

Required fields are shown with yellow backgrounds and asterisks.

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

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

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
 Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**Contact Information**  
 Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \*  Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*  Fax

**Signature**  
 Pursuant to the requirements of the Securities Exchange Act of 1934,  
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  
 (Title \*)  
 Date  Executive Vice President and General Counsel  
 By    
 (Name \*)

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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

**Exhibit 1 - Notice of Proposed Rule Change \***

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

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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

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

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 IV, Part A entitled “PIXL Pricing” to amend pricing related to PIXL<sup>3</sup> executions.

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:

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<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

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

a. Purpose

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 amend PIXL Executions in Standard and Poor's Depository Receipts/SPDRs ("SPY").<sup>4</sup> The Exchange also proposes to amend PIXL Pricing in Section IV, Part A, entitled "PIXL Pricing" for all other Multiply-Listed options symbols.<sup>5</sup>

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

Section I of the Pricing Schedule contains pricing for PIXL Executions in SPY. Today, with respect to PIXL executions in SPY, the Exchange assesses an Initiating Order fee of \$0.05 per contract. Today, the Initiating Order Fee for Professional,<sup>6</sup> Firm,<sup>7</sup>

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<sup>4</sup> 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.

<sup>5</sup> The Exchange initially filed the proposed pricing changes on February 2, 2017 (SR-Phlx-2017-10). On February 8, 2017, the Exchange withdrew that filing and submitted this filing.

<sup>6</sup> The term "Professional" applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(14).

<sup>7</sup> 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.

Broker-Dealer,<sup>8</sup> Specialist<sup>9</sup> and Market Maker<sup>10</sup> orders that are contra to a Customer<sup>11</sup> PIXL Order are reduced to \$0.00 if the Customer PIXL Order is greater than 399 contracts. Further, when the PIXL Order is contra to the Initiating Order, a Customer PIXL Order is assessed \$0.00 per contract and all other non-Customer market participants are assessed a \$0.38 per contract fee when contra to an Initiating Order. When the PIXL Order is contra to other than the Initiating Order, the PIXL Order is assessed \$0.00 per contract, unless the order is a Customer, in which case the Customer will receive a rebate of \$0.38 per contract. All other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, are assessed a Fee for Removing Liquidity of

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<sup>8</sup> The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

<sup>9</sup> The term “Specialist” applies to transactions for the account of a Specialist (as defined in Exchange Rule 1020(a)).

<sup>10</sup> The term “Market Maker” includes Registered Options Traders (“ROT”). See Exchange Rule 1014(b)(i) and (ii). A ROT includes a Streaming Quote Trader or “SQT,” a Remote Streaming Quote Trader or “RSQT” and a Non-SQT, which by definition is neither a SQT nor a 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. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or “RSQTO,” which may also be referred to as a Remote Market Making Organization (“RMO”), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a). RSQTs may also be referred to as Remote Market Markers (“RMMs”).

<sup>11</sup> 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)).

\$0.42 per contract or will receive the Rebate for Adding Liquidity. The aforementioned applies to pricing in SPY.

The Exchange proposes to continue to assess an Initiating Order fee of \$0.05 per contract for SPY Orders within PIXL. The Exchange proposes to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order, which are currently reduced to \$0.00 if the Customer PIXL Order is greater than 399 contracts. The Exchange is replacing the incentive which reduces the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order, provided the Customer PIXL Order is greater than 399 contracts, with another incentive to attract more liquidity for SPY PIXL Orders.

The Exchange proposes to offer Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers<sup>12</sup> 2 through 6 or qualify for the Monthly Firm Fee Cap<sup>13</sup> a rebate of \$0.10 per contract for all SPY Complex PIXL Orders greater

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<sup>12</sup> 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.

<sup>13</sup> Firms are subject to a maximum fee of \$75,000 (“Monthly Firm Fee Cap”). Firm Floor Option Transaction Charges and QCC Transaction Fees in Section II of the Pricing Schedule, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions, as defined in Section II, will be excluded from the Monthly Firm Fee Cap. Reversal and conversion, jelly roll and box spread strategy

than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. The Exchange desires to incentivize members or member organizations to transact a greater number of SPY Complex PIXL Orders while also incentivizing members or member organizations to submit Customer order flow on Phlx.

