

Required fields are shown with yellow backgrounds and asterisks.

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			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 *).

Amend to Sections I and II of the Pricing Schedule

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"/>	Executive Vice President and General Counsel
By <input type="text" value="Edward S. Knight"/>	<input type="text"/>
(Name *)	<input type="text" value="edward.knight@nasdaq.com"/>

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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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 (“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 I, entitled “Rebates and Fees for Adding and Removing Liquidity in SPY,” and Section II, entitled “Multiply Listed Options Fees”³ to amend various transaction fees and rebates.

A notice of the proposed rule change for publication in the Federal Register is at Exhibit 1 and the text of the amended Exchange Rule is at Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on 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.

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ Multiply Listed Options includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in SPY," to (i) amend the Simple Order Rebate for Adding Liquidity which is paid to Specialists⁴ and Market Makers;⁵ (ii) increase the Specialist, Market Maker, Firm,⁶ Broker-Dealer⁷ and Professional⁸ Simple Order Fees for Removing Liquidity; and (iii)

⁴ The term "Specialist" applies to transactions for the account of a Specialist (as defined in Exchange Rule 1020(a)).

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

⁶ 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.

⁷ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

⁸ The term "Professional" applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(14).

increase the Specialist and Market Maker Complex Order⁹ Fees for Removing Liquidity. The amendments will be described in greater detail below.

The Exchange also proposes to amend the Exchange's Pricing Schedule at Section II, entitled "Multiply Listed Options Fees," to: (i) remove the applicability of note 2 in the Pricing Schedule and thereby increase the Professional, Broker-Dealer and Firm electronic Complex Orders in non-Penny Pilot Options; (ii) amend the lower transaction fee for Professional, Broker-Dealer and Firm electronic Complex Orders in Penny Pilot Options; and (iii) amend the transaction fee assessed to Professional, Broker-Dealer and Firm electronic Complex Orders in non-Penny Pilot Options if they are under Common Ownership with another member or member organization or an Appointed OFP of an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule.¹⁰ The amendments will be described in greater detail below.

⁹ A Complex Order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy.

¹⁰ Section B of the Pricing Schedule contains Customer Rebate Tiers which are calculated by totaling Customer volume in Multiply Listed Options (including SPY) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o). Rebates are paid on Customer Rebate Tiers according to certain categories. Members and member organizations under Common Ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Affiliated Entities may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. See Section B of the Pricing Schedule.

Proposed Amendments to Section I: Rebates and Fees for Adding and Removing Liquidity in SPY

Section I of the Pricing Schedule contains fees and rebates applicable to options overlying Standard and Poor's Depository Receipts/SPDRs ("SPY").¹¹ The Exchange specifies which fees and rebates apply to Simple Orders and Complex Orders within this section.

Simple Order

Today, Simple Order Rebates for Adding Liquidity are paid as noted below to Specialists and Market Makers adding the requisite amount of electronically executed Specialist and Market Maker Simple Order contracts per day in a month in SPY:

Tiers	Monthly Volume	Rebate for Adding Liquidity
1	1 to 2,499	\$0.15
2	2,500 to 4,999	\$0.20
3	5,000 to 19,999	\$0.25
4	20,000 to 34,999	\$0.30
5	35,000 to 49,999	\$0.32
6	greater than 49,999	\$0.35

All other market participants do not receive a SPY Simple Order Rebate for Adding Liquidity. The Exchange proposes to amend the Simple Order Rebates for

¹¹ Options overlying Standard and Poor's Depository Receipts/SPDRs ("SPY") are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

Adding Liquidity which are paid to Specialists and Market Makers by reducing the number of tiers from 6 tiers to 5 tiers. The Exchange proposes to amend Tier 2 to reduce the Rebate for Adding Liquidity from \$0.20 to \$0.18 per contract. The Exchange proposes to amend Tier 3 to reduce the Rebate for Adding Liquidity from \$0.25 to \$0.21 per contract. The monthly volume per day for Tiers 2 and 3 are not being amended. With respect to Tier 4, the Exchange proposes to amend the monthly volume per day from 20,000 to 34,999 contracts to 20,000 to 49,999 contracts. The Exchange proposes to increase the Tier 4 rebate from \$0.30 to \$0.31 per contract. The Exchange proposes to eliminate current Tier 5. The Exchange proposes to rename Tier 6 to be new Tier 5. No other amendments are proposed to new renamed Tier 5.¹²

The Exchange also proposes to rename the column entitled “Monthly Volume” as “Average Daily Volume (“ADV”).” The Exchange believes that this title more accurately describes the manner in which the rebate is calculated, which is adding the requisite amount of electronically executed Specialist and Market Maker Simple Order contracts per day in a month in SPY, as noted in Part A of Section I of the Pricing Schedule. This proposed change does not impact the manner in which the Exchange calculates these rebates today.

The Exchange’s proposal for the Simple Order Rebates for Adding Liquidity which are paid to Specialists and Market Makers would be as follows:

¹² Tier 1 is not being amended.

Tiers	Average Daily Volume (“ADV”)	Rebate for Adding Liquidity
1	1 to 2,499	\$0.15
2	2,500 to 4,999	\$0.18
3	5,000 to 19,999	\$0.21
4	20,000 to 49,999	\$0.31
5	greater than 49,999	\$0.35

The Exchange believes that the proposed five tier rebate structure will incentivize market participants to add a greater amount of Specialist and Market Maker liquidity in SPY on the Exchange to obtain higher rebates.

The Exchange also proposes to amend the Simple Order Fees for Removing Liquidity in SPY for Specialists, Market Makers, Firms, Broker Dealers and Professionals by increasing the fees from \$0.47 to \$0.48 per contract. The Customer¹³ Simple Order Fee for Removing Liquidity is not being amended and will remain at \$0.45 per contract. Despite the increased fee, the Exchange believes that its fees for Simple Orders in SPY remain competitive.

