orders, qualified contingent cross or “QCC” orders, price improvement or “PIXL” orders, Mini Option orders or Singly Listed Orders.

MARS Payment

Phlx members that have System Eligibility and have executed the requisite number of Eligible Contracts in a month will be paid the following per contract rebates:

Tiers	Average Daily Volume (“ADV”)	MARS Payment
1	1,000	\$0.01
2	[30,000] <u>27,500</u>	\$0. <u>[10]08</u>
3	<u>32,500</u>	<u>\$0.10</u>
4	<u>40,000</u>	<u>\$0.12</u>

The specified MARS Payment will be paid on all executed Eligible Contracts which are routed to Phlx through a participating Phlx member's System and meet the requisite Eligible Contracts ADV. No payment will be made with respect to orders that are routed to Phlx, but not executed.

A Phlx member will not be entitled to receive any other revenue for the use of its System specifically with respect to orders routed to Phlx with the exception of the Marketing Fee.

* * * * *