The Exchange also proposes to amend its SPY PIXL pricing so that when the PIXL Order is contra to other than the Initiating Order, the PIXL Order will continue to be assessed \$0.00 per contract, unless the order is a Customer, in which case the Customer will receive an increased rebate of \$0.40 per contract (an increase from \$0.38 per contract). The Exchange also proposes to amend the SPY PIXL pricing so that all other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, will be assessed an increased Fee for Removing Liquidity of \$0.50 per contract (an increase from \$0.42 per contract) or will receive the Rebate for Adding Liquidity.<sup>14</sup> The Exchange is increasing the Fee for Removing Liquidity because it seeks to offer an increase rebate to attract additional SPY PIXL Orders.

The Exchange proposes that when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order will not be eligible for a rebate. The Exchange believes that this

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executions, as defined in Section II, will be included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap. Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap.

<sup>14</sup> The Rebates for Adding Liquidity for Simple Orders are in Part A and for Complex Orders in Part B.

proposal will encourage Specialists and Market Makers to quote their best price at the initiation of a PIXL auction to obtain the rebate.

**Proposed Amendments to Section IV, Part A: PIXL Pricing**

Today, the PIXL pricing in all Multiply-Listed symbols except SPY is as described below. The Exchange assesses an Initiating Order Fee of \$0.07 per contract. If the member or member organization qualifies for the Tier 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract. Today, if the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month, the member or member organization will be assessed \$0.00 per contract for Complex PIXL Orders.

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

The Exchange proposes to continue to assess an Initiating Order Fee of \$0.07 per contract. The Exchange proposes that if the member or member organization qualifies for the Tier 3, 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract. The Tier 3 qualifier is being added to provide



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

The Exchange proposes to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts. Instead, the Exchange proposes to offer another incentive to attract more liquidity for Complex PIXL Orders similar to proposed SPY PIXL pricing. The Exchange proposes to offer Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6<sup>15</sup> or qualify for the Monthly Firm Fee Cap<sup>16</sup> a rebate of \$0.10 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of Complex SPY PIXL Orders in a month. The Exchange desires to incentivize members and member organizations to transact a greater number of SPY Complex PIXL Orders while also incentivizing members and

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<sup>15</sup> See note 12 above.

<sup>16</sup> See note 13 above.

member organizations to submit Customer order flow on Phlx to obtain the \$0.10 rebate on all Complex PIXL Orders (excluding SPY Options).

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>18</sup> 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.”<sup>19</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>20</sup> (“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

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>19</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

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

Congress mandated a cost-based approach.<sup>21</sup> 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.”<sup>22</sup>

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’ . . .”<sup>23</sup> 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**

The Exchange’s proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer SPY PIXL Order if the Customer SPY PIXL Order is greater than 399 contracts and instead offer Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers<sup>24</sup> 2 through 6 or qualify for the

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<sup>21</sup> See NetCoalition, at 534 - 535.

<sup>22</sup> Id. at 537.

<sup>23</sup> 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)).

<sup>24</sup> See note 12 above.

Monthly Firm Fee Cap<sup>25</sup> a rebate of \$0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month is reasonable. The proposed rebate will incentivize members and member organizations to transact a greater number of SPY Complex PIXL Orders will also incentivizing members and member organizations to submit Customer order flow on Phlx. All members and member organizations are eligible for this rebate which may be obtained by either sending in the requisite amount of Customer order, thereby benefitting all participants with order flow with which to interact or benefitting members and member organizations that have \$75,000 in transaction fees for the month, which contributed to the Exchange's revenue. The Exchange desires to incentivize members and member organizations to transact a greater amount of Complex SPY Orders as compared to Simple SPY Orders. The quantity of orders is being increased to receive the rebate, which order flow benefits all participants through order interaction.