Complex Order

The Exchange proposes to amend its Complex Order Fees for Removing Liquidity in SPY for Specialists and Market Makers by increasing the fees from \$0.40 to \$0.43 per contract. The Exchange would not increase the fees for Firms, Broker-Dealers

¹³ The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation which is not for the account of a broker or dealer or for the account of a “Professional” (as that term is defined in Rule 1000(b)(14)).

or Professionals; those fees will remain at \$0.50 per contract. Today, Customers are not assessed a Complex Order Fee for Removing Liquidity. Despite the increased fee, the Exchange believes that its fees for Complex Orders in SPY remain competitive.

Proposed Amendments to Section II: Multiple Listed Options Fees

Penny Pilot Options

The Exchange proposes to amend its Professional, Broker-Dealer and Firm electronic Penny Pilot Options Transaction Charges for Complex Orders. Today, the Exchange assesses Professionals, Broker-Dealers and Firms an electronic Penny Pilot Options Transaction Charges for Complex Orders of \$0.35 per contract. The Exchange proposes to increase the Professional, Broker-Dealer and Firm electronic Penny Pilot Options Transaction Charges for Complex Orders to \$0.40 per contract. Despite the increase to this fee, the Exchange believes the Penny Pilot Options Transaction Charges for electronic Complex Order transactions remain competitive. Professionals, Broker-Dealers and Firms will continue to be offered a discounted rate as compared to Simple Orders.¹⁴

Non-Penny Pilot Options

The Exchange proposes to amend its Professional, Broker-Dealer and Firm electronic non-Penny Pilot Options Transaction Charges for Complex Orders. Today, the Exchange assesses Professionals, Broker-Dealers and Firms an electronic non-Penny Pilot Options Transaction Charges for Complex Orders of \$0.35 per contract. The Exchange is proposing to remove the applicability of note 2 in the Pricing Schedule from

¹⁴ The Exchange would continue to assess an electronic Penny Pilot Options Transaction Charges to Professionals, Broker-Dealers and Firms of \$0.48 per contract for Simple Orders.

the non-Penny Pilot Options Transaction Charges for Professionals, Broker-Dealers and Firms. With this proposal, Professional, Broker-Dealer and Firm electronic non-Penny Pilot Options Transaction Charges for Complex Orders would be increased to \$0.75 per contract because the reduced rate would no longer apply. Members may still lower this rate if they qualified for the reduced rebate offered in note 3 in the Pricing Schedule, which note is also being amended with this proposal as noted below. As proposed, the Options Transaction Charge for Simple and Complex Order electronic non-Penny Pilot Options Transaction Charges would be the same fee of \$0.75 per contract fee.

The Exchange also proposes to amend its Professional, Broker-Dealer and Firm electronic non-Penny Pilot Options Transaction Charges by amending note 3 in the Pricing Schedule. Today, note 3 provides that any member or member organization under Common Ownership with another member or member organization or an Appointed OFP of an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule¹⁵ will be assessed a Professional, Broker-Dealer or Firm electronic non-Penny Pilot Options Transaction Charge of \$0.60 per contract. The Exchange proposes to amend the fee to assess \$0.65 per contract. The qualifications for the reduced rate remain the same. Professionals, Broker-Dealers and Firms that do not qualify for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule would continue to pay an electronic non-Penny Pilot Options Transaction Charge of \$0.75 per contract. While the Exchange is amending the fee so that the reduction is not as great as today, the Exchange will continue to offer a reduced rate to Professionals, Broker-Dealers and Firms that qualify by sending the requisite order flow to the Exchange.

¹⁵ See note 10 above.

Finally, the Exchange is adding a period at end of the sentence in footnote 3 to correct a typographical error.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ 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.”¹⁸

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁹ (“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

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

¹⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

Congress mandated a cost-based approach.²⁰ 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.”²¹

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’ . . .”²² 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.

Proposed Amendments to Section I: Rebates and Fees for Adding and Removing Liquidity in SPY

Simple Order

The Exchange’s proposal to amend the Simple Order Rebates for Adding Liquidity which are paid to Specialists and Market Makers by reducing the number of tiers from 6 tiers to 5 tiers and reducing the Tier 2 rebate to \$0.18 per contract, reducing the Tier 3 rebate to \$0.21 per contract, amending the Tier 4 monthly volume to 20,000 to 49,999 contracts per day and the rebate to \$0.31 per contract, eliminating Tier 5 and

²⁰ See NetCoalition, at 534 - 535.

²¹ Id. at 537.

²² 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)).

renaming Tier 6 to new Tier 5 is reasonable because the Exchange believes that the proposed five tier rebate structure will incentivize market participants to add a greater amount of Specialist and Market Maker liquidity in SPY on the Exchange to obtain higher rebates. A Specialist or Market Maker would continue to receive a rebate with this proposal provided they execute one electronic Simple Order SPY contract.

In some cases, the rebate will be lower. When 2,500 to 4,999 electronic Simple Order SPY contracts per day are added, the SPY Simple Order Rebate for Adding Liquidity for Specialists and Market Makers will be \$0.18 per contract as compared to \$0.20 per contract (today's rebate). With this proposal, the rebate would be lower for members currently submitting 5,000 to 19,999 SPY contracts per day, the rebate would be \$0.21 per contract as compared to \$.25 per contract. Members currently submitting between 20,000 and 34,999 SPY contracts would receive a \$0.31 per contract as compared to \$0.30 per contract rebate with this proposal, an increased rebate of \$0.01 per contract. Finally, with this proposal, market participants currently submitting between 35,000 and 49,999 SPY contracts per day would receive a lower rebate of \$0.31 per contract as compared to \$0.32 per contract. Despite this decrease, the Exchange believes that participants will continue to be incentivized to add SPY order flow to the Exchange to receive the rebate.

The Exchange's proposal to amend the Simple Order Rebates for Adding Liquidity which are paid to Specialists and Market Makers by reducing the number of tiers from 6 tiers to 5 tiers and reducing the Tier 2 rebate to \$0.18 per contract, reducing the Tier 3 rebate to \$0.21 per contract, amending the Tier 4 monthly volume to 20,000 to 49,999 contracts per day and the rebate to \$0.31 per contract, eliminating Tier 5 and

renaming Tier 6 to new Tier 5 is equitable and not unfairly discriminatory because Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²³ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to rename the column entitled "Monthly Volume" as "Average Daily Volume ("ADV")" is reasonable, equitable and not unfairly discriminatory because the title more accurately describes the manner in which the rebate is calculated, which is adding the requisite amount of electronically executed Specialist and Market Maker Simple Order contracts per day in a month in SPY, as noted in Part A of Section I of the Pricing Schedule. This proposed change does not impact the manner in which the Exchange calculates these rebates today.

The Exchange's proposal to amend the Simple Order Fees for Removing Liquidity for Specialists, Market Makers, Firms, Broker Dealers and Professionals by increasing the fees from \$0.47 to \$0.48 per contract is reasonable because despite the

²³ See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

increased fee, the Exchange believes that its fees for Simple Orders in SPY remain competitive. The Customer Simple Order Fee for Removing Liquidity is not being amended and will remain at \$0.45 per contract. Also, the increase in the Simple Order Fees for Removing Liquidity will continue to support the rebate structure proposed herein, which as stated above, attracts Specialists and Market Makers. An increase in the activity of Specialists and Market Makers in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to amend the Simple Order Fees for Removing Liquidity for Specialists, Market Makers, Firms, Broker Dealers and Professionals by increasing the fees from \$0.47 to \$0.48 per contract is equitable and not unfairly discriminatory because all participants would continue to be assessed a similar fee, except for Customers. The Exchange believes that assessing Customers a lower fee is equitable and not unfairly discriminatory because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Complex Order

The Exchange's proposal to amend its Complex Order Fees for Removing Liquidity for Specialists and Market Makers by increasing the fees from \$0.40 to \$0.43 per contract is reasonable because despite the increased fee, the Exchange believes that its fees for Complex Orders in SPY remain competitive. Also, Specialists and Market

Makers continue to be assessed a lower fee as compared to Firms, Broker-Dealers or Professionals; who are assessed \$0.50 per contract.

The Exchange's proposal to amend its Complex Order Fees for Removing Liquidity for Specialists and Market Makers by increasing the fees from \$0.40 to \$0.43 per contract is equitable and not unfairly discriminatory. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁴ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. 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. Customers continue to be assessed no Complex Order Fee for Removing Liquidity because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

²⁴

Id.

Proposed Amendments to Section II: Multiple Listed Options FeesPenny Pilot Options

The Exchange's proposal to amend its Professional, Broker-Dealer and Firm electronic Penny Pilot Options Transaction Charges for Complex Orders from \$0.35 per contract to \$0.40 per contract is reasonable because despite the increase to this fee, the Exchange believes the Penny Pilot Options Transaction Charges for electronic Complex Order transactions remain competitive. Professionals, Broker-Dealers and Firms and will continue to be offered a discounted rate as compared to Simple Orders which will continue to be assessed \$0.48 per contract.

The Exchange's proposal to amend its Professional, Broker-Dealer and Firm electronic Penny Pilot Options Transaction Charges for Complex Orders from \$0.35 per contract to \$0.40 per contract is equitable and not unfairly discriminatory because Professionals, Broker-Dealers and Firms would be uniformly assessed \$0.40 per contract. Specialists and Market Makers would continue to be assessed a lower electronic Penny Pilot Options Transaction Charge of \$0.22 per contract. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁵ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading

²⁵Id.

environment on the Exchange by these market participants. 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. Customers continue to be assessed no Penny Pilot Options Transaction Charge because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to offer Professionals, Broker-Dealers and Firms the opportunity to reduce electronic Complex Orders in Penny Pilot Options as compared to non-Penny Pilot Options because the Exchange seeks to incentivize Professionals, Broker-Dealers and Firms to execute Complex Penny Pilot Options orders. Also, lowering the electronic Options Transaction Charges for Complex Orders, as compared to Simple Orders is reasonable, equitable and not unfairly discriminatory because the Exchange desires to continue to incentivize these market participants to transact Complex Orders on the Exchange. The fees will be applied uniformly to all market participants.

Non-Penny Pilot

The Exchange's proposal to amend its Professional, Broker-Dealer and Firm electronic non-Penny Pilot Options Transaction Charges for Complex Orders by removing the applicability of note 2 in the Pricing Schedule and increasing the fee to \$0.75 per contract is reasonable because Professionals, Broker-Dealers and Firms

transacting electronic non-Penny Pilot Options Transaction Charges would be uniformly assessed a fee of \$0.75 per contract for Simple and Complex Orders. Members may still lower this rate if they qualified for the reduced rebate offered in note 3 in the Pricing Schedule, which note is also being amended with this proposal. Despite the inapplicability of note 2, the Exchange believes the non-Penny Pilot Options Transaction Charges for electronic Complex Order transactions remain competitive.

The Exchange's proposal to amend its Professional, Broker-Dealer and Firm electronic non-Penny Pilot Options Transaction Charges for Complex Orders by removing the applicability of note 2 in the Pricing Schedule and increasing the fee to \$0.75 per contract is equitable and not unfairly discriminatory because Professionals, Broker-Dealers and Firms transacting electronic non-Penny Pilot Options Transaction Charges would be uniformly assessed a fee of \$0.75 per contract for Simple and Complex Orders. Specialists and Market Makers would continue to be assessed a lower electronic non-Penny Pilot Options Transaction Charge of \$0.25 per contract. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁶ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. An increase in the activity of

²⁶ Id.

these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Customers continue to be assessed no non-Penny Pilot Options Transaction Charge because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to amend note 3 in the Pricing Schedule to increase the amount a member or member organization under Common Ownership with another member or member organization or an Appointed OFP of an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed and increase the Professional, Broker-Dealer or Firm electronic non-Penny Pilot Options Transaction Charge of from \$0.60 to \$0.65 per contract is reasonable because Professionals, Broker-Dealers and Firms may continue to qualify for a lower rate. Professionals, Broker-Dealers and Firms that do not qualify for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule would continue to pay an electronic non-Penny Pilot Options Transaction Charge of \$0.75 per contract. While amendment reduces the savings, the Exchange will continue to offer Professionals, Broker-Dealers and Firms that qualify by sending the requisite order flow to the Exchange a lower transaction fee. In addition, attracting Customer order flow benefits all market participants with increased order flow with which to interact.