The Exchange's proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer SPY PIXL Order if the Customer SPY PIXL Order is greater than 399 contracts and instead offer Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap a rebate of \$0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month is equitable and not

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<sup>25</sup> See note 13 above.

unfairly discriminatory. All members and member organizations are eligible for the proposed rebate, provided they met the requisite qualifications. Members and member organizations would be uniformly paid the new rebate. No member or member organization will be eligible to eliminate the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer SPY PIXL Order if the Customer SPY PIXL Order is greater than 399 contracts.

The Exchange's proposal to amend its SPY PIXL pricing so that when the PIXL Order is contra to other than the Initiating Order, the PIXL Order will continue to be assessed \$0.00 per contract, unless the order is a Customer, in which case the Customer will receive an increased rebate of \$0.40 per contract is reasonable. The Exchange is increasing this rebate from \$0.38 per contract to incentivize members and member organizations to transact a greater number of SPY PIXL Orders to earn the increased rebate.

The Exchange's proposal to amend its SPY PIXL pricing so that when the PIXL Order is contra to other than the Initiating Order, the PIXL Order will continue to be assessed \$0.00 per contract, unless the order is a Customer, in which case the Customer will receive an increased rebate of \$0.40 per contract is equitable and not unfairly discriminatory because the Exchange will uniformly pay this rebate.

The Exchange's proposal to amend the SPY PIXL pricing so that all other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, will be assessed an increased Fee for Removing Liquidity of \$0.50 per contract or will receive

the Rebate for Adding Liquidity is reasonable.<sup>26</sup> The Exchange is increasing the fee from \$0.42 to \$0.50 per contract so that it may offer members and member organizations increased SPY Complex PIXL rebates as proposed herein.

The Exchange's proposal to amend the SPY PIXL pricing so that all other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, will be assessed an increased Fee for Removing Liquidity of \$0.50 per contract or will receive the Rebate for Adding Liquidity is equitable and not unfairly discriminatory because the Exchange will uniformly assess the increased Fee for Removing Liquidity to all applicable members and member organizations.

The Exchange's proposal to not offer a rebate when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order is reasonable. The Exchange believes that not paying a rebate to the PIXL Order in this case is reasonable because the Exchange will be paying Specialists and Market Makers the Rebate for Adding Liquidity<sup>27</sup> instead. Also, this proposal continues to encourage Specialists and Market Makers to quote their best price at the initiation of a PIXL auction to obtain the rebate.

The Exchange's proposal to not offer a rebate when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order is equitable and not unfairly discriminatory. The Exchange will uniformly not offer a rebate to any member or member organizations

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<sup>26</sup> The Rebates for Adding Liquidity for Simple Orders are in Part A and for Complex Orders in Part B.

<sup>27</sup> Id.

when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction.

**Proposed Amendments to Section IV, Part A: PIXL Pricing**

The Exchange's proposal that if the member or member organization qualifies for the Tier 3, 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract, instead of the \$0.07 per contract Initiating Order fee is reasonable because the Exchange is offering members and member organizations a greater opportunity to qualify for the lower fee by adding Tier 3 as a qualifier.

The Exchange's proposal that if the member or member organization qualifies for the Tier 3, 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract, instead of the \$0.07 per contract Initiating Order fee is equitable and not unfairly discriminatory because the Exchange will assess the fee in a uniform manner to all applicable members and member organizations.

The Exchange's proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts and instead replace this offer with a rebate to attract more liquidity for Complex SPY PIXL Orders similar to proposed SPY PIXL pricing is reasonable. The proposed rebate will incentivize members and member organizations to transact a greater number of Complex SPY PIXL Orders will also incentivizing members and member organizations to submit Customer order flow on Phlx. All members and member organizations are eligible for this rebate, which applies to all Complex PIXL

Orders excluding SPY Options,<sup>28</sup> which may be obtained by either sending in the requisite amount of Customer orders, thereby benefitting all participants with order flow with which to interact, or benefitting members and member organizations that have paid \$75,000 in transaction fees for the month, which contributed to the Exchange's revenue. The Exchange desires to incentivize members and member organizations to transact a greater amount of Complex SPY PIXL Orders. The quantity of orders required to be transacted to earn the rebate (2,500 Complex SPY PIXL Orders) will result in a greater amount of order flow to the Exchange, which benefits all participants through order interaction.