The Exchange's proposal to amend note 3 in the Pricing Schedule to increase the amount a member or member organization under Common Ownership with another member or member organization or an Appointed OFP of an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed and increase the Professional, Broker-Dealer or Firm electronic non-Penny Pilot Options Transaction Charge of from \$0.60 to \$0.65 per contract is equitable and not unfairly discriminatory because these market participants are subject to the highest transaction fees of \$0.75 per contract.

The Exchange's proposal to correct the typographical error in footnote 3 is reasonable, equitable and not unfairly discriminatory because it correct a grammatical error.

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.

In terms of inter-market competition, the Exchange believes that its proposed rebates and fees continue to remain competitive in SPY and Multiply Listed Options. 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.

Proposed Amendments to Section I: Rebates and Fees for Adding and Removing Liquidity in SPY

Simple Order

The Exchange's proposal to amend the Simple Order Rebates for Adding Liquidity which are paid to Specialists and Market Makers by reducing the number of tiers from 6 tiers to 5 tiers and reducing the Tier 2 rebate to \$0.18 per contract, reducing the Tier 3 rebate to \$0.21 per contract, amending the Tier 4 monthly volume to 20,000 to 49,999 contracts per day and the rebate to \$0.31 per contract, eliminating Tier 5 and renaming Tier 6 to new Tier 5 does not impose an undue burden on intra-market competition because Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁷ They have obligations to make continuous markets, engage in a course of dealings

²⁷ Id.

reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to rename the column entitled "Monthly Volume" as "Average Daily Volume ("ADV")" does not impose an undue burden on intra-market competition because the title more accurately describes the manner in which the rebate is calculated, which is adding the requisite amount of electronically executed Specialist and Market Maker Simple Order contracts per day in a month in SPY, as noted in Part A of Section I of the Pricing Schedule. This proposed change does not impact the manner in which the Exchange calculates these rebates today.

The Exchange's proposal to amend the Simple Order Fees for Removing Liquidity for Specialists, Market Makers, Firms, Broker Dealers and Professionals by increasing the fees from \$0.47 to \$0.48 per contract does not impose an undue burden on intra-market competition because all participants would continue to be assessed a similar fee, except for Customers. The Exchange believes that assessing Customers a lower fee does not impose an undue burden on intra-market competition because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity

of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Complex Order

The Exchange's proposal to amend its Complex Order Fees for Removing Liquidity for Specialists and Market Makers by increasing the fees from \$0.40 to \$0.43 per contract does not impose an undue burden on intra-market competition. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁸ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. 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. Customers continue to be assessed no Complex Order Fee for Removing Liquidity because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads,

²⁸

Id.

which may cause an additional corresponding increase in order flow from other market participants.

Proposed Amendments to Section II: Multiple Listed Options Fees

Penny Pilot Options

The Exchange's proposal to amend its Professional, Broker-Dealer and Firm electronic Penny Pilot Options Transaction Charges for Complex Orders from \$0.35 per contract to \$0.40 per contract does not impose an undue burden on intra-market competition because Professionals, Broker-Dealers and Firms would be uniformly assessed \$0.40 per contract. Specialists and Market Makers would continue to be assessed a lower electronic Penny Pilot Options Transaction Charge of \$0.22 per contract. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁹ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. 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. Customers continue to be assessed no Penny Pilot Options Transaction Charge because Customer orders bring valuable liquidity to the market,

²⁹

Id.

which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Non-Penny Pilot Options

The Exchange's proposal to amend its Professional, Broker-Dealer and Firm electronic non-Penny Pilot Options Transaction Charges for Complex Orders by removing the applicability of note 2 in the Pricing Schedule and increasing the fee to \$0.75 per contract does not impose an undue burden on intra-market competition because Professionals, Broker-Dealers and Firms transacting electronic non-Penny Pilot Options Transaction Charges would be uniformly assessed a fee of \$0.75 per contract. Specialists and Market Makers would continue to be assessed a lower electronic non-Penny Pilot Options Transaction Charge of \$0.25 per contract. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.³⁰ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. An increase in the activity of

³⁰

Id.

these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Customers continue to be assessed no non-Penny Pilot Options Transaction Charge because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange believes that it does not impose an undue burden on intra-market competition to continue to offer Professionals, Broker-Dealers and Firms the opportunity to reduce electronic Complex Orders in non-Penny Pilot Options as compared to Penny Pilot Options because the Options Transaction Charges for non-Penny Pilot Options are higher. Also, only lowering the electronic Options Transaction Charges for Complex Orders, as compared to Simple Orders does not impose an undue burden on intra-market competition because the Exchange desires to continue to incentivize these market participants to transact Complex Orders on the Exchange.

The Exchange's proposal to amend note 3 in the Pricing Schedule to increase the amount a member or member organization under Common Ownership with another member or member organization or an Appointed OFP of an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed and increase the Professional, Broker-Dealer or Firm electronic non-Penny Pilot Options Transaction Charge of from \$0.60 to \$0.65 per contract does not impose an

undue burden on intra-market competition because these market participants are subject to the highest transaction fees of \$0.75 per contract.

The Exchange's proposal to correct the typographical error in footnote 3 does not impose an undue burden on intra-market competition because it corrects a grammatical error.

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,³¹ The Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

³¹ 15 U.S.C. § 78s(b)(3)(A)(ii).

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-2017-09)

February __, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend to Sections I and II of the Pricing Schedule

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 I, entitled “Rebates and Fees for Adding and Removing Liquidity in SPY,” and Section II, entitled “Multiply Listed Options Fees”³ to amend various transaction fees and rebates.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Multiply Listed Options includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in SPY," to (i) amend the Simple Order Rebate for Adding Liquidity which is paid to Specialists⁴ and Market Makers;⁵ (ii) increase the Specialist, Market Maker, Firm,⁶

⁴ The term "Specialist" applies to transactions for the account of a Specialist (as defined in Exchange Rule 1020(a)).

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

Broker-Dealer⁷ and Professional⁸ Simple Order Fees for Removing Liquidity; and (iii) increase the Specialist and Market Maker Complex Order⁹ Fees for Removing Liquidity.

The amendments will be described in greater detail below.

The Exchange also proposes to amend the Exchange's Pricing Schedule at Section II, entitled "Multiply Listed Options Fees," to: (i) remove the applicability of note 2 in the Pricing Schedule and thereby increase the Professional, Broker-Dealer and Firm electronic Complex Orders in non-Penny Pilot Options; (ii) amend the lower transaction fee for Professional, Broker-Dealer and Firm electronic Complex Orders in Penny Pilot Options; and (iii) amend the transaction fee assessed to Professional, Broker-Dealer and Firm electronic Complex Orders in non-Penny Pilot Options if they are under Common Ownership with another member or member organization or an Appointed OFP of an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule.¹⁰ The amendments will be described in greater detail below.

⁶ 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.

⁷ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

⁸ The term "Professional" applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(14).

⁹ A Complex Order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy.

¹⁰ Section B of the Pricing Schedule contains Customer Rebate Tiers which are calculated by totaling Customer volume in Multiply Listed Options (including SPY) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o). Rebates are

Proposed Amendments to Section I: Rebates and Fees for Adding and Removing Liquidity in SPY

Section I of the Pricing Schedule contains fees and rebates applicable to options overlying Standard and Poor's Depository Receipts/SPDRs ("SPY").¹¹ The Exchange specifies which fees and rebates apply to Simple Orders and Complex Orders within this section.

Simple Order

Today, Simple Order Rebates for Adding Liquidity are paid as noted below to Specialists and Market Makers adding the requisite amount of electronically executed Specialist and Market Maker Simple Order contracts per day in a month in SPY:

Tiers	Monthly Volume	Rebate for Adding Liquidity
1	1 to 2,499	\$0.15
2	2,500 to 4,999	\$0.20
3	5,000 to 19,999	\$0.25
4	20,000 to 34,999	\$0.30
5	35,000 to 49,999	\$0.32

paid on Customer Rebate Tiers according to certain categories. Members and member organizations under Common Ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Affiliated Entities may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. See Section B of the Pricing Schedule.

¹¹ Options overlying Standard and Poor's Depository Receipts/SPDRs ("SPY") are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

6	greater than 49,999	\$0.35
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All other market participants do not receive a SPY Simple Order Rebate for Adding Liquidity. The Exchange proposes to amend the Simple Order Rebates for Adding Liquidity which are paid to Specialists and Market Makers by reducing the number of tiers from 6 tiers to 5 tiers. The Exchange proposes to amend Tier 2 to reduce the Rebate for Adding Liquidity from \$0.20 to \$0.18 per contract. The Exchange proposes to amend Tier 3 to reduce the Rebate for Adding Liquidity from \$0.25 to \$0.21 per contract. The monthly volume per day for Tiers 2 and 3 are not being amended. With respect to Tier 4, the Exchange proposes to amend the monthly volume per day from 20,000 to 34,999 contracts to 20,000 to 49,999 contracts. The Exchange proposes to increase the Tier 4 rebate from \$0.30 to \$0.31 per contract. The Exchange proposes to eliminate current Tier 5. The Exchange proposes to rename Tier 6 to be new Tier 5. No other amendments are proposed to new renamed Tier 5.¹²

The Exchange also proposes to rename the column entitled “Monthly Volume” as “Average Daily Volume (“ADV”).” The Exchange believes that this title more accurately describes the manner in which the rebate is calculated, which is adding the requisite amount of electronically executed Specialist and Market Maker Simple Order contracts per day in a month in SPY, as noted in Part A of Section I of the Pricing Schedule. This proposed change does not impact the manner in which the Exchange calculates these rebates today.

¹² Tier 1 is not being amended.

The Exchange's proposal for the Simple Order Rebates for Adding Liquidity which are paid to Specialists and Market Makers would be as follows:

Tiers	Average Daily Volume (“ADV”)	Rebate for Adding Liquidity
1	1 to 2,499	\$0.15
2	2,500 to 4,999	\$0.18
3	5,000 to 19,999	\$0.21
4	20,000 to 49,999	\$0.31
5	greater than 49,999	\$0.35

The Exchange believes that the proposed five tier rebate structure will incentivize market participants to add a greater amount of Specialist and Market Maker liquidity in SPY on the Exchange to obtain higher rebates.

The Exchange also proposes to amend the Simple Order Fees for Removing Liquidity in SPY for Specialists, Market Makers, Firms, Broker Dealers and Professionals by increasing the fees from \$0.47 to \$0.48 per contract. The Customer¹³ Simple Order Fee for Removing Liquidity is not being amended and will remain at \$0.45 per contract. Despite the increased fee, the Exchange believes that its fees for Simple Orders in SPY remain competitive.

¹³ The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation which is not for the account of a broker or dealer or for the account of a “Professional” (as that term is defined in Rule 1000(b)(14)).

Complex Order

The Exchange proposes to amend its Complex Order Fees for Removing Liquidity in SPY for Specialists and Market Makers by increasing the fees from \$0.40 to \$0.43 per contract. The Exchange would not increase the fees for Firms, Broker-Dealers or Professionals; those fees will remain at \$0.50 per contract. Today, Customers are not assessed a Complex Order Fee for Removing Liquidity. Despite the increased fee, the Exchange believes that its fees for Complex Orders in SPY remain competitive.

Proposed Amendments to Section II: Multiple Listed Options Fees

Penny Pilot Options

The Exchange proposes to amend its Professional, Broker-Dealer and Firm electronic Penny Pilot Options Transaction Charges for Complex Orders. Today, the Exchange assesses Professionals, Broker-Dealers and Firms an electronic Penny Pilot Options Transaction Charges for Complex Orders of \$0.35 per contract. The Exchange proposes to increase the Professional, Broker-Dealer and Firm electronic Penny Pilot Options Transaction Charges for Complex Orders to \$0.40 per contract. Despite the increase to this fee, the Exchange believes the Penny Pilot Options Transaction Charges for electronic Complex Order transactions remain competitive. Professionals, Broker-Dealers and Firms will continue to be offered a discounted rate as compared to Simple Orders.¹⁴

¹⁴ The Exchange would continue to assess an electronic Penny Pilot Options Transaction Charges to Professionals, Broker-Dealers and Firms of \$0.48 per contract for Simple Orders.