The Exchange's proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts and instead replace this offer with a rebate to attract more liquidity for PIXL SPY Complex Orders similar to proposed SPY PIXL pricing is equitable and not unfairly discriminatory. All members and member organizations are eligible for the proposed rebate, provide they met the requisite qualifications. Members and member organizations would be uniformly paid the rebate, provided they qualify. No member will be eligible to eliminate the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the

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<sup>28</sup> The Exchange is offering a rebate for Complex SPY PIXL Orders in Section I.



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**

The Exchange's proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker

orders that are contra to a Customer SPY PIXL Order if the Customer SPY PIXL Order is greater than 399 contracts and instead offer Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap a rebate of \$0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month does not impose an undue burden on intra-market competition. All members and member organizations are eligible for the proposed rebate, provide they met the requisite qualifications. Members and member organizations would be uniformly paid the new rebate. No member or member organization will be eligible to eliminate the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer SPY PIXL Order if the Customer SPY PIXL Order is greater than 399 contracts.

The Exchange's proposal to amend its SPY PIXL pricing so that when the PIXL Order is contra to other than the Initiating Order, the PIXL Order will continue to be assessed \$0.00 per contract, unless the order is a Customer, in which case the Customer will receive an increased rebate of \$0.40 per contract does not impose an undue burden on intra-market competition because the Exchange will uniformly pay this rebate.

The Exchange's proposal to amend the SPY PIXL pricing so that all other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, will be assessed an increased Fee for Removing Liquidity of \$0.50 per contract or will receive the Rebate for Adding Liquidity does not impose an undue burden on intra-market

competition because the Exchange will uniformly assess the increased Fee for Removing Liquidity to all applicable members and member organizations.

The Exchange's proposal to not offer a rebate when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order does not impose an undue burden on intra-market competition. The Exchange will uniformly not offer a rebate to any member or member organization when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction.

#### **Proposed Amendments to Section IV, Part A: PIXL Pricing**

The Exchange's proposal that if the member or member organization qualifies for the Tier 3, 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract, instead of the \$0.07 per contract Initiating Order fee does not impose an undue burden on intra-market competition because the Exchange will assess the fee in a uniform manner to all applicable members and member organizations.

The Exchange's proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts and instead replace this offer with a rebate to attract more liquidity for PIXL SPY Complex Orders similar to proposed SPY PIXL pricing does not impose an undue burden on intra-market competition. All members and member organizations are eligible for the proposed rebate, provide they met the requisite qualifications. Members and member organizations would be uniformly paid the rebate, provided they

qualify. No member or member organization will be eligible to eliminate the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>29</sup> The Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

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<sup>29</sup> 15 U.S.C. § 78s(b)(3)(A)(ii).

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule 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-2017-14)

February \_\_, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend PIXL pricing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 8, 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 IV, Part A entitled “PIXL Pricing” to amend pricing related to PIXL<sup>3</sup> executions.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in SPY," to amend PIXL Executions in Standard and Poor's Depository Receipts/SPDRs ("SPY").<sup>4</sup> The Exchange also proposes to amend PIXL Pricing in Section IV, Part A, entitled "PIXL Pricing" for all other Multiply-Listed options symbols.

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

Section I of the Pricing Schedule contains pricing for PIXL Executions in SPY. Today, with respect to PIXL executions in SPY, the Exchange assesses an Initiating

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<sup>4</sup> 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.

Order fee of \$0.05 per contract. Today, the Initiating Order Fee for Professional,<sup>5</sup> Firm,<sup>6</sup> Broker-Dealer,<sup>7</sup> Specialist<sup>8</sup> and Market Maker<sup>9</sup> orders that are contra to a Customer<sup>10</sup> PIXL Order are reduced to \$0.00 if the Customer PIXL Order is greater than 399 contracts. Further, when the PIXL Order is contra to the Initiating Order, a Customer PIXL Order is assessed \$0.00 per contract and all other non-Customer market

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<sup>5</sup> The term “Professional” applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(14).

<sup>6</sup> 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.

<sup>7</sup> The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

<sup>8</sup> The term “Specialist” applies to transactions for the account of a Specialist (as defined in Exchange Rule 1020(a)).