Non-Penny Pilot Options

The Exchange proposes to amend its Professional, Broker-Dealer and Firm electronic non-Penny Pilot Options Transaction Charges for Complex Orders. Today, the Exchange assesses Professionals, Broker-Dealers and Firms an electronic non-Penny Pilot Options Transaction Charges for Complex Orders of \$0.35 per contract. The Exchange is proposing to remove the applicability of note 2 in the Pricing Schedule from the non-Penny Pilot Options Transaction Charges for Professionals, Broker-Dealers and Firms. With this proposal, Professional, Broker-Dealer and Firm electronic non-Penny Pilot Options Transaction Charges for Complex Orders would be increased to \$0.75 per contract because the reduced rate would no longer apply. Members may still lower this rate if they qualified for the reduced rebate offered in note 3 in the Pricing Schedule, which note is also being amended with this proposal as noted below. As proposed, the Options Transaction Charge for Simple and Complex Order electronic non-Penny Pilot Options Transaction Charges would be the same fee of \$0.75 per contract fee.

The Exchange also proposes to amend its Professional, Broker-Dealer and Firm electronic non-Penny Pilot Options Transaction Charges by amending note 3 in the Pricing Schedule. Today, note 3 provides that any member or member organization under Common Ownership with another member or member organization or an Appointed OFP of an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule¹⁵ will be assessed a Professional, Broker-Dealer or Firm electronic non-Penny Pilot Options Transaction Charge of \$0.60 per contract. The Exchange proposes to amend the fee to assess \$0.65 per contract. The qualifications for

¹⁵ See note 10 above.

the reduced rate remain the same. Professionals, Broker-Dealers and Firms that do not qualify for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule would continue to pay an electronic non-Penny Pilot Options Transaction Charge of \$0.75 per contract. While the Exchange is amending the fee so that the reduction is not as great as today, the Exchange will continue to offer a reduced rate to Professionals, Broker-Dealers and Firms that qualify by sending the requisite order flow to the Exchange.

Finally, the Exchange is adding a period at end of the sentence in footnote 3 to correct a typographical error.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ 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

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

broader forms that are most important to investors and listed companies.”¹⁸

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁹ (“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.²⁰ 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.”²¹

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’”²² 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.

¹⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²⁰ See NetCoalition, at 534 - 535.

²¹ Id. at 537.

²² 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)).

Proposed Amendments to Section I: Rebates and Fees for Adding and Removing Liquidity in SPYSimple Order

The Exchange's proposal to amend the Simple Order Rebates for Adding Liquidity which are paid to Specialists and Market Makers by reducing the number of tiers from 6 tiers to 5 tiers and reducing the Tier 2 rebate to \$0.18 per contract, reducing the Tier 3 rebate to \$0.21 per contract, amending the Tier 4 monthly volume to 20,000 to 49,999 contracts per day and the rebate to \$0.31 per contract, eliminating Tier 5 and renaming Tier 6 to new Tier 5 is reasonable because the Exchange believes that the proposed five tier rebate structure will incentivize market participants to add a greater amount of Specialist and Market Maker liquidity in SPY on the Exchange to obtain higher rebates. A Specialist or Market Maker would continue to receive a rebate with this proposal provided they execute one electronic Simple Order SPY contract.

In some cases, the rebate will be lower. When 2,500 to 4,999 electronic Simple Order SPY contracts per day are added, the SPY Simple Order Rebate for Adding Liquidity for Specialists and Market Makers will be \$0.18 per contract as compared to \$0.20 per contract (today's rebate). With this proposal, the rebate would be lower for members currently submitting 5,000 to 19,999 SPY contracts per day, the rebate would be \$0.21 per contract as compared to \$.25 per contract. Members currently submitting between 20,000 and 34,999 SPY contracts would receive a \$0.31 per contract as compared to \$0.30 per contract rebate with this proposal, an increased rebate of \$0.01 per contract. Finally, with this proposal, market participants currently submitting between 35,000 and 49,999 SPY contracts per day would receive a lower rebate of \$0.31 per contract as compared to \$0.32 per contract. Despite this decrease, the Exchange believes

that participants will continue to be incentivized to add SPY order flow to the Exchange to receive the rebate.

The Exchange's proposal to amend the Simple Order Rebates for Adding Liquidity which are paid to Specialists and Market Makers by reducing the number of tiers from 6 tiers to 5 tiers and reducing the Tier 2 rebate to \$0.18 per contract, reducing the Tier 3 rebate to \$0.21 per contract, amending the Tier 4 monthly volume to 20,000 to 49,999 contracts per day and the rebate to \$0.31 per contract, eliminating Tier 5 and renaming Tier 6 to new Tier 5 is equitable and not unfairly discriminatory because Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²³ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to rename the column entitled "Monthly Volume" as "Average Daily Volume ("ADV")" is reasonable, equitable and not unfairly discriminatory because the title more accurately describes the manner in which the rebate

²³ See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

is calculated, which is adding the requisite amount of electronically executed Specialist and Market Maker Simple Order contracts per day in a month in SPY, as noted in Part A of Section I of the Pricing Schedule. This proposed change does not impact the manner in which the Exchange calculates these rebates today.

The Exchange's proposal to amend the Simple Order Fees for Removing Liquidity for Specialists, Market Makers, Firms, Broker Dealers and Professionals by increasing the fees from \$0.47 to \$0.48 per contract is reasonable because despite the increased fee, the Exchange believes that its fees for Simple Orders in SPY remain competitive. The Customer Simple Order Fee for Removing Liquidity is not being amended and will remain at \$0.45 per contract. Also, the increase in the Simple Order Fees for Removing Liquidity will continue to support the rebate structure proposed herein, which as stated above, attracts Specialists and Market Makers. An increase in the activity of Specialists and Market Makers in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to amend the Simple Order Fees for Removing Liquidity for Specialists, Market Makers, Firms, Broker Dealers and Professionals by increasing the fees from \$0.47 to \$0.48 per contract is equitable and not unfairly discriminatory because all participants would continue to be assessed a similar fee, except for Customers. The Exchange believes that assessing Customers a lower fee is equitable and not unfairly discriminatory because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market

participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Complex Order

The Exchange's proposal to amend its Complex Order Fees for Removing Liquidity for Specialists and Market Makers by increasing the fees from \$0.40 to \$0.43 per contract is reasonable because despite the increased fee, the Exchange believes that its fees for Complex Orders in SPY remain competitive. Also, Specialists and Market Makers continue to be assessed a lower fee as compared to Firms, Broker-Dealers or Professionals; who are assessed \$0.50 per contract.

The Exchange's proposal to amend its Complex Order Fees for Removing Liquidity for Specialists and Market Makers by increasing the fees from \$0.40 to \$0.43 per contract is equitable and not unfairly discriminatory. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁴ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. 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. Customers continue

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Id.

to be assessed no Complex Order Fee for Removing Liquidity because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Proposed Amendments to Section II: Multiple Listed Options Fees

Penny Pilot Options

The Exchange's proposal to amend its Professional, Broker-Dealer and Firm electronic Penny Pilot Options Transaction Charges for Complex Orders from \$0.35 per contract to \$0.40 per contract is reasonable because despite the increase to this fee, the Exchange believes the Penny Pilot Options Transaction Charges for electronic Complex Order transactions remain competitive. Professionals, Broker-Dealers and Firms and will continue to be offered a discounted rate as compared to Simple Orders which will continue to be assessed \$0.48 per contract.

The Exchange's proposal to amend its Professional, Broker-Dealer and Firm electronic Penny Pilot Options Transaction Charges for Complex Orders from \$0.35 per contract to \$0.40 per contract is equitable and not unfairly discriminatory because Professionals, Broker-Dealers and Firms would be uniformly assessed \$0.40 per contract. Specialists and Market Makers would continue to be assessed a lower electronic Penny Pilot Options Transaction Charge of \$0.22 per contract. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory

requirements, which normally do not apply to other market participants.²⁵ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. 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. Customers continue to be assessed no Penny Pilot Options Transaction Charge because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to offer Professionals, Broker-Dealers and Firms the opportunity to reduce electronic Complex Orders in Penny Pilot Options as compared to non-Penny Pilot Options because the Exchange seeks to incentivize Professionals, Broker-Dealers and Firms to execute Complex Penny Pilot Options orders. Also, lowering the electronic Options Transaction Charges for Complex Orders, as compared to Simple Orders is reasonable, equitable and not unfairly discriminatory because the

²⁵Id.

Exchange desires to continue to incentivize these market participants to transact Complex Orders on the Exchange. The fees will be applied uniformly to all market participants.

Non-Penny Pilot

The Exchange's proposal to amend its Professional, Broker-Dealer and Firm electronic non-Penny Pilot Options Transaction Charges for Complex Orders by removing the applicability of note 2 in the Pricing Schedule and increasing the fee to \$0.75 per contract is reasonable because Professionals, Broker-Dealers and Firms transacting electronic non-Penny Pilot Options Transaction Charges would be uniformly assessed a fee of \$0.75 per contract for Simple and Complex Orders. Members may still lower this rate if they qualified for the reduced rebate offered in note 3 in the Pricing Schedule, which note is also being amended with this proposal. Despite the inapplicability of note 2, the Exchange believes the non-Penny Pilot Options Transaction Charges for electronic Complex Order transactions remain competitive.

The Exchange's proposal to amend its Professional, Broker-Dealer and Firm electronic non-Penny Pilot Options Transaction Charges for Complex Orders by removing the applicability of note 2 in the Pricing Schedule and increasing the fee to \$0.75 per contract is equitable and not unfairly discriminatory because Professionals, Broker-Dealers and Firms transacting electronic non-Penny Pilot Options Transaction Charges would be uniformly assessed a fee of \$0.75 per contract for Simple and Complex Orders. Specialists and Market Makers would continue to be assessed a lower electronic non-Penny Pilot Options Transaction Charge of \$0.25 per contract. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory

requirements, which normally do not apply to other market participants.²⁶ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. 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. Customers continue to be assessed no non-Penny Pilot Options Transaction Charge because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to amend note 3 in the Pricing Schedule to increase the amount a member or member organization under Common Ownership with another member or member organization or an Appointed OFP of an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed and increase the Professional, Broker-Dealer or Firm electronic non-Penny Pilot Options Transaction Charge of from \$0.60 to \$0.65 per contract is reasonable because Professionals, Broker-Dealers and Firms may continue to qualify for a lower rate.

²⁶ Id.

Professionals, Broker-Dealers and Firms that do not qualify for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule would continue to pay an electronic non-Penny Pilot Options Transaction Charge of \$0.75 per contract. While amendment reduces the savings, the Exchange will continue to offer Professionals, Broker-Dealers and Firms that qualify by sending the requisite order flow to the Exchange a lower transaction fee. In addition, attracting Customer order flow benefits all market participants with increased order flow with which to interact.

The Exchange's proposal to amend note 3 in the Pricing Schedule to increase the amount a member or member organization under Common Ownership with another member or member organization or an Appointed OFP of an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed and increase the Professional, Broker-Dealer or Firm electronic non-Penny Pilot Options Transaction Charge of from \$0.60 to \$0.65 per contract is equitable and not unfairly discriminatory because these market participants are subject to the highest transaction fees of \$0.75 per contract.

The Exchange's proposal to correct the typographical error in footnote 3 is reasonable, equitable and not unfairly discriminatory because it correct a grammatical error.

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.

In terms of intra-market competition, the Exchange believes that its proposed rebates and fees continue to remain competitive in SPY and Multiply Listed Options. 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.

Proposed Amendments to Section I: Rebates and Fees for Adding and Removing Liquidity in SPY

Simple Order

The Exchange's proposal to amend the Simple Order Rebates for Adding Liquidity which are paid to Specialists and Market Makers by reducing the number of tiers from 6 tiers to 5 tiers and reducing the Tier 2 rebate to \$0.18 per contract, reducing

the Tier 3 rebate to \$0.21 per contract, amending the Tier 4 monthly volume to 20,000 to 49,999 contracts per day and the rebate to \$0.31 per contract, eliminating Tier 5 and renaming Tier 6 to new Tier 5 does not impose an undue burden on intra-market competition because Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁷ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to rename the column entitled "Monthly Volume" as "Average Daily Volume ("ADV")" does not impose an undue burden on intra-market competition because the title more accurately describes the manner in which the rebate is calculated, which is adding the requisite amount of electronically executed Specialist and Market Maker Simple Order contracts per day in a month in SPY, as noted in Part A of Section I of the Pricing Schedule. This proposed change does not impact the manner in which the Exchange calculates these rebates today.