<sup>9</sup> The term “Market Maker” includes Registered Options Traders (“ROT”). See Exchange Rule 1014(b)(i) and (ii). A ROT includes a Streaming Quote Trader or “SQT,” a Remote Streaming Quote Trader or “RSQT” and a Non-SQT, which by definition is neither a SQT nor a 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. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or “RSQTO,” which may also be referred to as a Remote Market Making Organization (“RMO”), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a). RSQTs may also be referred to as Remote Market Markers (“RMMs”).

<sup>10</sup> 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)).



participants are assessed a \$0.38 per contract fee when contra to an Initiating Order. When the PIXL Order is contra to other than the Initiating Order, the PIXL Order is assessed \$0.00 per contract, unless the order is a Customer, in which case the Customer will receive a rebate of \$0.38 per contract. All other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, are assessed a Fee for Removing Liquidity of \$0.42 per contract or will receive the Rebate for Adding Liquidity. The aforementioned applies to pricing in SPY.

The Exchange proposes to continue to assess an Initiating Order fee of \$0.05 per contract for SPY Orders within PIXL. The Exchange proposes to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order, which are currently reduced to \$0.00 if the Customer PIXL Order is greater than 399 contracts. The Exchange is replacing the incentive which reduces the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order, provided the Customer PIXL Order is greater than 399 contracts, with another incentive to attract more liquidity for SPY PIXL Orders.

The Exchange proposes to offer Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers<sup>11</sup> 2 through 6 or qualify for the Monthly

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<sup>11</sup> 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

Firm Fee Cap<sup>12</sup> a rebate of \$0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. The Exchange desires to incentivize members or member organizations to transact a greater number of SPY Complex PIXL Orders while also incentivizing members or member organizations to submit Customer order flow on Phlx.

The Exchange also proposes to amend its SPY PIXL pricing so that when the PIXL Order is contra to other than the Initiating Order, the PIXL Order will continue to be assessed \$0.00 per contract, unless the order is a Customer, in which case the Customer will receive an increased rebate of \$0.40 per contract (an increase from \$0.38 per contract). The Exchange also proposes to amend the SPY PIXL pricing so that all other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, will be assessed an increased Fee for Removing Liquidity of \$0.50 per contract (an

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calculating the Customer Rebate Tiers and receiving rebates. See Section B of the Pricing Schedule.

<sup>12</sup> Firms are subject to a maximum fee of \$75,000 (“Monthly Firm Fee Cap”). Firm Floor Option Transaction Charges and QCC Transaction Fees in Section II of the Pricing Schedule, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions, as defined in Section II, will be excluded from the Monthly Firm Fee Cap. Reversal and conversion, jelly roll and box spread strategy executions, as defined in Section II, will be included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap. Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap.

increase from \$0.42 per contract) or will receive the Rebate for Adding Liquidity.<sup>13</sup> The Exchange is increasing the Fee for Removing Liquidity because it seeks to offer an increase rebate to attract additional SPY PIXL Orders.

The Exchange proposes that when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order will not be eligible for a rebate. The Exchange believes that this proposal will encourage Specialists and Market Makers to quote their best price at the initiation of a PIXL auction to obtain the rebate.

#### **Proposed Amendments to Section IV, Part A: PIXL Pricing**

Today, the PIXL pricing in all Multiply-Listed symbols except SPY is as described below. The Exchange assesses an Initiating Order Fee of \$0.07 per contract. If the member or member organization qualifies for the Tier 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract. Today, if the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month, the member or member organization will be assessed \$0.00 per contract for Complex PIXL Orders.

Today, any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier 4 or 5 in Section B, or executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month will receive one of the PIXL Initiating Order discounts as described above.

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<sup>13</sup> The Rebates for Adding Liquidity for Simple Orders are in Part A and for Complex Orders in Part B.

Today, the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order will be reduced to \$0.00 if the Customer PIXL Order is greater than 399 contracts.