The Exchange's proposal to amend the Simple Order Fees for Removing Liquidity for Specialists, Market Makers, Firms, Broker Dealers and Professionals by

²⁷ Id.

increasing the fees from \$0.47 to \$0.48 per contract does not impose an undue burden on intra-market competition because all participants would continue to be assessed a similar fee, except for Customers. The Exchange believes that assessing Customers a lower fee does not impose a burden on intra-market competition because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Complex Order

The Exchange's proposal to amend its Complex Order Fees for Removing Liquidity for Specialists and Market Makers by increasing the fees from \$0.40 to \$0.43 per contract does not impose an undue burden on intra-market competition. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁸ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause

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Id.

an additional corresponding increase in order flow from other market participants. Customers continue to be assessed no Complex Order Fee for Removing Liquidity because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Proposed Amendments to Section II: Multiple Listed Options Fees

Penny Pilot Options

The Exchange's proposal to amend its Professional, Broker-Dealer and Firm electronic Penny Pilot Options Transaction Charges for Complex Orders from \$0.35 per contract to \$0.40 per contract does not impose an undue burden on intra-market competition because Professionals, Broker-Dealers and Firms would be uniformly assessed \$0.40 per contract. Specialists and Market Makers would continue to be assessed a lower electronic Penny Pilot Options Transaction Charge of \$0.22 per contract. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁹ They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and

²⁹ Id.

Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. 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. Customers continue to be assessed no Penny Pilot Options Transaction Charge because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Non-Penny Pilot Options

The Exchange's proposal to amend its Professional, Broker-Dealer and Firm electronic non-Penny Pilot Options Transaction Charges for Complex Orders by removing the applicability of note 2 in the Pricing Schedule and increasing the fee to \$0.75 per contract does not impose an undue burden on intra-market competition because Professionals, Broker-Dealers and Firms transacting electronic non-Penny Pilot Options Transaction Charges would be uniformly assessed a fee of \$0.75 per contract. Specialists and Market Makers would continue to be assessed a lower electronic non-Penny Pilot Options Transaction Charge of \$0.25 per contract. Unlike other market participants, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.³⁰ They have

³⁰

Id.

obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. 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. Customers continue to be assessed no non-Penny Pilot Options Transaction Charge because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange believes that it does not impose an undue burden on intra-market competition to continue to offer Professionals, Broker-Dealers and Firms the opportunity to reduce electronic Complex Orders in non-Penny Pilot Options as compared to Penny Pilot Options because the Options Transaction Charges for non-Penny Pilot Options are higher. Also, only lowering the electronic Options Transaction Charges for Complex Orders, as compared to Simple Orders does not impose an undue burden on intra-market competition because the Exchange desires to continue to incentivize these market participants to transact Complex Orders on the Exchange.

The Exchange's proposal to amend note 3 in the Pricing Schedule to increase the amount a member or member organization under Common Ownership with another member or member organization or an Appointed OFP of an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed and increase the Professional, Broker-Dealer or Firm electronic non-Penny Pilot Options Transaction Charge of from \$0.60 to \$0.65 per contract does not impose an undue burden on intra-market competition because these market participants are subject to the highest transaction fees of \$0.75 per contract.

The Exchange's proposal to correct the typographical error in footnote 3 does not impose an undue burden on intra-market competition because it correct a grammatical error.

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.³¹

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

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2017-09 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-2017-09. 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-2017-09 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.³²

Robert W. Errett
Deputy Secretary

³² 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.

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I. Rebates and Fees for Adding and Removing Liquidity in SPY

With respect to Section I of this Pricing Schedule, the order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity, except with respect to orders that trigger an order exposure alert. Customer volume attributable to this section will be included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program in Section B. However, the rebates defined in Section B will not apply to electronic executions in SPY.

Part A. Simple Order

	Customer	Specialist	Market Maker	Firm	Broker-Dealer	Professional
Rebate for Adding Liquidity	\$0.00	*	*	\$0.00	\$0.00	\$0.00
Fee for	\$0.45	\$0.4[7]8	\$0.4[7]8	\$0.4[7]8	\$0.4[7]8	\$0.4[7]8

Removing
Liquidity

* The Simple Order Rebate for Adding Liquidity will be paid as noted below to Specialists and Market Makers adding the requisite amount of electronically executed Specialist and Market Maker Simple Order contracts per day in a month in SPY:

Tiers	[Monthly Volume] <u>Average Daily Volume</u> (“ADV”)	Rebate for Adding Liquidity
1	1 to 2,499	\$0.15
2	2,500 to 4,999	\$0.[20]18
3	5,000 to 19,999	\$0.[25]21
4	20,000 to [34,999]49,999	\$0.[30]31
[5]	35,000 to 49,999	\$0.32]
[6]	5 greater than 49,999	\$0.35

Part B. Complex Order

	Customer	Specialist	Market Maker	Firm	Broker- Dealer	Professional
Fee for Adding Liquidity	\$0.00	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10
Fee for Removing Liquidity	\$0.00	\$0.[40]43	\$0.[40]43	\$0.50	\$0.50	\$0.50

- Complex Order Fees for Removing Liquidity, applicable to Specialists and Market Makers, will be decreased by \$0.02 per contract when the Specialist

Cabinet Options	\$0.00	N/A	\$0.10	N/A	\$0.10	N/A	\$0.10	N/A	\$0.10
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- These fees are per contract.

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

²Electronic Complex Orders will be assessed \$0.[35]40 per contract.

³Any member or member organization under Common Ownership with another member or member organization or an Appointed OFP of an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed \$0.6[0]5 per contract.

⁴Any member or member organization under Common Ownership with another member or member organization or an Appointed MM of an Affiliate Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed \$0.23 per contract.

- The Cabinet Fees above are not in addition to the Options Transaction Charges.

* * * * *