The Exchange proposes to continue to assess an Initiating Order Fee of \$0.07 per contract. The Exchange proposes that if the member or member organization qualifies for the Tier 3, 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract. The Tier 3 qualifier is being added to provide another means to qualify for the lower fee. If the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month, the member or member organization will continue to be assessed \$0.00 per contract for Complex PIXL Orders. Any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier 4 or 5 in Section B, or executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month will continue to receive one of the PIXL Initiating Order discounts as described above.

The Exchange proposes to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts. Instead, the Exchange proposes to offer another incentive to attract more liquidity for Complex PIXL Orders similar to proposed SPY PIXL pricing. The Exchange proposes to offer Phlx members and member organizations that qualify for

Section B, Customer Rebate Tiers 2 through 6<sup>14</sup> or qualify for the Monthly Firm Fee Cap<sup>15</sup> a rebate of \$0.10 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of Complex SPY PIXL Orders in a month. The Exchange desires to incentivize members and member organizations to transact a greater number of SPY Complex PIXL Orders while also incentivizing members and member organizations to submit Customer order flow on Phlx to obtain the \$0.10 rebate on all Complex PIXL Orders (excluding SPY Options).

2. Statutory Basis

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

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<sup>14</sup> See note 11 above.

<sup>15</sup> See note 12 above.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(4) and (5).

market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>18</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>19</sup> (“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.<sup>20</sup> 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.”<sup>21</sup>

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’ . . .”<sup>22</sup> 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.

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

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

<sup>20</sup> See NetCoalition, at 534 - 535.

<sup>21</sup> Id. at 537.

<sup>22</sup> 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 SPY**

The Exchange's proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer SPY PIXL Order if the Customer SPY PIXL Order is greater than 399 contracts and instead offer Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers<sup>23</sup> 2 through 6 or qualify for the Monthly Firm Fee Cap<sup>24</sup> a rebate of \$0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month is reasonable. The proposed rebate will incentivize members and member organizations to transact a greater number of SPY Complex PIXL Orders will also incentivizing members and member organizations to submit Customer order flow on Phlx. All members and member organizations are eligible for this rebate which may be obtained by either sending in the requisite amount of Customer order, thereby benefitting all participants with order flow with which to interact or benefitting members and member organizations that have \$75,000 in transaction fees for the month, which contributed to the Exchange's revenue. The Exchange desires to incentivize members and member organizations to transact a greater amount of Complex SPY Orders as compared to Simple SPY Orders. The quantity of orders is being increased to receive the rebate, which order flow benefits all participants through order interaction.

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<sup>23</sup> See note 11 above.

<sup>24</sup> See note 12 above.

The Exchange's proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer SPY PIXL Order if the Customer SPY PIXL Order is greater than 399 contracts and instead offer Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap a rebate of \$0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month is equitable and not unfairly discriminatory. All members and member organizations are eligible for the proposed rebate, provided they met the requisite qualifications. Members and member organizations would be uniformly paid the new rebate. No member or member organization will be eligible to eliminate the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer SPY PIXL Order if the Customer SPY PIXL Order is greater than 399 contracts.

The Exchange's proposal to amend its SPY PIXL pricing so that when the PIXL Order is contra to other than the Initiating Order, the PIXL Order will continue to be assessed \$0.00 per contract, unless the order is a Customer, in which case the Customer will receive an increased rebate of \$0.40 per contract is reasonable. The Exchange is increasing this rebate from \$0.38 per contract to incentivize members and member organizations to transact a greater number of SPY PIXL Orders to earn the increased rebate.

The Exchange's proposal to amend its SPY PIXL pricing so that when the PIXL Order is contra to other than the Initiating Order, the PIXL Order will continue to be



assessed \$0.00 per contract, unless the order is a Customer, in which case the Customer will receive an increased rebate of \$0.40 per contract is equitable and not unfairly discriminatory because the Exchange will uniformly pay this rebate.

The Exchange's proposal to amend the SPY PIXL pricing so that all other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, will be assessed an increased Fee for Removing Liquidity of \$0.50 per contract or will receive the Rebate for Adding Liquidity is reasonable.<sup>25</sup> The Exchange is increasing the fee from \$0.42 to \$0.50 per contract so that it may offer members and member organizations increased SPY Complex PIXL rebates as proposed herein.

The Exchange's proposal to amend the SPY PIXL pricing so that all other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, will be assessed an increased Fee for Removing Liquidity of \$0.50 per contract or will receive the Rebate for Adding Liquidity is equitable and not unfairly discriminatory because the Exchange will uniformly assess the increased Fee for Removing Liquidity to all applicable members and member organizations.

The Exchange's proposal to not offer a rebate when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order is reasonable. The Exchange believes that not paying a rebate to the PIXL Order in this case is reasonable because the Exchange will be paying Specialists and Market Makers the Rebate for Adding Liquidity<sup>26</sup> instead. Also,

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<sup>25</sup> The Rebates for Adding Liquidity for Simple Orders are in Part A and for Complex Orders in Part B.

<sup>26</sup> Id.

this proposal continues to encourage Specialists and Market Makers to quote their best price at the initiation of a PIXL auction to obtain the rebate.

The Exchange's proposal to not offer a rebate when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order is equitable and not unfairly discriminatory. The Exchange will uniformly not offer a rebate to any member or member organizations when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction.

#### **Proposed Amendments to Section IV, Part A: PIXL Pricing**

The Exchange's proposal that if the member or member organization qualifies for the Tier 3, 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract, instead of the \$0.07 per contract Initiating Order fee is reasonable because the Exchange is offering members and member organizations a greater opportunity to qualify for the lower fee by adding Tier 3 as a qualifier.

The Exchange's proposal that if the member or member organization qualifies for the Tier 3, 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract, instead of the \$0.07 per contract Initiating Order fee is equitable and not unfairly discriminatory because the Exchange will assess the fee in a uniform manner to all applicable members and member organizations.

The Exchange's proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts and instead replace this offer with a rebate to attract more liquidity

for Complex SPY PIXL Orders similar to proposed SPY PIXL pricing is reasonable. The proposed rebate will incentivize members and member organizations to transact a greater number of Complex SPY PIXL Orders will also incentivizing members and member organizations to submit Customer order flow on Phlx. All members and member organizations are eligible for this rebate, which applies to all Complex PIXL Orders excluding SPY Options,<sup>27</sup> which may be obtained by either sending in the requisite amount of Customer orders, thereby benefitting all participants with order flow with which to interact, or benefitting members and member organizations that have paid \$75,000 in transaction fees for the month, which contributed to the Exchange's revenue. The Exchange desires to incentivize members and member organizations to transact a greater amount of Complex SPY PIXL Orders. The quantity of orders required to be transacted to earn the rebate (2,500 Complex SPY PIXL Orders) will result in a greater amount of order flow to the Exchange, which benefits all participants through order interaction.

The Exchange's proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts and instead replace this offer with a rebate to attract more liquidity for PIXL SPY Complex Orders similar to proposed SPY PIXL pricing is equitable and not unfairly discriminatory. All members and member organizations are eligible for the proposed rebate, provide they met the requisite qualifications. Members and member organizations would be uniformly paid the rebate, provided they qualify. No member

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<sup>27</sup> The Exchange is offering a rebate for Complex SPY PIXL Orders in Section I.

will be eligible to eliminate the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts.

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

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

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**

The Exchange's proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer SPY PIXL Order if the Customer SPY PIXL Order is greater than 399 contracts and instead offer Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap a rebate of \$0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month does not impose an undue burden on intra-market competition. All members and member organizations are eligible for the proposed rebate, provide they met the requisite qualifications. Members and member organizations would be uniformly paid the new rebate. No member or member organization will be eligible to eliminate the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer SPY PIXL Order if the Customer SPY PIXL Order is greater than 399 contracts.

The Exchange's proposal to amend its SPY PIXL pricing so that when the PIXL Order is contra to other than the Initiating Order, the PIXL Order will continue to be assessed \$0.00 per contract, unless the order is a Customer, in which case the Customer

will receive an increased rebate of \$0.40 per contract does not impose an undue burden on intra-market competition because the Exchange will uniformly pay this rebate.

The Exchange's proposal to amend the SPY PIXL pricing so that all other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, will be assessed an increased Fee for Removing Liquidity of \$0.50 per contract or will receive the Rebate for Adding Liquidity does not impose an undue burden on intra-market competition because the Exchange will uniformly assess the increased Fee for Removing Liquidity to all applicable members and member organizations.

The Exchange's proposal to not offer a rebate when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order does not impose an undue burden on intra-market competition. The Exchange will uniformly not offer a rebate to any member or member organization when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction.

#### **Proposed Amendments to Section IV, Part A: PIXL Pricing**

The Exchange's proposal that if the member or member organization qualifies for the Tier 3, 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract, instead of the \$0.07 per contract Initiating Order fee does not impose an undue burden on intra-market competition because the Exchange will assess the fee in a uniform manner to all applicable members and member organizations.

The Exchange's proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker

orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts and instead replace this offer with a rebate to attract more liquidity for PIXL SPY Complex Orders similar to proposed SPY PIXL pricing does not impose an undue burden on intra-market competition. All members and member organizations are eligible for the proposed rebate, provide they met the requisite qualifications. Members and member organizations would be uniformly paid the rebate, provided they qualify. No member or member organization will be eligible to eliminate the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>28</sup>

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.

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<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-14 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-2017-14. 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-2017-14 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.<sup>29</sup>

Robert W. Errett  
Deputy Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined and 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**

No change.

**Part B. Complex Order**

No change.

**Part C. The following will apply to fees in Parts A and B:**

No change.

**PIXL Executions in SPY:**

- **Initiating Order:** \$0.05 per contract. [The Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order will be reduced to \$0.00 if the Customer PIXL Order is greater than 399 contracts.] Members that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap are eligible for a rebate of \$0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.
- When the PIXL Order is contra to the Initiating Order, a Customer PIXL Order will be assessed \$0.00 per contract and all other non-Customer market participants will be assessed a \$0.38 per contract fee when contra to an Initiating Order.
- When the PIXL Order is contra to other than the Initiating Order, the PIXL Order will be assessed \$0.00 per contract, unless the order is a Customer, in which case the Customer will receive a rebate of \$0.[38]40 per contract. All other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, will be assessed a Fee for Removing Liquidity of \$0.[42]50 per contract or will receive the Rebate for Adding Liquidity. When the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order will not be eligible for a rebate.

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**IV. Other Transaction Fees**

**A. PIXL Pricing**

**Initiating Order** (Section II) \$0.07 per contract. If the member or member organization qualifies for the Tier 3, 4 or 5 Customer Rebate in Section B the member or member organization will be assessed \$0.05 per contract. If the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month, the member or member organization will be assessed \$0.00 per contract for Complex PIXL Orders. Any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier 4 or 5 in Section B, or executes equal to or greater than 3.00% of National Customer Volume in

Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month will receive one of the PIXL Initiating Order discounts as described above. [The Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order will be reduced to \$0.00 if the Customer PIXL Order is greater than 399 contracts.] Members or member organizations that qualify for Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap are eligible for a rebate of \$0.10 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts, provided the member executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.

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

- When the PIXL Order is contra to the Initiating Order a Customer PIXL Order will be assessed \$0.00 per contract and Non-Customer PIXL Orders will be assessed \$0.30 per contract.
- When a PIXL Order is contra to a PIXL Auction Responder, a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer PIXL Orders will be assessed \$0.30 per contract in Penny Pilot Options or \$0.38 per contract in Non-Penny Pilot Options. A Responder that is a Specialist or a Market Maker will be assessed \$0.25 per contract in Penny Pilot Options or \$0.40 per contract in Non-Penny Pilot Options. Other Non-Customer Responders will be assessed \$0.48 per contract in Penny Pilot Options or \$0.70 per contract in Non-Penny Pilot Options when contra to a PIXL Order. A Responder that is a Customer will be assessed \$0.00 per contract in Penny Pilot Options and Non-Penny Pilot Options.
- When a PIXL Order is contra to a resting order or quote a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer will be assessed \$0.30 per contract and the resting order or quote will be assessed the appropriate Options Transaction Charge in Section II.

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

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

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

**B. – E.** No change.

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